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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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EXECUTIVE ORDER NO. 15 - 01

PROVIDING EMPLOYMENT SERVICES TO INDIVIDUALS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES

Individuals with disabilities persistently face higher rates of unemployment than their non-disabled fellow citizens.

As Oregon's economy continues to recover from the 2008 recession, we must strive to ensure that all Oregonians benefit from the recovery, including those with intellectual and developmental disabilities.

Oregon is a leader in providing supported employment services to persons with intellectual and developmental disabilities. Oregon adopted an Employment First Policy in 2008, making it one of the first states to do so. The Employment First Policy makes competitive integrated employment the goal for all Oregonians with intellectual and developmental disabilities. Competitive integrated employment is the much-preferred and optimal form of employment for all Oregonians with intellectual or developmental disabilities, consistent with their abilities and choices.

While the state cannot guarantee a job to any Oregonian, the state can and should consistently work to continue to improve its provision of employment services to provide the best possible opportunities for success and choice for individuals receiving those services. This requires new approaches and partnerships with government, the non-profit services sector, and current and potential employers in the business community.

To further these goals, on April 10, 2013, I signed Executive Order 13-04. Since that time, the state has made significant progress in developing and refining policies and practices, has strengthened its partnerships with employers and stakeholders, and has achieved milestones demonstrating tangible progress in improving employment outcomes for persons with intellectual and developmental disabilities. This Executive Order revises and supersedes Executive Order 13-04 in order to provide further policy guidance intended to continue the state's progress in these areas, including through a substantial reduction in employment in sheltered workshops. Continuing to improve Oregon's delivery of employment services, with the goal of achieving competitive integrated employment for individuals with intellectual and developmental disabilities, consistent with their abilities and choices, will benefit individuals with disabilities, their families, our communities, the economy, and the state.

NOW THEREFORE, IT IS HEREBY DIRECTED AND ORDERED:

Following the strategies set forth in further detail below, the Oregon Department of Human Services and the Oregon Department of Education shall continue to work to further improve Oregon's systems of designing and delivering employment services to those with intellectual and developmental disabilities toward fulfillment of Oregon's Employment First Policy, including a significant reduction over time of state support of sheltered work and an increased investment in employment services.

I. DEFINITIONS

For the purposes of this Executive Order only, as used below, the following terms have the following meanings:

1. "The State" means the State of Oregon, including the Office of Developmental Disability Services ("ODDS") and Vocational Rehabilitation ("VR"), as administered through the Department of Human Services ("DHS"), and the Oregon Department of Education ("ODE").

2. An "Annual Plan" means the written summary a service coordinator completes for an individual who is not enrolled in the waiver or Community First Choice services. An Annual Plan is not an Individual Support Plan ("ISP") and is not a plan of care for Medicaid purposes.

3. A "Career Development Plan" ("CDP") is part of an ISP or Annual Plan regarding ODDS services. A "Career Development Plan" identifies the individual's employment goals and objectives, the services and supports needed to achieve those goals and objectives, the persons, agencies, and providers assigned to assist the person to attain those goals, the obstacles to the individual working in Competitive Integrated Employment in an Integrated Employment Setting, and the services and supports necessary to overcome those obstacles. Career Development Plans shall be based on person-centered planning principles.

4. "Competitive Integrated Employment," consistent with the federal Workforce Innovation and Opportunity Act ("WIOA"), means work that is performed on a full-time or part-time basis (including self-employment) for which an individual:

a. Is compensated at a rate that:

(1) Meets or exceeds state or local minimum wage requirements, whichever is higher; and

(2) 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

(3) 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; and

c. Is at a location where the employee interacts with other persons who are not individuals with disabilities (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that individuals who are not individuals with disabilities and who are in comparable positions interact with other persons; and

d. 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.

5. A "Comprehensive Vocational Assessment" is an assessment administered for individuals eligible for employment services from VR or transition services from local educational agencies under the Individuals with Disabilities Education Act ("IDEA") to provide employment-related information for the development of, or revision of, an individual's employment-related planning document, such as the Individual Plan for Employment ("IPE"), or Individual Education Plan ("IEP").

6. "Discovery" is a comprehensive and person-centered employment planning support service to better inform an individual seeking Competitive Integrated Employment in an Integrated Employment Setting, and to create a Discovery profile for the individual. Discovery includes a series of work or volunteer-related activities to inform the individual and the job developer about the individual's strengths, interests, abilities, skills, experiences, and support needs, as well as

to identify the conditions or employment settings in which the individual will be successful.

7. "Employment Services" provided or funded by ODDS or VR are services that are intended to assist a person with I/DD to choose, get, learn, and keep work in an Integrated Employment Setting. Employment Services shall be "individualized," meaning that services shall be individually planned, based on person-centered planning principles and evidence-based practices, where applicable. Employment Services may include post-secondary education and/or training to the extent they are reinforced in an individual's ISP or Individual Plan for Employment Services.

8. "Evidence-based Practices" means well-defined best practices, which have been demonstrated to be effective with the I/DD population or the relevant subset of that population, such as youth sixteen or older, by multiple peer-reviewed research studies that are specific to this population or subset of this population.

9. Individuals with "I/DD" are persons who have an "Intellectual Disability," as defined in Oregon Administrative Rule ("OAR") chapter 411, division 320, or a "Developmental Disability," as defined in OAR chapter 411, division 320.

10. An "Integrated Employment Setting" is:

a. An employment setting that satisfies the requirements for Competitive Integrated Employment, as defined above; or

b. An employment setting that provides opportunities for an individual to have interaction with non-disabled persons. The setting must allow an individual to interact with non-disabled persons in a manner typical to the employment setting. Such settings may include Small Group Employment, as defined below.

Employment in an Integrated Employment Setting cannot be facility-based work in a Sheltered Workshop, and cannot be non-work activities such as day support activities.

11. "Person-centered Planning" is:

a. A timely and formal or informal process that is directed by the individual with I/DD in which the participants gather and organize information to help the individual:

(1) Determine and describe choices about personal employment goals, activities, services, providers, and lifestyle preferences; and

(2) Design strategies and networks of support to achieve goals and a preferred lifestyle using individual strengths, relationships, and resources; and

(3) Identify, use, and strengthen naturally occurring opportunities for support at home and in the community.

b. The methods for gathering information vary, but all are consistent with the individual's cultural considerations, needs, and preferences.

12. A "Qualified Employment Services Provider" is a provider of Employment Services that meets the qualification requirements to deliver Employment Services consistent with OAR chapter 407, division 25; OAR chapter 411, division 323; OAR chapter 411, division 340; OAR chapter 411, division 345; and any rule subsequently issued by DHS.

13. "Related Employment Services" are services which are provided by ODDS or VR in conjunction with or after the completion of needed Employment Services in order to enable an individual to maintain or advance in Competitive Integrated Employment. Services may include, but are not necessarily limited to, benefits counseling, transportation support, personal care supports (such as Activities of Daily Living, or ADL), environmental accessibility adaptations, behavioral supports, assistive technology, and social skills training as they relate to continued participation in Competitive Integrated Employment.

14. "Self-Employment" is an option for achieving Competitive Integrated Employment and is recognized as a viable means of promoting independence and economic self-sufficiency. Self-Employment generally refers to one person owning and controlling the operations and management of an enterprise that reflects the owner's skills, interests, and preferred work environment. An individual in Self-Employment may or may not receive ongoing supports. Self-Employment yields an income that is comparable to the income received by other individuals who are not individuals with disabilities, who are self-employed in similar occupations or on similar tasks, and who have similar training, experience, and skills.

15. A "Sheltered Workshop" is a facility in which individuals with I/DD are congregated for the purpose of receiving employment services and performing work tasks for pay at the facility. A Sheltered Workshop primarily employs individuals with I/DD and other disabilities, with the exception of service support staff. A Sheltered Workshop is a fixed site that is owned, operated, or controlled by a provider, where an individual has few or no opportunities to interact with non-disabled individuals, except paid support staff. A Sheltered Workshop is not Small Group Employment in an Integrated Employment Setting, and is not otherwise an Integrated Employment Setting as defined in this Order.

16. "Small Group Employment" refers to work performed in regular business, industry, and community settings by groups of two to eight individuals with I/DD. It is not Competitive Integrated Employment, which is the much-preferred and optimal form of employment for Oregonians with I/DD, but it can have value as a way to offer additional opportunities for integration and employment. Small Group Employment support is provided in an Integrated Employment Setting and in a manner that promotes integration into the workplace and interaction between participants and people without disabilities. Small Group Employment must allow an individual to interact with non-disabled persons in a manner typical to the employment setting. The wage paid to the supported individual must meet or exceed State and local minimum wage requirements as specified in Competitive Integrated Employment, and the individual must maintain goals to pursue Competitive Integrated Employment opportunities.

17. "Supported Employment" means services provided to support Competitive Integrated Employment, Self-Employment, and Small Group Employment.

18. "Working-Age Individuals" are adults with I/DD who are 21 or older and who are no longer receiving public school services, and those with I/DD who are age 60 or older who choose to continue employment.

II. TARGET POPULATIONS

1. ODDS/VR Target Population. At a minimum, the following individuals with I/DD will receive Employment Services described in this Order:

a. "Sheltered Workshop workers." Working-Age Individuals with I/DD found eligible for ODDS employment services and who worked in Sheltered Workshops on or after the effective date of Executive Order 13-04; and

b. "Transition-age individuals." Individuals with I/DD who at any time from the effective date of Executive Order 13-04 until July 1, 2022 meet the below definition of "transition-age," and who are

found eligible for ODDS employment services as described in OAR chapter 411, division 345, or who are found eligible for ODDS and VR services.

For the purpose of Section II.1.b, "transition-age" means:

(1) Not older than 24 years of age.

(2) Not younger than 14 years of age. With respect to VR, persons who are under 16 years of age may receive employment services with DHS approval. With respect to ODDS, persons who are under 18 years of age may receive employment services with DHS approval.

2. Education Target Population. The expectations for ODE described in Section X below are intended to benefit the following target populations, to the extent described in Section X below:

a. "Students with I/DD." All youth with I/DD who at any time from the effective date of Executive Order 13-04 until July 1, 2022 meet the below definition of "transition-age" and who receive services in public schools; and

b. "All transition-age students." All youth who at any time from the effective date of Executive Order 13-04 until July 1, 2022 meet the below definition of "transition-age" and who receive services in public schools and otherwise are eligible for services under the IDEA.

For the purpose of Section II.2, "transition-age" may begin as young as age 14, if deemed appropriate by the student's IEP team (including the student's parent(s)), and must begin no later than the start of the one-year period of a student's IEP during which the student reaches 16 years of age. Transition age ends when a student leaves school.

III. SHELTERED WORKSHOPS

1. By July 1, 2014, ODDS and VR shall no longer purchase or fund Vocational Assessments for individuals with I/DD that occur in Sheltered Workshops.

2. By July 1, 2015, ODDS and VR shall no longer purchase or fund Sheltered Workshop placements for:

a. Transition-age individuals, as defined under Section II.1.b. above;

b. Any working-age adult with I/DD who is newly eligible for ODDS or VR services; and

c. Any working-age adult with I/DD who is already utilizing ODDS or VR services who is not already working in a Sheltered Workshop.

IV. EMPLOYMENT SERVICES PROVIDED THROUGH ODDS AND VR

1. ODDS and VR will establish and implement a policy that Employment Services shall be evidence-based and individualized. Where such evidence-based practices have not been identified, Oregon may adopt practices used in other states that are generally recognized as effective practices.

2. Employment Services shall be based on an individual's capabilities, choices, and strengths and shall be tailored to each person. Specifically, ODDS and VR shall take into account an individual's capabilities, choices, and strengths in determining the type and duration of the Employment Services provided to that individual, the expected outcomes of the Employment Services, and whether a different type of Employment Service would more fully achieve Competitive Integrated Employment for the individual, as appropriate.

3. ODDS and VR will provide Employment Services as described in Section IV.6 below to at least 7,000 unique individuals in the ODDS/VR Target Population, including individuals in Section II.1.a of the ODDS/VR Target Population who wish to receive those Employment Services, between July 1, 2013 and July 1, 2022, in accordance with the following schedule:

a. By July 1, 2014, ODDS and/or VR report that they had provided Employment Services, as defined by this Order, to at least 600 individuals.

b. By July 1, 2015, ODDS and/or VR will have provided Employment Services to at least 1,350 individuals.

c. By July 1, 2016, ODDS and/or VR will have provided Employment Services to at least 2,200 individuals.

d. By July 1, 2017, ODDS and/or VR will have provided Employment Services to at least 3,000 individuals.

e. By July 1, 2018, ODDS and/or VR will have provided Employment Services to at least 3,800 individuals.

f. By July 1, 2019, ODDS and/or VR will have provided Employment Services to at least 4,600 individuals.

g. By July 1, 2020, ODDS and/or VR will have provided Employment Services to at least 5,400 individuals.

h. By July 1, 2021, ODDS and/or VR will have provided Employment Services to at least 6,200 individuals.

i. By July 1, 2022, ODDS and/or VR will have provided Employment Services to at least 7,000 individuals.

4. Any Sheltered Workshop worker in Section II.1.a of the ODDS/VR Target Population who, in his or her CDP as described in Section V below, indicates a desire to work in an Integrated Employment Setting and to receive Employment Services as described in Section IV.6 below shall receive these Employment Services. The Policy Group referred to in Section XIV of this Order shall be responsible for recommending metrics aimed at assessing the delivery of Employment Services as described in Section IV.6 below to individuals in Section II.1.a of the ODDS/VR Target Population who desire to receive these Employment Services, as well as reviewing the State's performance under those metrics.

5. Both ODDS/VR Target Populations described in section 3 above will receive Employment Services as described in Section IV.6 below. The proportionality of the delivery of Employment Services to different Target Populations will be reviewed by the Policy Group referred to in Section XIV of this Order to assure delivery is consistent with the expected outcomes of this Order. Further, as necessary, the State shall revise the above schedule for the provision of Employment Services to both ODDS/VR Target Populations to further this purpose.

6. For an individual to be counted as being provided an Employment Service under this Section, that person must have received one or more of the following:

a. Discovery services though ODDS;

b. Comprehensive Vocational Assessments through VR;

c. An approved Individual Plan for Employment with VR;

d. Job development services through ODDS; or

e. Supported Employment Services through ODDS.

None of the services listed above shall be counted in a way that creates a duplicate count of individuals that were provided Employment Services. Any additions to the list of Employment Services to be counted in this Section will be subject to review and approval by the Policy Group referred to in Section XIV of this Order.

7. The State cannot guarantee a job to any Oregonian, including jobs in Competitive Integrated Employment or other Integrated Employment Settings to Oregonians with I/DD. Nevertheless, the purpose of the Employment Services provided in this Order is to increase the number of jobs in Competitive Integrated Employment or other Integrated Employment Settings for individuals in the ODDS/VR Target Populations, and to decrease the number of individuals employed in Sheltered Workshops. The Policy Group referred to in Section XIV of this Order shall be responsible for recommending outcome metrics aimed at assessing the effectiveness of the Employment Services provided in this Order in achieving this purpose, as well as reviewing the State's performance under those metrics.

V. CAREER DEVELOPMENT PLANNING

1. In Executive Order 13-04, I directed that ODDS shall adopt and implement policies and procedures for developing a CDP. The policies will include a presumption that all individuals in the ODDS/VR Target Population are capable of working in an Integrated Employment Setting. DHS reports that such policies and procedures have been adopted, and they should be updated from time to time as appropriate.

2. The CDP shall prioritize Competitive Integrated Employment, and then other employment in Integrated Employment Settings. The career development process shall focus on the strengths of the individual and shall be conducted with the goal of maximizing the number of hours spent working, consistent with an individual's abilities and choices.

3. By July 1, 2015, all working-age individuals in Sheltered Workshops in the ODDS/VR Target Population shall receive a CDP. The expectation for transition-age individuals in that Target Population is that they should have a CDP no later than the date of their anticipated departure from the Oregon public schools, and in any event no later than one year after their departure. The provision of Employment Services by ODDS will not be delayed or denied due to the lack of a CDP.

VI. TRAINING

1. In Executive Order 13-04, I directed ODDS and VR to establish competencies for the provision of Employment Services, and will adopt and implement competency-based training standards for CDPs, job creation, job development, job coaching, and coordination of those services. DHS reports that such competencies have been adopted. The competencies shall be updated from time to time as appropriate.

2. By July 1, 2016, ODDS and VR will purchase Employment Services for people with I/DD only from agencies or individual providers that are licensed, certified, credentialed or otherwise qualified as required by Oregon Administrative Rule. Such requirements for the provision of Employment Services will be competency-based and may include, as applicable, such national credentialing programs as the APSE Certified Employment Support Professional exam or a substantial equivalent.

VII. OUTREACH AND AWARENESS

In Executive Order 13-04, I directed , ODDS and VR to develop an outreach and informational education program for all persons in the ODDS/VR Target Population that explains the benefits of employment, addresses concerns of families and perceived obstacles to participating in Employment Services, and is designed to encourage individuals with I/DD and their families to seek Employment Services. DHS reports that the program has been adopted. The program shall be updated from time to time as appropriate.

VIII. PROVIDER CAPACITY

State agencies will make good faith efforts, within available budgetary resources, to ensure that there are a sufficient number of qualified employment providers to deliver the services and supports necessary for individuals in the ODDS/VR Target Population to receive Employment Services consistent with the terms of this Order.

IX. STATE AGENCY ACTIONS

1. Consistent with its authority and the Oregon Administrative Procedures Act, DHS will update ODDS and VR policies and administrative rules related to employment to be consistent with this Order.

2. In Executive Order 13-04, I directed DHS to designate a statewide Employment Coordinator to oversee and coordinate its employment services program and all activities required by DHS, ODDS, and/or VR under this Order. The Employment Coordinator will coordinate with the ODE employees referenced in Section X.3.b. below. The Employment Coordinator has been named and DHS reports that the Employment Coordinator is actively engaged in the coordination of work by the agencies.

3. In Executive Order 13-04, I directed DHS to support new or existing technical assistance provider(s) or use other available training resources to provide leadership, training and technical assistance to employment providers and to provider, county, support services brokerage, and VR staff to support the performance of this Order. DHS reports that supports are being provided.

4. In Executive Order 13-04, I directed that DHS adopt an "Integrated Employment Plan" to further carry out the goals of this Order, after review by the Policy Group described in Section XIV below. This Order and the Plan itself are not admissions that such a Plan is legally required, nor are they admissions on any legal issue that is currently the subject of (a) *Lane v. Kitzhaber,* a class action lawsuit alleging violations of the Americans with Disabilities Act, or (b) a parallel United States Department of Justice ("USDOJ") investigation of a complaint allegedly made to USDOJ made by persons involved in the *Lane* case. Given those matters and Oregon's longstanding commitment to integrated services for individuals with disabilities, however, adopting a Plan is a prudent step.

X. EDUCATION PROVISIONS

1. As the Superintendent of Public Instruction, I emphasize that all students with disabilities attending public schools in Oregon should receive a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and that prepares them for further education, training, employment, and independent living. This provision is intended to focus attention on students with I/DD. [1]

2. Intent. This Order, including these Education Provisions, is not intended to expand the obligations of the State or its schools under the IDEA.

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[1] The term "intellectual or developmental disabilities" is defined by this Order, but it is not a term commonly used by educators. In the educational context, persons with these disabilities may fall into one or more of several categories mandated by the IDEA. These categories may include, but are not limited to, Intellectual Disabilities, Autism, Emotional Disturbance, and Other Health Impaired.

3. Definitions. For purposes of this Section X, the following definitions apply:

a. "Education Goals" means the following goals:

(1) Families, students, and educators will have the expectation of work in Integrated Employment Settings.

(2) Students transitioning to adult services through VR or ODDS will be prepared to transition to integrated work experiences.

(3) Statewide systems will be coordinated to reach the goal of Competitive Integrated Employment opportunities as an outcome of students' education.

b. "Transition Services" means a coordinated set of activities for students in the Education Target Population that:

(1) 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, which post-school activities may include postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;

(2) Is based on the individual student's needs, taking into account the student's preferences and interests; and

(3) 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

(4) 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.

c. "Transition Technical Assistance" will be the substance of the work of the Statewide Transition Technical Assistance Network, described in Section X.3.c. below. Transition Technical Assistance will be aimed primarily at students with I/DD in Section II.2.a of the Education Target Population, and will include professional development and technical assistance for teachers, administrators, and other educational service providers that include:

(1) Transition-related curriculum and instructional approaches which are consistent with the Education Goals.

(2) Outcome-based transition planning approaches that use precepts of discovery and person-centered planning.

(3) Implementation of transition-related instructional approaches, such as those that are community-based, and which can include authentic experiences such as internships, mentorships, youth work experiences, job skill related instruction, and job shadowing.

(4) Facilitation and management of interagency teams and resources to help ensure students and families can utilize resources from ODDS, VR, and local education agencies.

(5) Encouraging the implementation of Transition Services in the schools that are consistent with the Education Goals.

4. Strategies.

a. ODE will implement, through a contract with Oregon's federally-funded Parent Training and Information Center, or other similar entity, an ongoing program of outreach to students, families, and communities to seek to ensure that all individuals in the education target populations are familiar with the Education Goals.

b. ODE will designate staff specialists whose work will be focused on systems-change efforts in schools and communities to focus on liaisons with partner agencies, data quality and tracking, local capacity development, and working with local education agencies to help ensure that the Education Goals are reflected in the provision of Transition Services. ODE staff will also coordinate the work of a Statewide Transition Technical Assistance Network.

c. ODE will establish a Statewide Transition Technical Assistance Network to assist high schools in Oregon to provide Transition Services. The Transition Technical Assistance Network shall seek to ensure that the Education Goals of this Order are implemented in assessment, curriculum, and instruction for students of transition age, particularly students with I/DD in Section II.2.a of the Education Target Population.

d. ODE will partner with VR and ODDS to review the post-secondary outcomes of students in the Education Target Population, and assess the effectiveness of these strategies on students with I/DD in Section II.2.a of the Education Target Population.

e. Section X.4.e of Executive Order 13-04 directed ODE to support proposed legislative or rule changes that will prohibit local education agencies from contracting with adult service providers for employment or vocational assessment services in Sheltered Workshops. ODE supported and the State Board of Education adopted a rule that prohibits local educational agencies from including Sheltered Workshops in the continuum of alternative placements and supplementary aids and services provided to students. ODE shall continue to support legislation consistent with the intent of the directive to support proposed legislative changes that will prohibit local education agencies from contracting with adult service providers for employment or Comprehensive Vocational Assessment services in Sheltered Workshops.

XI. INTERAGENCY COLLABORATION

1. In Executive Order 13-04, I directed that the State develop and implement one or more inter-agency agreements or Memorandum of Understanding among ODDS, VR, and ODE designed to assist in accomplishing the implementation of this Order that generally addresses the following issues:

a. Allocation of responsibility, funding commitments, and authority for conducting and ensuring the performance of this Order, including career planning, transition planning, outreach, training, Employment Services, data collection and sharing, and service gaps.

b. Employment outcomes through collaboration among ODDS, VR, and the Policy Group described in Section XIV below.

c. Coordination of funding to accomplish the goals of this Order.

d. Coordinated outreach efforts to individuals in the ODDS/VR Target Populations by Vocational Rehabilitation counselors, personal agents, and service coordinators. DHS reports that a Memorandum of Understanding was adopted. The MOU shall be updated from time to time as appropriate.

2. ODDS will include specific provisions in its contracts with each Support Services Brokerage and each Community Developmental Disability Program ("CDDP") to accomplish the full implementation of this Order. DHS reports that this work is underway.

3. ODDS, VR and ODE shall, to the extent possible and where efforts may compliment or overlap, coordinate with other State initiative efforts involving employment, such as "Chartering Partnerships for Job Growth and Talent Development." [2]

XII. QUALITY ASSESSMENT AND IMPROVEMENT

In Executive Order 13-04, I directed DHS to develop and implement a quality improvement initiative that is designed to promote Employment Services developed in accordance with this Order and to evaluate the quality of Employment Services provided to persons with I/DD under this Order statewide. DHS reports that a plan has been adopted. The plan shall be updated from time to time as appropriate and implementation shall continue.

XIII. DATA COLLECTION AND REPORTING

1. In Executive Order 13-04, I directed that, twice a year, the Employment Coordinator will monitor the progress of implementation of this Order through data collection, data analysis, and quality improvement activities. These monitoring efforts shall continue.

2. In Executive Order 13-04, I directed that, twice a year, ODDS and VR shall collect data and report to the Employment Coordinator and the Policy Group the following data for the ODDS/VR Target Populations:

a. The number of individuals receiving Employment Services;

b. The number of individuals working in the following settings: Competitive Integrated Employment, Self-Employment, Sheltered Employment, and Small Group Employment (8 or less);

c. The number of individuals in Supported Employment;

d. The number of hours worked per week and hourly wages paid to those individuals;

e. The outcomes of Employment Services selected by individuals through the Career Development Planning process, including the selection of non-employment services;

f. Complaints and grievances.

This data collection and reporting shall continue. In addition, ODDS and VR shall collect and report the number of individuals receiving Related Employment Services.

3. In Executive Order 13-04, I directed that, twice a year, ODDS, VR, and ODE will report to the Employment Coordinator and the Policy Group on the progress made on the terms of this Order and the results of the data collected under this Section. These reports shall continue.

4. In Executive Order 13-04, I directed that ODDS, VR, and ODE will begin a program of regularly collecting and analyzing data described above in this Section XIII, and will identify problems or barriers to placement in or retaining jobs in an integrated employment setting, as well as service gaps, and will recommend to DHS, ODE, and the Legislature actions to improve services. ODDS, VR, and ODE will review this information on a semi-annual basis and develop and implement measures to improve services with respect to the problems and barriers identified. This program shall continue.

XIV. ASSURING SUCCESS

1. The involvement of stakeholders is critical to success. In Executive Order 13-04, I directed formation of a group consisting of representatives of ODE, DHS, legislators, and stakeholders shall be formed to make recommendations to the Director of DHS and the Deputy Superintendent of Public Instruction regarding design and implementation on issues including, but not limited to, education, outreach, development of provider capacity, training, and processes for assessment and Discovery. This group is referred to throughout this Order as the Policy Group. Disability Rights Oregon was also invited to attend and is expressly encouraged to participate in the Policy Group.

2. The Policy Group shall continue its work.

3. The Policy Group shall recommend outcome metrics to the State, review the State's performance under those metrics, and make annual recommendations to the Governor for improving performance. Metrics developed by the Policy Group shall not create enforceable rights.

XV. OTHER LAWS

1. Federal statutes, regulations, and guidance in this area continue to evolve, and State agencies should look to revise their regulations and policies as appropriate.

2. State agencies are not directed by this Order to act in a way that would jeopardize the State's federal funding, such as funding from United States Department of Education, Centers for Medicare & Medicaid Services, and/or Rehabilitation Services Administration, or that would violate federal law or regulations.

3. Performance of this Order is subject to Oregon law, including Article XI, section 7, of the Oregon Constitution. To the extent that this Order is not consistent with Oregon state statutes or administrative rules, the Order should be read as requesting a change in state law, so long as that request is consistent withfederal law. This Order does not attempt to override any provision of state law but reflects a desired policy change.

4. Wherever possible, this Order shall be read as consistent with federal law. In the event any provision of this Order is declared by a court to be in violation of any Oregon or federal law, that law will prevail and the remaining terms of this Executive Order will remain in full force and effect.

XVI. EFFECTIVE DATE AND EFFECT OF THIS ORDER

1. This Order shall take effect on February 2, 2015.

2. This Order supersedes and replaces Executive Order 13-04.

3. This Order addresses employment services for those who have intellectual or developmental disabilities, as well as services to transition-aged students with disabilities. This Order is intended to promote agency coordination by providing a statement of my executive policy preferences, to assist the agencies in working together towards a common goal of better enabling those with intellectual or development disabilities to locate and maintain competitive integrated employment. This Order states my policy preferences and directions to DHS and ODE. Directives that certain measures "shall," "should," or "will" occur are not substitutes for rulemaking, which should occur where necessary to implement this Order and satisfy the requirements of the Oregon Administrative Procedures Act ("APA").

4. The Order does not create enforceable rights, but is my request to DHS and the State Board of Education to continue to engage in any rulemaking necessary to implement the terms of this Order,

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[2] State of Oregon, Office of the Governor (2013). Executive Order 13-08: *Chartering Partnerships for Job Growth and Talent Development,* retrieved at http://www.oregon.gov/gov/Documents/executive_orders/eo_13-08.pdf.

consistent with the terms of this Order, the agencies' rulemaking authority, and the APA.

Done at Salem, Oregon, this 2nd day of February, 2015.

/s/ John A. Kitzhaber
John A. Kitzhaber, M.D.
GOVERNOR

ATTEST

/s/ Kate Brown
Kate Brown
SECRETARY OF STATE

REQUEST FOR COMMENTS
PROPOSED CLEANUP PLAN FOR MC AYEAL'S WARDROBE CLEANERS SITE

COMMENTS DUE: 5 p.m., Tuesday March 31, 2015
PROJECT LOCATION: 1060 Olive St., Eugene
PROPOSAL: The Oregon Department of Environmental Quality proposes to implement soil and groundwater cleanup actions at the site of the former McAyeals Wardrobe Cleaners in downtown Eugene.
HIGHLIGHTS: Spills of dry cleaning solvent and petroleum hydrocarbons have contaminated the soil and groundwater beneath this property. Lane County acquired the property by tax foreclosure in 2012. DEQ and Lane County will use funds DEQ received in a settlement with the former property owner, as well as funding through Business Oregon's Brownfields Program to clean up the site so that it can be put back to productive use. An Analysis of Brownfield Cleanup Alternatives report was completed for the site in 2014. A Staff Report prepared by DEQ for public review describes its proposed cleanup action for the site. Cleanup is proposed to start in 2015. Both documents are available for public review and comment.
HOW TO COMMENT: Send comments to DEQ Project Manager Don Hanson at 165 E. 7th Ave., Suite 100, Eugene, OR 97401 or hanson.don@deq.state.or.us. For more information contact the project manager at 541-687-7349.

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 the proposed plan 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 2490 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled **2490** 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?SourceId=2490&SourceIdType=11

If you do not have web access and want to review the project file contact the DEQ project manager.
THE NEXT STEP: DEQ will review all comments it receives regarding the proposed cleanup plan, and will consider and address all comments. If there is significant public interest DEQ may hold a public meeting to discuss the project. After making any revisions to the plan based on comments received, DEQ will implement the cleanup.

REQUEST FOR COMMENTS
PROPOSED CERTIFICATE OF COMPLETION FOR HAWTHORNE DEPOT LLC AT PGE HAWTHORNE SITE

COMMENTS DUE: 5 p.m., Tuesday, March 31, 2015
PROJECT LOCATION: 1510 SE Water Avenue, Portland, OR
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 March 2014 Hawthorne Depot, LLC entered a Prospective Purchaser Agreement Consent Order with DEQ and agreed to complete a Scope of Work on the subject property, including environmental cleanup of primarily soil contaminated with polychlorinated biphenyls, commonly known as PCBs, at the PGE Hawthorne site.

DEQ reviewed the requirements of the PPA and the corresponding actions, and has made a preliminary determination that all obligations of the PPA 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 Hawthorne Depot's 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 Hawthorne Depot with third party liability protection.
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 5779 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled 5779 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/lq/ecsi/ecsilist.asp?SiteID=5779&Bus_Name=&Address=&County=ALL&City=&Zip_Code=&LatitudeMin=&LatitudeMax=&LongitudeMin=&LongitudeMax=&Township=All&TownshipZone=N&Range=1&RangeZone=E&Section=All&ActionCode=All&Substance=None&Alias=None&Submit=Submit&listtype=lis.

If you do not have web access and want to review the project file contact the DEQ project manager.
THE NEXT STEP: DEQ will consider all public comments received by the date and time stated above before making a final decision regarding the completion certification of the remedial actions taken at the site. A public notice of DEQ's final decision will be issued.
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 PROSPECTIVE PURCHASER AGREEMENT FOR FORMER CAMPBELL CRANE

COMMENTS DUE: April 1, 2015 at 5 pm Pacific Standard Time
PROJECT LOCATION: 8001 and 8010 NE 14th Place, Portland, Oregon
PROPOSAL: The Department of Environmental Quality seeks comments on its proposed Consent Order for a prospective purchaser agreement with the non-profit Oregon Humane Society (OHS) concerning its acquisition of real property (including six tax lots) located at or near 8001 and 8101 NE 14th Place, Portland, Oregon (Property).

OHS proposes to provide evaluation of prior hazardous substance releases on the site, improve stormwater management, and produce a contaminated media management plan for safe soil and groundwater management during future site construction and development. After completing the remaining environmental work, OHS intends to use the acquired properties to expand from their existing adjacent campus in order to continue their mission of pet adoptions, education, veterinary services and training, animal-assisted therapy, and advocacy.

The subject properties were historically used for farming in the early 1900's until the mid-1960's to early 1970's when industrial-use sites were established. In 1966 the 8101 property was developed with a 12,000-square foot building with office and warehouse space that included 12 truck bay doors. Four tax lots to the north include portions of the Columbia Slough levee. Campbell Crane a construction

crane and rigging service occupied at the 8001 NE 14th place property from approximately 1973 to 2012.

Historic contamination sources include under- and above-ground fuel storage tanks and appurtenant lines and dispensers, machinery and vehicle maintenance and cleaning, and metal sandblasting. Contaminants of potential concern are primarily petroleum hydrocarbons, polynuclear aromatic hydrocarbons (PAHs), and a few heavy metals.

Remedial actions will include –

• Cleanout of the subject property stormwater lines and improvements where needed in the stormwater system for protection of surface waters and sediments in the Middle Columbia Slough.

• Production of a site-specific Contaminated Media Management Plan (CMMP) to guide future site construction and development activities as OHS expands from current campus.

• Provide site investigation reports to evaluate if there is contamination present that presents unacceptable exposure risks to future site occupants.

• Remedial actions, where required, to eliminate any unacceptable exposure risks to contamination still present from historic releases. For example, soil removal or capping to prevent exposure to contamination site soils.

• Investigate underground magnetic anomaly and take remedial action if required.

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

The proposed Consent Order will provide the Oregon Humane Society with a release from liability for claims by the State of Oregon under ORS 465.200 to 465.545 and 465.990, 466.640, and 468B.310 regarding existing hazardous substance releases at or from the property. The proposed consent order will also provide the Oregon Humane Society with third party liability protection.

HOW TO COMMENT: Send comments to DEQ Project Manager Chuck Harman at DEQ's Northwest Region Office, 2020 SW 4th Avenue, Suite 400, Portland, OR 97201 or via email at harman.charles@deq.state.or.us. For more information you can also contact the project manager directly at (503) 229-5125.

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 3794 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled 3794 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/lq/ecsi/ecsilist.asp?SiteID=3794&Bus_Name=&Address=&County=ALL&City=&Zip_Code=&LatitudeMin=&LatitudeMax=&LongitudeMin=&LongitudeMax=&Township=All&TownshipZone=N&Range=1&RangeZone=E&Section=All&ActionCode=All&Substance=None&Alias=None&Submit=Submit&listtype=lis.

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

THE NEXT STEP: DEQ will consider all public comments received by the date and time stated above before making a final decision regarding the proposed remedial actions and terms of the Order on Consent for 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, call DEQ at 503-229-5696 or toll free in Oregon at 800-452-4011; fax to 503-229-6762; or email to deqinfo@deq.state.or.us. People with hearing impairments may call 711.

Notices of Proposed Rulemaking 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 Architect Examiners
Chapter 806

Rule Caption: Board of Architect Examiners 2015–17 Budget

Date:	Time:	Location:
3-16-15	9 a.m.	205 Liberty St. NE, Suite A Salem, OR

Hearing Officer: Maria Brown
Stat. Auth.: ORS 671.125 & 182.462
Stats. Implemented: ORS 671.125 & 182.462
Proposed Adoptions: 806-001-0003
Last Date for Comment: 3-16-15, 12 p.m.
Summary: Board of Architect Examiners 2015–17 Budget.
Rules Coordinator: Maria Brown
Address: Oregon Board of Architect Examiners, 205 Liberty St. NE, Suite A, Salem, OR 97301
Telephone: (503) 763-0662

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Board of Chiropractic Examiners
Chapter 811

Rule Caption: Remove fee from rule and requires the applicant to pay the "current" background check fee.

Date:	Time:	Location:
3-12-15	1 p.m.	85625 Hwy. 101 Florence, OR 97439

Hearing Officer: Daniel Cote DC, OBCE President
Stat. Auth.: ORS 684
Stats. Implemented: ORS 684.040 & 684.155
Proposed Amendments: 811-010-0085
Last Date for Comment: 3-12-15, 3:30 p.m.
Summary: The amendment removes the fee inserted into rule (which is outdated) and proposed generic language requires the applicant to pay the "current" background check fee.
Rules Coordinator: Kelly J. Beringer
Address: Board of Chiropractic Examiners, 3218 Pringle Rd. SE, Suite 150, Salem, OR 97302
Telephone: (503) 373-1573

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Rule Caption: Proposal states how licensees leaving practice must notify patients about accessing their records

Date:	Time:	Location:
3-12-15	1 p.m.	85625 Hwy. 101 Florence, OR 97439

Hearing Officer: Daniel Cote DC, OBCE President
Stat. Auth.: ORS 684
Stats. Implemented: ORS 684.155
Proposed Amendments: 811-015-0005
Last Date for Comment: 3-12-15, 3:30 p.m.
Summary: Addresses what a DC or a DC's legal representative's duties are with regard to patient records after DC moves, retires, becomes incapacitated, unable to practice, or dies.
Rules Coordinator: Kelly J. Beringer
Address: Board of Chiropractic Examiners, 3218 Pringle Rd. SE, Suite 150, Salem, OR 97302
Telephone: (503) 373-1573

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Board of Medical Imaging
Chapter 337

Rule Caption: Allow two new imaging subspecialties to be recognized on medical imaging licenses.
Stat. Auth.: ORS 688.555
Stats. Implemented: ORS 688.445
Proposed Amendments: 337-010-0007
Last Date for Comment: 3-31-15, 4:30 p.m.
Summary: This rulemaking would add two registry subspecialty credentials to the list of recognized credentials that the Board could print on the license of a licensee who earns the respective credential through one of the national imaging registries. The subspecialty credentials to be added by this rulemaking would be the computed tomography credential that was recently developed and is now offered by the Nuclear Medicine Technology Certification Board, and the pediatric sonography subspecialty credential that was recently developed and is now offered by the American Registry of Diagnostic Medical Sonographers.
Rules Coordinator: Ed Conlow
Address: Board of Medical Imaging, 800 NE Oregon St., Suite 1160A, Portland, OR 97232
Telephone: (971) 673-0216

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Board of Parole and Post-Prison Supervision
Chapter 255

Rule Caption: Amend the exhibits to be in accordance with the current rules.
Stat. Auth.: ORS 183.415, 163.105(2), 163.115(5), 144.120(7) & 144.130
Stats. Implemented: ORS 144.120(7) & 144.130
Proposed Amendments: 255-030-0013, 255-032-0022
Last Date for Comment: 3-27-15, 12 p.m.
Summary: The timeframe for submitting documents to the Board before a hearing is, under OAR 255-030-0040, 14 days, but the current version of the Notice of Rights (NOR), which is a document providing information about our rules, states the timeframe is 7 days. This appears to be an oversight. The change is a clean-up measure to ensure the NOR provides correct information about Board practices.
Rules Coordinator: Shawna Harnden
Address: Board of Parole and Post-Prison Supervision, 2575 Center St. NE, Salem, OR 97301
Telephone: (503) 945-0914

Department of Administrative Services
Chapter 125

Rule Caption: Amending rules governing renting or leasing office quarters.

Date:	Time:	Location:
3-16-15	1:30 p.m.	Dept. of Administrative Services 1225 Ferry St. SE Mt. Jefferson Conference Rm. Salem, OR 97301

Hearing Officer: Shannon Ryan
Stat. Auth.: ORS 184.340
Other Auth.: Governor's Executive Order 12-17, Governor's 10-Year Plan for Oregon
Stats. Implemented: ORS 276.420, 276.426 & 276.428
Proposed Amendments: 125-120-0000, 125-120-0100, 125-120-0120, 125-120-0130, 125-120-0150
Proposed Repeals: 125-120-0160
Last Date for Comment: 3-17-15, 5 p.m.
Summary: The proposed amendments update the leasing office quarters rules to respond to contemporary best practice recommendations from a recent study and to align with Governor's Executive Order 12-17 and Governor's 10-Year Plan for Oregon.
Rules Coordinator: Janet Chambers
Address: Department of Administrative Services, 155 Cottage St. NE, Salem, OR 97301
Telephone: (503) 378-5522

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Department of Corrections
Chapter 291

Rule Caption: Assignment and Supervision of Inmates for Work Assignments and Unfenced Minimum Housing
Stat. Auth.: ORS 179.040, 421.445, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 421.445, 423.020, 423.030 & 423.075
Proposed Amendments: 291-082-0100 – 291-082-0145
Last Date for Comment: 4-13-15, 5 p.m.
Summary: 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 necessary to reflect operational changes within the agency.
Rules Coordinator: Janet R. Worley
Address: Department of Corrections, 2575 Center St. NE, Salem, OR 97301-4667
Telephone: (503) 945-0933

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Rule Caption: Custody Classification Levels of Inmates in DOC Facilities
Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Proposed Amendments: 291-104-0111, 291-104-0116, 291-104-0125, 291-104-0135, 291-104-0140
Last Date for Comment: 4-13-15, 5 p.m.
Summary: These rule amendments 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
Address: Department of Corrections, 2575 Center St. NE, Salem, OR 97301-4667
Telephone: (503) 945-0933

Department of Fish and Wildlife
Chapter 635

Rule Caption: Salmon Seasons for Commercial and Sport Fisheries In the Pacific Ocean.

Date:	Time:	Location:
4-24-15	8 a.m.	63095 Deschutes Market Rd. Bend, OR 97701

Hearing Officer: Oregon Fish & Wildlife Commission
Stat. Auth.: ORS 496.138, 496.146, 506.036, 506.119, 506.129, 506.750 et Seq.
Other Auth.: Magnuson-Stevens Sustainable Fisheries Act
Stats. Implemented: ORS 496.162, 506.036, 506.109, 506.129, 506.750 et Seq.
Proposed Adoptions: Rules in 635-003, 635-006, 635-013
Proposed Amendments: Rules in 635-003, 635-006, 635-013
Proposed Repeals: Rules in 635-003, 635-006, 635-013
Last Date for Comment: 4-24-15, Close of Hearing
Summary: Amend rules related to commercial and sport salmon fishing in the Pacific Ocean within Oregon State jurisdiction. Housekeeping and technical corrections to the regulations may occur to ensure rule consistency.
Rules Coordinator: Michelle Tate
Address: Department of Fish and Wildlife, 4034 Fairview Industrial Dr. SE, Salem, OR 97302
Telephone: (503) 947-6044

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Rule Caption: Amend Rules for Sport and Commercial Halibut Fisheries.

Date:	Time:	Location:
4-24-15	8 a.m.	63095 Deschutes Market Rd. Bend, OR 97701

Hearing Officer: Oregon Fish & Wildlife Commission
Stat. Auth.: ORS 496.138, 496.146, 496.162, 497.121, 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 496.004, 496.009, 496.162, 506.109, 506.129 & 508.306
Proposed Adoptions: Rules in 635-004, 635-039
Proposed Amendments: Rules in 635-004, 635-039
Proposed Repeals: Rules in 635-004, 635-039
Last Date for Comment: 4-24-15, Close of Hearing
Summary: Amendments to Oregon's regulations for sport and commercial halibut fisheries will bring the State of Oregon concurrent with federally adopted regulations. Modifications establish 2015 seasons and/or quotas for halibut fisheries. Housekeeping and technical corrections to the regulations may occur to ensure rule consistency.
Rules Coordinator: Michelle Tate
Address: Department of Fish and Wildlife, 4034 Fairview Industrial Dr. SE, Salem, OR 97302
Telephone: (503) 947-6044

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Rule Caption: Wildlife holding, rehabilitation, protected wildlife and Wildlife Control Operators

Date:	Time:	Location:
4-24-15	8 a.m.	63095 Deschutes Market Rd. Bend, OR 97701

Hearing Officer: Oregon Fish and Wildlife Commission
Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.162, 497.298, 497.308, 497.312, 497.318, 498.022, 498.029, 498.052, 498.222 & 498.242
Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.162, 497.298, 497.308, 497.312, 497.318, 498.022, 498.029, 498.052, 498.222 & 498.242
Proposed Adoptions: Rules in 635-042, 635-044, 635-435
Proposed Amendments: Rules in 635-044, 635-435
Proposed Repeals: Rules in 635-044, 635-435
Proposed Renumberings: Rules in 635-044 to 635-042
Last Date for Comment: 4-24-15, Close of Hearing

Summary: Amend rules pertaining to Wildlife Control Operators and the protection and holding of wildlife and wildlife rehabilitation. Additionally, rules pertaining to wildlife holding will be moved into its own division.
Rules Coordinator: Michelle Tate
Address: Department of Fish and Wildlife, 4034 Fairview Industrial Dr. SE, Salem, OR 97302
Telephone: (503) 947-6044

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

Rule Caption: Eligibility for Medicaid K-State Plan in Long-Term Care Service Priorities; K-State Plan; and In-Home Services

Date:	Time:	Location:
3-17-15	2 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
Proposed Amendments: 411-015-0100, 411-030-0040, 411-035-0015, 411-035-0025, 411-035-0040, 411-035-0055, 411-035-0070, 411-035-0085
Proposed Repeals: 411-015-0100(T), 411-030-0040(T), 411-035-0015(T), 411-035-0025(T), 411-035-0040(T), 411-035-0055(T), 411-035-0070(T), 411-035-0085(T)
Last Date for Comment: 3-21-15, 5 p.m.
Summary: The Department of Human Services (Department) is proposing to amend the rules in OAR 411-015, 030, and 035 to make permanent changes from the January 1, 2015 temporary rulemaking, which puts the Department in compliance with mandates from the Center for Medicare and Medicaid Services (CMS).

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 OAR 461-145-0220 regarding the equity value of the home in the same manner as if they were requesting these services under OSIPM. This criteria was added to the rules as it was not in them prior to the temporary rulemaking.

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 035 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 030 and 035. This means all mutual eligibility criteria were tied back to the 411-015 eligibility criteria.

Minor punctuation, grammar, and formatting changes were made to the rules as well.

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

Department of Human Services,
Child Welfare Programs
Chapter 413

Rule Caption: Amending Child Welfare rules relating to Differential Response

Date:	Time:	Location:
3-30-15	1 p.m.	Human Services Bldg. 500 Summer St. NE, Rm. 257 Salem, OR

Hearing Officer: Kris Skaro
Stat. Auth.: ORS 409.027, 409.050, 418.005 & 418.598
Stats. Implemented: ORS 409.010, 409.027, 409.050, 409.185, 418.005, 418.015, 418.580, 418.598 & 419B.020
Proposed Amendments: 413-015-9000 – 413-015-9040
Last Date for Comment: 3-30-15, 5 p.m.
Summary: The Department of Human Services, Office of Child Welfare Programs, is proposing to amend its rules relating to Oregon's Differential Response (DR) system. DR will ultimately be implemented statewide, but is currently being implemented on a county-by-county basis. OAR 413-015-9000 is being amended to specify the implementation dates for additional counties, specifically Benton, Lincoln, Linn, and Washington. OAR 413-015-9020 is also being amended to clarify that the Department will utilize both community partners and support persons when conducting an alternative response assessment.

In addition, the DR rules may be amended to: ensure consistent terminology throughout child welfare rules and policies; make general updates consistent with current Department practices; update statutory and rule references; correct formatting and punctuation; remove unnecessary language; and clarify Department rules and processes.

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 Justice
Chapter 137

Rule Caption: Amending actions, redirecting support, accepting payments in court, child attending school
Stat. Auth.: ORS 25.020, 107.108, 180.345, 180.345 & 416.455
Stats. Implemented: ORS 25.020, 25.080, 73.0114, 73.0401, 107.108, 416.407, 183.415 & 416.407
Proposed Adoptions: 137-055-3495
Proposed Amendments: 137-055-2160, 137-055-3500, 137-055-5030, 137-055-5110
Last Date for Comment: 3-23-15, 5 p.m.
Summary: OAR 137-055-2160 is being amended to authorize the Program to amend a legal action, if necessary, following a dismissal of the hearing when the requesting party fails to appear.

OAR 137-055-3495 is being adopted to implement the Program's policy and procedures regarding redirection of support.

OAR 137-055-3500 is being amended to update cite references and to clarify the process when joining a party to the order.

OAR 137-055-5030 is being amended to put procedures in place to specifically allow Child Support Program staff to accept child support payments in court if the payment is received as a result of a court hearing for nonpayment of support.

OAR 137-055-5110 is amended to simplify the process for submitting documentation of compliance with the requirements in ORS 107.108 when the Child Attending School has filed a Claim of Risk. The Program will seek documentation from the Child Attending School as provided in ORS 107.108(8)(c).

Please submit written comments to Lori Woltring, Policy Analyst, Division of Child Support, 1162 Court St NE Salem, Oregon 97301.

Questions may be directed to that address or emailed to lori.woltring@doj.state.or.us
Rules Coordinator: Carol Riches
Address: Department of Justice, 1162 Court St. NE, Salem, OR 97301
Telephone: (503) 947-4700

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Rule Caption: Social Security and Veterans Benefits dollar for dollar reduction in support
Stat. Auth.: ORS 25.270–25.290 & 180.345
Stats. Implemented: ORS 25.270–25.290
Proposed Amendments: 137-050-0740
Last Date for Comment: 3-23-15, 5 p.m.
Summary: OAR 137-050-0740 is being amended to emphasize the dollar for dollar reduction in support for Social Security or Veterans Benefits.

Please submit written comments to Lori Woltring, Policy Analyst, Division of Child Support, 1162 Court St NE Salem, Oregon 97301. Questions may be directed to that address or emailed to lori.woltring@doj.state.or.us
Rules Coordinator: Carol Riches
Address: Department of Justice, 1162 Court St. NE, Salem, OR 97301
Telephone: (503) 947-4700

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Department of Public Safety Standards and Training
Chapter 259

Rule Caption: Eliminates the tamper-proof bag requirement for private security applicants and providers submitting DPSST Form PS-6.
Stat. Auth.: ORS 181.878
Stats. Implemented: ORS 181.878
Proposed Amendments: 259-060-0060, 259-060-0135
Last Date for Comment: 3-23-15, Close of Business
Summary: Current rule requires that private security applicants and private security providers submit to DPSST their original Form PS-6 (Affidavit of Instructor and Private Security Provider Testing Results) in a tamper-proof bag, sealed by the instructor. Staff has found several problems with this process, including bags that are not correctly sealed or submitted with incorrect documents. Further, both purchasing the bags and providing them to constituents is time consuming and costly. This proposed rule change eliminates the requirement to have the Form PS-6 sent in a sealed, tamper-proof bag.
Rules Coordinator: Sharon Huck
Address: Department of Public Safety Standards and Training, 4190 Aumsville Hwy SE, Salem, OR 97317
Telephone: (503) 378-2432

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Rule Caption: To repeal OAR 259-061-0190.
Stat. Auth.: ORS 703.480
Stats. Implemented: ORS 703.480
Proposed Repeals: 259-061-0190
Last Date for Comment: 3-23-15, Close of Business
Summary: This proposed rule change removes the Private Investigator Code of Ethical Conduct from rule, leaving it as a component of the application process in OAR 259-061-0020. This will negate the need for an administrative rule change every time the Private Investigator Code of Ethical Conduct is updated.
Rules Coordinator: Sharon Huck
Address: Department of Public Safety Standards and Training, 4190 Aumsville Hwy SE, Salem, OR 97317
Telephone: (503) 378-2432

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Rule Caption: Updates effective date of CJC reference (OAR 213-003-0001); adds patronizing a prostitute to OAR 259-060-0300.
Stat. Auth.: ORS 703.480 & 181.878
Stats. Implemented: ORS 703.480 & 181.878
Proposed Amendments: 259-060-0300, 259-061-0300
Last Date for Comment: 3-23-15 Close of Business
Summary: OAR 259-060-0300 and OAR 259-061-0300 reference the Criminal Justice Commission's (CJC) list of person felonies and person class A misdemeanors (OAR 213-003-0001.) When the CJC amends their list of person felonies and person class A misdemeanors to reflect legislative changes, DPSST must update our Oregon Administrative Rules (OAR's) that reference the CJC's rule. This rule change updates the private security and private investigator OAR's to reflect the current date of the CJC's OAR changes to the list of person felonies and person class A misdemeanors. Further, this proposed rule change adds patronizing a prostitute (ORS 167.008) to the list of misdemeanors in OAR 259-060-0300.
Rules Coordinator: Sharon Huck
Address: Department of Public Safety Standards and Training, 4190 Aumsville Hwy SE, Salem, OR 97317
Telephone: (503) 378-2432

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Rule Caption: Clarify definition of employer; amend rule language regarding civil penalties against businesses or entities.
Stat. Auth.: ORS 181.870 & 181.878
Stats. Implemented: ORS 181.870 & 181.878
Proposed Amendments: 259-060-0010, 259-060-0130, 259-060-0145, 259-060-0450
Last Date for Comment: 3-23-15, Close of Business
Summary: DPSST received direction from the Department of Justice (DOJ) regarding the administrative rule relating to civil penalties. The Board on Public Safety Standards and Training (Board) has the authority to issue civil penalties against the owner or owners of a business or entity in violation of a law or rule relating to the Private Security Act, which mirrors DPSST's current practice. However, the current rule states action will be brought specifically against a business or entity, which is an action outside the statutory authority of the Board. This proposed rule change corrects this error by amending the language to clearly show that Department action on any violations subject to civil penalty will be taken against an individual or owner or owners of a business or entity. Additionally, there are minor housekeeping changes for consistency.
Rules Coordinator: Sharon Huck
Address: Department of Public Safety Standards and Training, 4190 Aumsville Hwy SE, Salem, OR 97317
Telephone: (503) 378-2432

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Rule Caption: To increase the minimum hour requirement for the unarmed private security professional basic course; Housekeeping.
Stat. Auth.: ORS 181.870 & 181.878
Stats. Implemented: ORS 181.870 & 181.878
Proposed Amendments: 259-060-0010, 259-060-0060, 259-060-0120, 259-060-0130, 259-060-0135
Last Date for Comment: 3-23-15, Close of Business
Summary: The curriculum for the basic unarmed private security professional course has recently been updated. This proposed rule change updates the minimum number of hours required for the basic training course required for initial certification as an unarmed private security professional from 12 hours (8 hours of classroom and 4 hours of assessments) to 14 hours total. This increased hour requirement will allow for adequate delivery of the new curriculum to new private security professionals. Housekeeping changes were made for clarity.
Rules Coordinator: Sharon Huck
Address: Department of Public Safety Standards and Training, 4190 Aumsville Hwy SE, Salem, OR 97317
Telephone: (503) 378-2432

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Rule Caption: Adds CPR/First Aid certification to all levels of certification; updates military leave; extensive housekeeping.
Stat. Auth.: ORS 181.640
Stats. Implemented: ORS 181.640, 181.644, 181.652 & 181.653

Proposed Amendments: 259-008-0005, 259-008-0060
Last Date for Comment: 3-23-15, Close of Business
Summary: This proposed rule change adds to rule that all levels of certification require current CPR/first aid certification. Additionally, OAR 259-008-0060 has been updated regarding crediting service time for military leave to reflect current federal standards. The sections of rule applicable to the Intermediate and Advanced Certification charts have been re-worded for clarity and extensive housekeeping has been performed for consistency. Further, the definition of "leave" has been updated in OAR 259-008-0005.
Rules Coordinator: Sharon Huck
Address: Department of Public Safety Standards and Training, 4190 Aumsville Hwy SE, Salem, OR 97317
Telephone: (503) 378-2432

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Rule Caption: Adds new rule regarding "limited duration, administrative positions"; Updates all other applicable rules; Housekeeping.
Stat. Auth.: ORS 181.640 & 183.341
Stats. Implemented: ORS 181.640, 181.644, 181.652, 181.653 & 183.341
Proposed Adoptions: 259-008-0078
Proposed Amendments: 259-008-0005, 259-008-0010, 259-008-0011, 259-008-0025, 259-008-0060
Last Date for Comment: 3-23-15, Close of Business
Summary: This proposed rule change adds OAR 259-008-0078, which is a new certification status of "limited duration, administrative position." This certification status will be available to officers filling non-elected, certifiable public safety positions where the primary duties relate to the administration, operation, and accountability of a public safety agency. Individuals employed in limited duration, administrative positions will not have to meet additional physical or training requirements, if they meet specific eligibility conditions. Additionally, this rule change updates all other affected areas of DPSST's rules and provides housekeeping for consistency.
Rules Coordinator: Sharon Huck
Address: Department of Public Safety Standards and Training, 4190 Aumsville Hwy SE, Salem, OR 97317
Telephone: (503) 378-2432

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Department of Transportation
Chapter 731

Rule Caption: Road Usage Charge Program

Date:	Time:	Location:
3-18-15	10 a.m.	Transportation Bldg. 355 Capitol St. NE, Rm 103 Salem, OR

Hearing Officer: Maureen Bock
Stat. Auth.: ORS 184.616, 184.619, 319.905, 319.910, 319.925 & 319.930
Stats. Implemented: ORS 319.883–319.990
Proposed Adoptions: 731-090-0000, 731-090-0010, 731-090-0020, 731-090-0030, 731-090-0040, 731-090-0050, 731-090-0060, 731-090-0070, 731-090-0080, 731-090-0090
Last Date for Comment: 3-23-15, Close of Business
Summary: These rules were developed and are being adopted for the administration, operations and compliance of the Road Usage Charge Program. The Program is a volunteer program authorized under Chapter 781, Oregon Laws 2013 for the purpose of establishing an alternative revenue source to the state fuels tax.
Rules Coordinator: Lauri Kunze
Address: Department of Transportation, 355 Capitol St. NE, MS 51, Salem, OR 97301
Telephone: (503) 986-3171

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

Rule Caption: Specifies process for approving or denying participation in DMV's EVR program; adopts EVR-related sanctions
Stat. Auth.: ORS 184.616, 184.619, 802.600 & 803.097
Stats. Implemented: ORS 801.402, 801.465, 801.562, 802.600 & 803.097
Proposed Adoptions: 735-150-0041
Proposed Amendments: 735-150-0040, 735-150-0120
Last Date for Comment: 3-23-15, Close of Business
Summary: DMV currently maintains an agreement with an electronic vehicle registration (EVR) integrator under the authority of ORS 802.600. The agreement authorizes the integrator to process title and registration applications on behalf of DMV. The agreement also authorizes the integrator to subcontract with qualified Oregon vehicle dealers who, with customer approval, prepare and file title and registration applications on behalf of their customers. Vehicle dealers approved to participate in the EVR program may charge their customers a fee for the service.

Before entering into an EVR contract with the integrator, a dealer must submit an application to the integrator to become an EVR dealer. Once received, the integrator forwards the application to DMV where the dealer's business record is reviewed to ensure the dealer meets the minimum qualification requirements and for possible violations of Vehicle Code or DMV rules.

The purpose and need for the adoption and amendment to the above-referenced rules is to:

(1) Establish procedures and requirements for determining when DMV will approve or deny a vehicle dealer application to participate in the EVR program;

(2) Establish sanctions for the probation, suspension or permanent revocation of a dealer's authority to participate in the EVR program; and

(3) Add EVR program references to relevant rules.

As proposed, the adoption of OAR 735-150-0041 specifies when DMV will approve or deny a vehicle dealer application to participate in the EVR program. OAR 735-150-0120 is amended to include EVR-related dealer sanctions, and OAR 735-150-0040 is amended to add references to the EVR program.
Rules Coordinator: Lauri Kunze
Address: Department of Transportation, Driver and Motor Vehicle Services Division, 355 Capitol St. NE, MS 51, Salem, OR 97301
Telephone: (503) 986-3171

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Department of Transportation, Highway Division
Chapter 734

Rule Caption: Tandem drive axles
Stat. Auth.: ORS 184.616, 184.619 810.060 & 823.011
Stats. Implemented: ORS 818.200, 818.220
Proposed Amendments: 734-074-0010
Last Date for Comment: 3-23-15, Close of Business
Summary: Division 74 rules describe to the issuance of permits for combinations of vehicles having gross weights in excess of 80,000 pounds. The rulemaking originates from inquiries made to the Over-Dimension Permit Unit by motor carriers wanting to change the requirements of having power transmitted by both drive axles to only require motive power to one power axle. It was determined that there was no underlying safety concern requiring power to the tandem axles and therefore, motive power to one axle is sufficient. The rule change will allow for motor carriers to operate under an extended weight permit with motive power transmitted to a single drive axle. Minor language revision was made.
Rules Coordinator: Lauri Kunze

Address: Department of Transportation, Highway Division, 355 Capitol St. NE, MS 51, Salem, OR 97301
Telephone: (503) 986-3171

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Rule Caption: Warning Sign Requirements
Stat. Auth.: ORS 184.616, 184.619 & 823.011
Stats. Implemented: ORS 818.200 & 818.220
Proposed Amendments: 734-074-0060, 734-075-0045, 734-076-0135, 734-078-0030, 734-082-0037
Last Date for Comment: 3-23-15, Close of Business
Summary: These rules describe warning sign requirements for triple trailer combinations, oversized loads, mobile homes and modular building units, oversize tow vehicles, and non-divisible loads. The Western Association of State Highway and Transportation Officials (WASHTO) recommends that sign requirements be consistent from one state to the next. A recommendation from WASHTO, suggests Oregon remove the sign requirements that allow 1-5/8 inch brush stroke or a border with not more than 1 5/8 inch brush stokes around the edge of the sign. By eliminating these requirements, the proposed rule amendments allow Oregon to be more consistent with the sign requirements of neighboring states. The proposed amendments were presented to industry personnel and found to be reasonable. In addition, housekeeping amendments revise language to be in compliance with Secretary of State standards.
Rules Coordinator: Lauri Kunze
Address: Department of Transportation, Highway Division, 355 Capitol St. NE, MS 51, Salem, OR 97301
Telephone: (503) 986-3171

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Rule Caption: Annual readoption of IRP, HVUT and IFTA regulations
Stat. Auth.: ORS 184.616, 184.619, 823.011 & 826.003
Stats. Implemented: ORS 803.370(5), 825.490, 825.494, 825.555, 826.005 & 826.007
Proposed Amendments: 740-200-0010, 740-200-0020, 740-200-0040
Last Date for Comment: 3-23-15, Close of Business
Summary: The proposed amendment constitutes an adoption of the rules of the International Registration Plan (IRP) to the date of January 1, 2015. Title 26 Code of Federal Regulations Part 41 (HVUT) requires the State to confirm proof of payment of the tax, and require proof of payment by the State as a condition of issuing a registration for a highway motor vehicle. The amendment of OAR 740- 740-200-0020 adopts HVUT and amendments with the effective date of January 1, 2015, and ensures Oregon remains current with national commercial motor vehicle registration standards. International Fuel Tax Agreement (IFTA) and associated material are applicable to Oregon-based motor carriers who participate in IFTA as a way to report and pay fuel tax to other jurisdictions. The revision to OAR 740-200-0040 adopts the most recent version of IFTA and associated material as the procedures and guidelines for Oregon-based IFTA participants with the effective date of January 1, 2015 to ensure Oregon remains current with the international IFTA standards.
Rules Coordinator: Lauri Kunze
Address: Department of Transportation, Highway Division, 355 Capitol St. NE, MS 51, Salem, OR 97301
Telephone: (503) 986-3171

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Economic Recovery Review Council
Chapter 966

Rule Caption: Relating to the Economic Recovery Review Council's new designation of two Regionally Significant Industrial Areas.
Stat. Auth.: ORS 197.723
Stats. Implemented: ORS 197.723
Proposed Adoptions: 966-100-0700, 966-100-0800
Last Date for Comment: 3-27-15, 5 p.m.
Summary: The Economic Recovery Review Council met on January 28, 2015. Two new Regionally Significant Industrial Areas were adopted by the Council. The two new RISA's are the North Coast Business Park located in the City of Warrenton and Malheur County Regionally Significant Industrial Area located in the cities of Ontario, Nyssa and Vale. Both rules consist of descriptions of each new area.
Rules Coordinator: Mindee Sublette
Address: Economic Recovery Review Council, 775 Summer St. NE, Suite 200, Salem, OR 97301
Telephone: (503) 986-0036

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Higher Education Coordinating Commission
Chapter 715

Rule Caption: Relative weights and standards to be used in calculations of Student Success and Completion Model.

Date:	Time:	Location:
3-16-15	1 p.m.	775 Court St. NE Large Conference Rm. Salem, OR 97301

Hearing Officer: Kelly Dickinson
Stat. Auth.: ORS 351.735(3)(d) & 351.735(6)
Stats. Implemented: 2013 SB 270, 2013 HB 3120, 2014 HB 4018 & 2014 SB 1525
Proposed Adoptions: 715-013-0040
Last Date for Comment: 3-20-15, 5 p.m.
Summary: The Higher Education Coordinating Commission (the Commission), in consultation with Oregon public universities, has developed the Student Success and Completion Model (SSCM), which allocates the Public University Support Fund by incorporating measures of student credit hour and degree completions. The major components of the SSCM calculation methodology were determined with assistance from representatives of the public universities and other stakeholder groups. This rule codifies the metrics and weights that will be utilized in making this calculation.
Rules Coordinator: Kelly Dickinson
Address: Higher Education Coordinating Commission, 775 Court St NE, Salem, OR 97301
Telephone: (503) 378-5690

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Landscape Contractors Board
Chapter 808

Rule Caption: Allow managing owner to use Laws, Rules and Business Practices section for licensing
Stat. Auth.: ORS 670.310 & 671.760
Stats. Implemented: ORS 671.570
Proposed Amendments: 808-003-0065
Proposed Repeals: 808-003-0065(T)
Last Date for Comment: 3-31-15, Close of Business
Summary: Allow managing owner to use Laws, Rules and Business Practices section for licensing.
Rules Coordinator: Kim Gladwill-Rowley
Address: Landscape Contractors Board, 2111 Front Street NE, Suite 2-101, Salem, OR 97301
Telephone: (503) 967-6291, ext. 223

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Oregon Board of Naturopathic Medicine
Chapter 850

Rule Caption: Clarifies parts of the inactive license
Stat. Auth.: ORS 685.125
Stats. Implemented: ORS 685.100
Proposed Amendments: 850-030-0195
Last Date for Comment: 3-31-15, 2 p.m.
Summary: Clarifies the requirements for an inactive license holder to reinstate a license to active status.
Rules Coordinator: Anne Walsh

Address: Oregon Board of Naturopathic Medicine, 800 NE Oregon St., Suite 407, Portland, OR 97232
Telephone: (971) 673-0193

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Rule Caption: Includes continuing education on cultural competency as an approved CE opportunity
Stat. Auth.: ORS 685.125
Stats. Implemented: ORS 685.102
Proposed Amendments: 850-040-0210
Last Date for Comment: 3-31-15, 2 p.m.
Summary: Will include, for reference, Cultural Competency as an approved continuing education opportunity for licensees as required for renewal.
Rules Coordinator: Anne Walsh
Address: Oregon Board of Naturopathic Medicine, 800 NE Oregon St., Suite 407, Portland, OR 97232
Telephone: (971) 673-0193

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Rule Caption: To clarify the participation in birth requirements for certification in natural childbirth, already in rule
Stat. Auth.: ORS 685.125
Stats. Implemented: ORS 685.100, 685.102, 685.135 & 685.160
Proposed Amendments: 850-035-0230
Last Date for Comment: 3-31-15, 2 p.m.
Summary: Will clarify by clearly delineating the types of births necessary to qualify for natural childbirth certification.
Rules Coordinator: Anne Walsh
Address: Oregon Board of Naturopathic Medicine, 800 NE Oregon St., Suite 407, Portland, OR 97232
Telephone: (971) 673-0193

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Oregon Government Ethics Commission
Chapter 199

Rule Caption: Rules pertaining to persons required to file Annual Verified Statement of Economic Interest

Date:	Time:	Location:
4-7-15	10 a.m.	3218 Pringle Rd. SE, Suite 220 Salem, OR 97302

Hearing Officer: Diane Gould
Stat. Auth.: ORS 244.290
Stats. Implemented: ORS 244.050, 244.060, 244.070 & 244.090
Proposed Adoptions: 199-020-0002
Proposed Amendments: 199-020-0005
Last Date for Comment: 5-1-15, 12 p.m.
Summary: Adopts a new rule defining a term in ORS 244.050(1)(h) and amends a rule specifying procedures for compliance. The rules address the following topics: defining the persons required by ORS 244.050(1)(h) to file an Annual Verified Statement of Economic Interest; specifying the duties of public bodies in providing information on required filers; specifying duties of persons holding one or more positions requiring the filing of Annual Verified Statements of Economic Interest. The rules are intended to provide guidelines for compliance through defining terms and clarifying substantive provisions of government ethics law.
Rules Coordinator: Virginia Lutz
Address: Oregon Government Ethics Commission, 3218 Pringle Rd. SE, Suite 220, Salem, OR 97302
Telephone: (503) 378-5105

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Oregon Health Authority, Division of Medical Assistance Programs
Chapter 410

Rule Caption: Allow Use of Medical Billing Codes Designated for Adaptive Behavior Assessment and Treatment Services

Date:	Time:	Location:
3-17-15	10:30 a.m.	500 Summer St. NE, Rm. 160 Salem, OR 97301

Hearing Officer: Sandy Cafourek
Stat. Auth.: ORS 413.042
Stats. Implemented: ORS 414.025 & 414.065
Proposed Amendments: 410-130-0160
Proposed Repeals: 410-130-0160(T)
Last Date for Comment: 3-19-15, 5 p.m.
Summary: This rule directs medical providers to use billing codes following national standards and identifies which code sets are appropriate. One aspect of the current rule prevents use of Category III CPT Codes - a code set designated for services or technologies that are new and need to be tracked for data collection. The Division has identified that the billing codes for Adaptive Behavior Assessment and Treatment services found within the Category III CPT Code set are the most appropriate codes to use for billing ABA therapy. This rule change will allow use of these ABA therapy related billing codes. It will continue to restrict use of the remaining Category III codes.
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: Adopt New Rule to Allow DME Repurposing Program Required by the Legislature

Date:	Time:	Location:
3-17-15	10:30 a.m.	500 Summer St. NE, Rm. 160 Salem, OR 97301

Hearing Officer: Sandy Cafourek
Stat. Auth.: ORS 414.065
Other Auth.: HB 4108
Stats. Implemented: ORS 414.065
Proposed Adoptions: 410-122-0187
Proposed Repeals: 410-122-0187(T)
Last Date for Comment: 3-19-15, 5 p.m.
Summary: This rule generally describes the DME Repurposing Pilot and the requirement that qualified individuals are involved in the provision of gently used DME through the program. It also states the payment methodology is through grant award.
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: Amend Rules Governing Payment for Medicaid EHR Incentive Program

Date:	Time:	Location:
3-17-15	10:30 a.m.	500 Summer St. NE, Rm. 160 Salem, OR 97301

Hearing Officer: Sandy Cafourek
Stat. Auth.: ORS 413.042 & 414.033
Stats. Implemented: ORS 413.042 & 414.033
Proposed Amendments: 410-165-0000, 410-165-0020, 410-165-0040, 410-165-0060, 410-165-0080, 410-165-0100
Proposed Repeals: 410-165-0000(T), 410-165-0020(T), 410-165-0040(T), 410-165-0060(T), 410-165-0080(T), 410-165-0100(T)
Last Date for Comment: 3-19-15, 5 p.m.
Summary: The Division is amending these rules because new federal legislation from the Centers for Medicare and Medicaid Services (CMS) affects how providers are eligible for the Medicaid EHR Incentive Program. These rules include changes for a shortened EHR reporting period in 2014 as well as overall clean up to existing language. Notably, in program year 2014, providers are given the flexibility to use either a 3-month calendar quarter or any continuous 90-day EHR reporting period to demonstrate meaningful use.
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: Amendment of HERC Prioritized List of Health Services Effective 1/1/15 Incorporating Approved Modifications Effective 10/1/14

Date:	Time:	Location:
3-17-15	10:30 a.m.	500 Summer St. NE Salem, OR 97301

Hearing Officer: Sandy Cafourek
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
Proposed Amendments: 410-141-0520
Proposed Repeals: 410-141-0520(T)
Last Date for Comment: 3-19-15, 5 p.m.
Summary: This rule will amend 410-141-0520. This change references the approved Health Evidenced Review Committee (HERC) Prioritized List of Health Services, effective January 1, 2015–December 31, 2015 and incorporates interim modifications and technical changes made October 1, 2014. The change is effective January 1, 2015.
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 Approval Criteria Guide

Date:	Time:	Location:
3-17-15	10:30 a.m.	500 Summer St. NE, Rm. 160 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: 410-121-0040
Proposed Repeals: 410-121-0040(T)
Last Date for Comment: 3-19-15, 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:

The Authority is amending this rule to update the Oregon Medicaid Fee for Service Prior Authorization Criteria Guide found at http://www.oregon.gov/oha/healthplan/Pages/pharmacy-policy.aspx based on the P&T (Pharmacy and Therapeutic) Committee recommendations.
Rules Coordinator: Sandy Cafourek
Address: Oregon Health Authority, Division of Medical Assistance Programs, 500 Summer St. NE, Salem, OR 97301
Telephone: (503) 945-6430

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Rule Caption: Change Title of Rule to Better Reflect the Intent of the Rule

Date:	Time:	Location:
3-17-15	10:30 a.m.	500 Summer St. NE, Rm. 160 Salem, OR 97301

Hearing Officer: Sandy Cafourek
Stat. Auth.: ORS 414.042, 414.615, 414.625, 414.635 & 414.651
Stats. Implemented: ORS 414.610–414.685
Proposed Amendments: 410-141-3268
Last Date for Comment: 3-19-15, 5 p.m.
Summary: The Division of Medical Assistance Programs needs to amend this rule to incorporate arbitration language for when a dispute involves a Health Care Entity (HCE) who chooses not to contract with a Coordinated Care Organization (CCO). Only the title has been changed on this rule to narrow the scope and better define the scope and actual intent of the rule. The new title is as follows: Process for Resolving Disputes on Formation, Certification, and Recertification of CCOs.
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: Add a Dispute Resolution Process for Existing CCOs and HCEs

Date:	Time:	Location:
3-17-15	10:30 a.m.	500 Summer St. NE, Rm. 160 Salem, OR 97301

Hearing Officer: Sandy Cafourek
Stat. Auth.: ORS 414.042, 414.615, 414.625, 414.635 & 414.651
Stats. Implemented: ORS 414.610–414.685
Proposed Adoptions: 410-141-3269
Proposed Repeals: 410-141-3269(T)
Last Date for Comment: 3-19-15, 5 p.m.
Summary: The Division needs to adopt this rule to comply with ORS 414.635. The statute requires a dispute process be developed for existing coordinated care organizations and health care entities.
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: Adopt Rule to Allow DME Repurposing Program Required by the Legislature

Date:	Time:	Location:
3-17-15	10:30 a.m.	500 Summer St. NE, Rm. 160 Salem, OR 97301

Hearing Officer: Sandy Cafourek
Stat. Auth.: ORS 414.065
Stats. Implemented: ORS 414.065
Proposed Adoptions: 410-122-0187
Proposed Repeals: 410-122-0187(T)
Last Date for Comment: 3-19-15, 5 p.m.
Summary: This rule generally describes the DME Repurposing Pilot and the requirement that qualified individuals are involved in the provision of gently used DME through the program. It also states the payment methodology is through grant award.
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: Income Eligibility Guidelines for OCCS Medical Programs

Date:	Time:	Location:
4-15-15	10:30 a.m.	500 Summer St. NE Salem, OR 97301

Hearing Officer: Sandy Cafourek
Stat. Auth.: ORS 411.402, 411.404, 413.042 & 414.534
Other Auth.: 42 CFR: 435.110, 435.112, 435.115, 435.116, 435.118, 435.403, 435.940, 435.1200, 457.80, 457.340, 458.350, 435.3, 435.4, 435.406, 435.407, 435.940, 435.952, 435.956, 435.1008, 457.320, 457.380, 435.940, 435.956, 435.406, 457.380, 435.117, 435.170, 435.190, 435.916, 435.917, 435.926, 435.952, 435.1200, 435.1205, 447.56, 457.340, 457.350, 457.360, 457.805, 433.145, 433.147, 433.148, 433.146, 435.610, 435.115, 435.403, 435.1200, 457.80, 457.340, 458.350, 435.119, 435.222, 435.118, 433.138, 433.147, 433.148, 435.602 & 435.608
Stats. Implemented: ORS 411.060, 411.095, 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, 413.038, 414.025, 414.231, 414.440, 414.534, 414.536 & 414.706
Proposed Amendments: 410-200-0315
Proposed Repeals: 410-200-0315(T)
Last Date for Comment: 4-17-15, 5 p.m.
Summary: Every year the Federal Poverty Levels (FPL) are adjusted and published to the Federal Register. A number of OCCS medical programs and income disregards are based on percentages

of the FPL and must be updated now that the FPLs have been published and align with Cover Oregon's implementation timeline.
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 State Marine Board
Chapter 250

Rule Caption: Regarding Visual Distress Signals; establishes state requirement in coastal waters.
Stat. Auth.: ORS 830.110
Stats. Implemented: ORS 830.245 & 830.250
Proposed Adoptions: 250-010-0164
Last Date for Comment: 3-31-15, 5 p.m.
Summary: This rule will establish a requirement for boats operating in coastal waters to carry US Coast Guard approved visual distress signals including in those waters directly connected to the ocean up to a point where the waterway is less than two nautical miles wide.
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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Physical Therapist Licensing Board
Chapter 848

Rule Caption: Amend current rule expense budget figure to reflect 2015–2017 Board approved expenditures.

Date:	Time:	Location:
3-20-15	8 a.m.	Portland State Office Bldg. 800 NE Oregon St., Rm. 445 Portland, OR 97232

Hearing Officer: James D. Heider
Stat. Auth.: ORS 182.462
Stats. Implemented: ORS 182.462
Proposed Amendments: 848-005-0010
Last Date for Comment: 3-20-15, 10 a.m.
Summary: The Physical Therapist Licensing Board hereby adopts by reference the Physical Therapist Licensing Board 2015-2017 Biennium Budget of $1,022,000 covering the period from July 1, 2015 through June 30, 2017. The Executive Director of the Board will amend budgeted accounts as necessary within the approved budget of $1,022,000 for the effective operation of the Board. The Board will not exceed the approved 2015-2017 Biennium Budget expenditures without amending this rule, notifying holders of licenses, and holding a public hearing thereon as required, by ORS Chapter 182.462(1) and (2). Copies of the budget are available from the Board's office and posted on the Board's website.
Rules Coordinator: James Heider
Address: Physical Therapist Licensing Board, 800 NE Oregon St, Suite 407, Portland, OR 97232
Telephone: (971) 673-0203

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Public Utility Commission,
Board of Maritime Pilots
Chapter 856

Rule Caption: Implements reporting requirements of pilot organizations for fatigue mitigation programs.
Stat. Auth.: ORS 776
Stats. Implemented: ORS 776.115
Proposed Adoptions: 856-010-0029
Last Date for Comment: 4-1-15, Close of Business
Summary: In October, 2012 the Board established a committee to respond to an NTSB recommendation to require state pilot oversight authorities that have not already done so to implement fatigue mitigation and prevention programs that (1) regularly inform mariners of the hazards of fatigue and effective strategies to prevent it and (2) promulgate hours of service rules that prevent fatigue resulting from extended hours of service, insufficient rest within a 24-hour period, and disruption of circadian rhythms. Fatigue mitigation programs have been established, and this rule will assure that there is continued adherence to scientifically valid fatigue standards.
Rules Coordinator: Susan Johnson
Address: Public Utility Commission, Board of Maritime Pilots, 800 NE Oregon St., Suite 507, Portland, OR 97232
Telephone: (971) 673-1530

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Racing Commission
Chapter 462

Rule Caption: Amends rule to include single shareholder sub-chapter S Corporations in definition of a "Person".

Date:	Time:	Location:
3-19-15	11:30 a.m.	800 NE Oregon St., Rm. 1A Portland, OR 97232

Hearing Officer: Charles Williamson
Stat. Auth.: ORS 462.250(6)
Stats. Implemented: ORS 462.250(6)
Proposed Amendments: 462-210-0010
Last Date for Comment: 3-19-15, 11:30 a.m.
Summary: Amendment expands the definition of "Person" to include a single shareholder Sub-chapter S Corporation in which the shareholder is a natural person as defined in the current rule and is at least 18 years of age.
Rules Coordinator: Karen Parkman
Address: Oregon Racing Commission, 800 NE Oregon St., Suite 310, Portland, OR 97232
Telephone: (971) 673-0208

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Teacher Standards and Practices Commission
Chapter 584

Rule Caption: Adopts and amends rules related to educator licensure and state program approval.
Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120-430 & 342.553
Proposed Adoptions: 584-017-1026, 584-066-0220
Proposed Amendments: 584-001-0010, 584-042-0008, 584-042-0036, 584-060-0062, 584-060-0181, 584-060-0220, 584-090-0100, 584-090-0120
Last Date for Comment: 4-9-15, 12 p.m.
Summary: Establishes program requirements for English Language Learner programs; makes amendments to CTE licensure rules; Makes amendments to International Visiting Teacher License; Adopts standards for American Sign Language specialization; Makes other housekeeping changes.
Rules Coordinator: Victoria Chamberlain
Address: Teacher Standards and Practices Commission, 250 Division St. NE, Salem, OR 97301
Telephone: (503) 378-6813

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Water Resources Department
Chapter 690

Rule Caption: Amends Division 522 to Clarify Adjustment of Allocation Cap and Mitigation Credit Reassignment Upon Cancellation.

Date:	Time:	Location:
3-30-15	3 p.m.	231 SW Scalehouse Lp., Suite 103 Bend, OR 97702

Hearing Officer: Laura Wilke
Stat. Auth.: ORS 536.025, 536.027, 537.746 & 390.835
Stats. Implemented: 2005 OL Ch. 669 (HB 3494) & 2011 OL Ch. 694, (HB 3623)
Proposed Amendments: 690-522-0030, 690-522-0050
Last Date for Comment: 3-31-15, 5 p.m.
Summary: OAR chapter 690, division 522 is used in conjunction with the Deschutes Basin Ground Water Mitigation Rules in OAR

chapter 690, division 505, and the Deschutes Basin Mitigation Bank and Mitigation Credit rules in OAR chapter 690, division 521. In addition to other provisions, the Division 522 rules allow water to be added back to a 200 cubic foot per second allocation cap on new groundwater use and permanent mitigation credits to be reassigned under certain circumstances, including permit and certificate cancellation. However, the rules unintentionally limit cancellation to specific statutes. Division 522 cites ORS 537.410 (cancellation of a permit for failure to meet construction conditions), ORS 540.621 (voluntary cancellation of a certificate), and ORS 540.610 (forfeiture of a certificated water right). This limits reassignment of permanent mitigation credits and inclusion of water back to the allocation cap if cancellation occurs under another statute. The purpose of this rulemaking is to remove the references to specific cancellation statutes and allow water to be added back to the allocation cap and mitigation credits to be reassigned regardless of which cancellation process is exercised.

Rules Coordinator: Joshua Spansail
Address: Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301
Telephone: (503) 986-0874

Board of Examiners for Engineering and Land Surveying
Chapter 820

Rule Caption: Amend rules related to the continuing education requirements, use of title, renewals, and examinations.
Adm. Order No.: BEELS 1-2015
Filed with Sec. of State: 2-3-2015
Certified to be Effective: 2-3-15
Notice Publication Date: 8-1-2014
Rules Amended: 820-010-0417, 820-010-0463, 820-010-0505, 820-010-0520, 820-010-0730, 820-015-0026, 820-050-0010
Subject: OAR 820-010-0417 — Removes the requirement to obtain a passing grade for the buildings portion of the structural examination due to the implementation of the 16-hour structural examination administered by NCEES.

OAR 820-010-0463 — Includes language that the cutoff score for the California geotechnical examination is established by the California board.

OAR 820-010-0505 and 820-010-0520 — Includes language to clarify that failure to pay any fees, including the delinquent fee will place a registration in the "delinquent status."

OAR 820-010-0730 — Includes language to allow for a PLS registered in another jurisdiction to use the title in Oregon.

OAR 815-0026 and 820-050-0010 — Clarifies process related to requesting the grace period for completing continuing professional development.
Rules Coordinator: Mari Lopez—(503) 362-2666

820-010-0417
Nature of Examination for Structural Engineer

(1) An applicant to qualify for registration must:

(a) Obtain a passing grade for a written examination in engineering fundamentals for qualification as an EI as covered in OAR 820-010-0420, unless exempted from this examination under 820-010-0455. Such examination may be taken at any scheduled examination period but must be passed in order to be admitted to the branch examination as covered in (1)(b) of this rule; and

(b) Obtain a passing grade for a written examination in a professional branch of engineering covering practical engineering problems in branches listed in OAR 820-010-0450; and

(c) Obtain at least two years of progressive responsibility in structural engineering experience. These two years of structural experience are in addition to the required years of engineering experience required to be registered as a professional engineer. The structural engineering experience must be supervised by a registered professional engineer in the branch of structural engineering or a registered professional engineer with substantial structural engineering work experience; and

(d) After receiving a license as an Oregon registered professional engineer, obtain a passing grade for the 16-hour Structural Examination, administered by NCEES.

Stat. Auth.: ORS 670.310 & 672.255
Stats. Implemented: ORS 672.002 - 672.325
Hist.: BEELS 5-2007, f. & cert. ef. 9-20-07; BEELS 1-2011, f. & cert. ef. 1-14-11; BEELS 1-2015, f. & cert. ef. 2-3-15

820-010-0463
Cutoff Scores for Examinations

(1) The cutoff scores for the FE, FLS, PE, PLS, and Structural 16-hour examinations are established by NCEES.

(2) The cutoff scores for the acoustical, forest, and four-hour Oregon specific land surveying examinations are 70 points out of 100 points.

(3) The cutoff score for the photogrammetric mapping examination is established by the Colonial States Board of Surveyor Registration (CSBSR).

(4) The cutoff score for the California Geotechnical examination is established by the California Board for Professional Engineers, Land Surveyors, and Geologists (California Board).

Stat. Auth.: ORS 670.310 & 672.255
Stats. Implemented: ORS 672.002 - 672.325
Hist.: BEELS 5-2007, f. & cert. ef. 9-20-07; BEELS 1-2011, f. & cert. ef. 1-14-11; BEELS 4-2012, f. & cert. ef. 9-14-12; BEELS 1-2015, f. & cert. ef. 2-3-15

820-010-0505
Biennial Renewal of Registration or Certification

(1) Registration as a professional engineer, professional land surveyor, or professional photogrammetrist with the Board is on a biennial renewal schedule. As a condition of registration renewal, registrants must comply with the continuing professional development requirements in OAR 820-010-0635. Certification of completing the required professional development requirements on the CPD Organizational Form and fee must be postmarked or hand delivered by 5:00 p.m. on the day of the expiration date of the registration. The biennial fee to renew a registration is described below:

(a) Professional Engineer — $150.00;

(b) Professional Land Surveyor — $150.00;

(c) Professional Photogrammetrist — $150.00;

(2) Certification as a certified water right examiner is on a biennial renewal schedule. The fee must be postmarked or hand delivered by 5:00 p.m. on the day of the expiration date of the certification. The biennial fee to renew a certification as a water right examiner is $40.00

(3) A delinquent fee of $80.00 will be assessed on the first day following the expiration date of each registration or certification, for each biennial renewal period in which payment or certification of completing the required continuing professional development hours is not submitted. Failure to pay the delinquent fee will place a registration or certificate in the "delinquent" status.

(4) Registrations or certificates in the delinquent or retired status for a period of 5 years or more may not be renewed. Delinquent or retired registrants or certificate holders must re-apply and re-take any applicable examination to obtain their certificate of registration or other certificate after a period of 5 years.

Stat. Auth.: ORS 670.310, 672.160, 672.170, & 672.255
Stats. Implemented: ORS 672.002 - 672.325
Hist.: BEELS 3-2008, f. & cert. ef. 11-14-08; BEELS 2-2009, f. & cert. ef. 11-13-09; BEELS 1-2011, f. & cert. ef. 1-14-11; BEELS 1-2012(Temp), f.& cert. ef. 3-16-12 thru 5-15-12; BEELS 2-2012, f. & cert. ef. 5-10-12; BEELS 1-2015, f. & cert. ef. 2-3-15

820-010-0520
Registrants or Certificate Holders Not Qualified to Practice

Registrants or certificate holders who are delinquent, retired, inactive, suspended or revoked by the Board, are not authorized to engage in the professional practice of engineering, land surveying, photogrammetric mapping, or the professional activities of a certified water right examiner as defined in ORS Chapter 537 and OAR chapter 690. Except as provided in section (2), registrants or certificate holders who are delinquent, retired, inactive, suspended or revoked may not hold out as professional engineers, professional land surveyors, professional photogrammetrists, or certified water right examiners.

(1) Delinquent registrants or certificate holders. Registrants or certificate holders become delinquent because they fail, within a period of five years from the renewal date, to renew their certificate of registration or to pay their renewal or delinquent fees, or satisfy the required PDH units. A delinquent registrant or certificate holder may return to active status:

(a) Upon application to the Board;

(b) By paying any delinquent renewal fee required by OAR 820-010-0305(3);

(c) By paying any biennial renewal fee required by OAR 820-010-0505; and

(d) By satisfying and submitting proof of completion on a form approved by the Board of all delinquent PDH units, at a rate of 15 PDH units per year delinquent, to a maximum of 30 PDH units as stated in OAR 820-010-0635.

(2) Retired registrants or certificate holders. Registrants or certificate holders may retire once they notify the Board that they are not providing engineering, land surveying, photogrammetric mapping services, or professional activities of a certified water right examiner to the public and they request retired status. Registrants or certificate holders who are retired may not use their seal. However, retired registrants may sign documents, listing after their name the designation "PE (Retired)," "SE (Retired)," "PLS (Retired)," "Photogrammetrist (Retired)," or "CWRE (Retired)," as appropriate. A retired registrant or certificate holder may, within a period of 5 years from retirement, return to active status:

(a) Upon application to the Board,

(b) Successfully pass a take at home examination on the laws and rules in Oregon;

(c) By paying the reinstatement fee required by OAR 820-010-0305(3);

(d) By paying the biennial renewal fee required by OAR 820-010-0505; and

(e) By satisfying and submitting proof of completion on a form approved by the Board of 15 PDH units per year for each year (or part of a year) retired, to a maximum of 30 PDH units as stated in OAR 820-010-0635.

(3) Inactive registrants or certificate holders. Registrants or certificate holders may place their license or certification on inactive status if the registrant or certificate holder has suffered a debilitating mental or physical illness, injury or disease that prevents the registrant or certificate holder from engaging in the professional practice. Registrants or certificate holders must request to be placed on inactive status. Registrants or certificate holders making such requests must provide documentation prepared by a licensed physician that the registrant or certificate holder suffers from a specific, named debilitating mental or physical illness, injury or disease that prevents the registrant or certificate holder from engaging in the professional practice, and an estimate of the period of time during when the illness, injury or disease will last or whether it is of an unlimited duration. An inactive registrant or certificate holder may, within a period of 5 years from inactive, return to active status:

(a) Upon application to the Board;

(b) Successfully pass a take at home examination on the laws and rules in Oregon;

(c) By paying the reinstatement fee required by OAR 820-010-0305(3);

(d) By paying the biennial renewal fee required by OAR 820-010-0505; and

(e) By satisfying and submitting proof of completion on a form approved by the Board of 15 PDH units per year for each year (or part of a year) inactive, to a maximum of 30 PDH units as stated in OAR 820-010-0635.

Stat. Auth: ORS 672.255(1)(g)
Stats. Implemented: ORS 672.170(4), 672.180 & 672.255(1)(g)
Hist.: BEELS 5-2007, f. & cert. ef. 9-20-07; BEELS 2-2008, f. & cert. ef. 7-9-08; BEELS 2-2009, f. & cert. ef. 11-13-09; BEELS 1-2011, f. & cert. ef. 1-14-11; BEELS 2-2012, f. & cert. ef. 5-10-12; BEELS 1-2013, f. & cert. ef. 3-13-13; BEELS 1-2015, f. & cert. ef. 2-3-15

820-010-0730
Use of Title if Registered in Other Jurisdiction

(1) A person who is not registered in Oregon as a professional engineer, but holds a substantially equivalent unexpired certificate of registration in another state, territory or possession of the United States, the District of Columbia, or a foreign country, may use the title, "engineer," "professional engineer," "registered professional engineer," or any of its derivations provided that the jurisdiction(s) in which they are registered is written/printed after the title so as not to mislead the public regarding their credentials.

(2) Other than as described in subsection (1) of this rule, no persons may hold themselves out as an engineer in Oregon by use of the title "professional engineer," "registered professional engineer," or any of their abbreviations or derivatives;

(3) Unless registered as a professional engineer in Oregon, no persons may;

(a) Hold themselves out as an "engineer" other than as described in subsection (1) of this rule or in ORS 672.060;

(b) Offer to practice engineering; or

(c) Engage in the practice of engineering.

(4) A person who is not registered in Oregon as a professional land surveyor, but holds a substantially equivalent unexpired certificate of registration in another state, territory or possession of the United States, the District of Columbia, or a foreign country, may use the title, "land surveyor," "professional land surveyor," "registered professional land surveyor," or any of its derivations provided that the jurisdiction(s) in which they are registered is written/printed after the title so as not to mislead the public regarding their credentials.

(5) Other than as described in subsection (4) of this rule, no persons may hold themselves out as a land surveyor in Oregon by use of the title "professional land surveyor," "registered professional land surveyor," or any of their abbreviations or derivatives;

(6) Unless registered as a professional land surveyor in Oregon, no persons may;

(a) Hold themselves out as a "land surveyor" other than as described in subsection (4) of this rule or in ORS 672.060;

(b) Offer to practice land surveying; or

(c) Engage in the practice of land surveying.

(7) A person who is not registered in Oregon as a professional photogrammetrist, but holds a substantially equivalent unexpired certificate of registration in another state, territory or possession of the United States, the District of Columbia, or a foreign country, may use the title, "photogrammetrist" or any of its derivations provided that the jurisdiction(s) in which they are registered is written/printed after the title so as not to mislead the public regarding their credentials.

(8) Other than as described in subsection (7) of this rule, no persons may hold themselves out as a photogrammetrist in Oregon by use of the title "photogrammetrist," or any abbreviations or derivatives;

(9) Unless registered as a professional photogrammetrist in Oregon, no persons may;

(a) Hold themselves out as a "photogrammetrist" other than as described in subsection (7) of this rule or in ORS 672.060;

(b) Offer to practice photogrammetric mapping; or

(c) Engage in the practice of photogrammetric mapping.

Stat. Auth.: ORS 672.007, 672.020 & 672.255
Stats. Implemented: ORS 672.002 - 672.325
Hist.: BEELS 2-2012, f. & cert. ef. 5-10-12; BEELS 1-2015, f. & cert. ef. 2-3-15

820-015-0026
Failure to Comply with Continuing Professional Development Requirements

(1) Any registrant who fails to satisfy the Continuing Professional Development requirements in OAR 820-010-0635 will be subject to suspension of or refusal to renew the registrant's license. Failure to satisfy the Continuing Professional Development requirements will not be the sole basis for license revocation.

(2) Before suspending or refusing to renew a registrant's license, the Board shall allow a grace period of up to one year for a registrant who qualifies for the grace period to satisfy the requirements of OAR 820-010-0635(1). When a grace period is allowed, the registrant must complete all deficient Continuing Professional Development requirements and satisfy all current Continuing Professional Development requirements within the grace period. If the registrant fails to obtain all required deficient and current PDH units within the grace period, the Board shall suspend the registrant's license.

(3) To qualify for the grace period in subsection (2), a registrant must:

(a) Respond to Board notifications;

(b) Complete a Continuing Education Request for a Grace Period Form;

(c) Not otherwise be subject to Board investigation, audit, or discipline; and

(d) Have failed to satisfy the Continuing Professional Development requirements by 15 or fewer PDH units.

Stat. Auth.: ORS 670.310 & 672.255
Stats. Implemented: ORS 672.002 - 672.325
Hist.: BEELS 2-2000, f. & cert. ef. 2-17-00; BEELS 1-2004, f. & cert. ef. 1-26-04; BEELS 2-2006, f. & cert. ef. 11-21-06; BEELS 1-2013, f. & cert. ef. 3-13-13; BEELS 1-2015, f. & cert. ef. 2-3-15

820-050-0010
Continuing Professional Development Requirements: Failure to Comply

(1) Requirements:

(a) Certified Water Right Examiners are required to obtain 10 professional development hour (PDH) units in subjects related to the practice of water right examination. As used in this rule, "Water Right Examination" includes: courses or study related to water right applications and claims of beneficial use, Water Resources Department programs, water law, or other subjects related to the work of a Water Right Examiner.

(b) For persons who hold registration as an engineer, land surveyor, or both, the number of PDH units required shall remain 30 PDH units per renewal period and may include the 10 PDH units required in OAR 820-050-0010(1)(a).

(c) Any Certified Water Right Examiner who fails to satisfy the Continuing Professional Development requirements in subsection (1)(a) shall be subject to suspension or refusal to renew the certificate. Failure to satisfy the Continuing Professional Development requirements shall not be the sole basis for revocation of certificate.

(2) Before suspending or refusing to renew the certificate of a Water Right Examiner, the Board shall allow a grace period of up to one year for a certificate holder who qualifies for the grace period to satisfy these Continuing Professional Development requirements. When a grace period is allowed under subsection (3), the certificate holder must complete all deficient Continuing Professional Development requirements and satisfy all current Continuing Professional Development requirements within the grace period. If the certificate holder fails to obtain all required deficient and current PDH units within the grace period, the Board shall suspend the registrant's certificate.

(3) To qualify for the grace period in subsection (2), a certificate holder must:

(a) Respond to Board notifications;

(b) Complete a Continuing Education Request for a Grace Period Form;

(c) Not otherwise be subject to Board investigation, audit, or discipline; and

(d) Have failed to satisfy the Continuing Professional Development requirements by 5 or fewer PDH units related to the practice of water right examination.

Stat. Auth.: ORS 670.310 & 672.255
Stats. Implemented: ORS 672.002 - 672.325
Hist.: BEELS 1-2013, f. & cert. ef. 3-13-13; BEELS 1-2015, f. & cert. ef. 2-3-15

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Board of Psychologist Examiners
Chapter 858

Rule Caption: Designation of education and licensure status for psychologists and psychologist associates.
Adm. Order No.: BPE 1-2015
Filed with Sec. of State: 1-21-2015
Certified to be Effective: 1-21-15
Notice Publication Date: 12-1-2014
Rules Adopted: 858-010-0062
Subject: This rule specifies how psychologists and psychologist associates may designate their education and licensure status.
Rules Coordinator: LaRee Felton—(503) 373-1196

858-010-0062
Designation of Education and Licensure Status

(1) Psychologists licensed pursuant to ORS 675.030 or 675.050 may only designate their academic degree using appropriate initials including "Ph.D.," "Psy.D.," or "Ed.D." as awarded by the degree-granting institution. Licensure status may only be designated as "psychologist."

(2) Psychologist associates licensed pursuant to ORS 675.065 may only designate their academic degree using appropriate initials including "M.A." or "M.S." as awarded by the degree-granting institution. Licensure status may only be designated as "psychologist associate."

Stat. Auth.: ORS 675.010 - 675.150
Stats. Implemented: ORS 675.110
Hist.: BPE 1-2015, f. & cert. ef. 1-21-15

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Rule Caption: Diversity continuing education requirement.
Adm. Order No.: BPE 2-2015
Filed with Sec. of State: 1-21-2015
Certified to be Effective: 1-21-15
Notice Publication Date: 12-1-2014
Rules Amended: 858-040-0015
Subject: This rule amendment changes the continuing education (CE) requirements for licensed psychologists and psychologist associates by adding a requirement that active and semi-active licensees complete four hours of education dedicated to the topic of diversity in each reporting period, effective January 1, 2016.
Rules Coordinator: LaRee Felton—(503) 373-1196

858-040-0015
Basic Requirements

(1) Licensees must earn at least 40 continuing education credits during the period between license renewals. Continuing education credit must be reported as follows:

(a) Licensees must submit a Renewal Notice and Reporting Affidavit to the Board office with the fee on or before the due date printed on the notice.

(b) An unsigned or incomplete Renewal Notice and Reporting Affidavit shall be returned to the licensee.

(2) New Licensees. There is no continuing education reporting required for individuals licensed twelve months or less on their first renewal date.

(3) All active and semi-active licensees must complete four hours of professional ethics and/or Oregon State laws and regulations related to the practice of psychology in each reporting period.

(4) All active and semi-active licensees must complete a minimum of seven hours of continuing education dedicated to the topic of pain management. This is a one-time requirement.

(a) One hour must be a course provided by the Oregon Pain Management Commission.

(b) The pain management requirement must be reported within twenty-four months of the first Renewal Notice and Affidavit.

(5) All active and semi-active licensees must complete four hours of continuing education dedicated to the topic of cultural competency in each reporting period.

(6) No continuing education reporting is required for licensees requesting a change from active or semi-active to inactive status.

(7) No continuing education reporting is required for inactive licensees.

(8) The Board may grant exemptions in whole or in part from continuing education requirements, including extension of deadlines, in documented hardship cases.

Stat. Auth.: ORS 675.110
Stats. Implemented: ORS 675.110(14)
Hist.: BPE 2-1999, f. & cert. ef. 7-6-99; BPE 2-2002, f. & cert. ef. 2-27-02; BPE 2-2004, f. & cert. ef. 8-30-04; BPE 1-2008, f. & cert. ef. 3-26-08; BPE 1-2010, f. & cert. ef. 1-8-10; BPE 2-2010, f. & cert. ef. 9-28-10; BPE 1-2011, f. & cert. ef. 1-25-11; BPE 1-2011, f. & cert. ef. 1-25-11; BPE 2-2014, f. 6-2-14, cert. ef. 1-1-15; BPE 2-2015, f. & cert. ef. 1-21-15

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Board of Tax Practitioners
Chapter 800

Rule Caption: 2014 Overhal based on Rules Advisory Committee recommendations and voted on by the Board.
Adm. Order No.: BTP 1-2015
Filed with Sec. of State: 1-16-2015
Certified to be Effective: 2-1-15
Notice Publication Date: 12-1-2014
Rules Amended: 800-001-0000, 800-010-0015, 800-010-0017, 800-010-0020, 800-010-0025, 800-010-0030, 800-010-0040, 800-010-0050, 800-015-0005, 800-015-0010, 800-015-0015, 800-015-0020, 800-020-0015, 800-020-0022, 800-020-0030, 800-020-0031, 800-025-0010, 800-025-0023, 800-025-0025, 800-025-0030, 800-025-0040, 800-025-0060, 800-025-0070, 800-030-0030, 800-030-0050
Subject: Adoptions to the OARs, under which the Board operates, result from the Rules Advisory Committee, Assistant Attorney General and Board staff recommendations. The Board of Tax Practitioners proposes to adopt a rule change to amend the advertising language for business and individual licensing to include acceptable alternative language. Removes Department of Education and replaces with the Higher Education Coordinating Commission who currently has over site of private career schools. Requires that a minimum of 2 hours of the 30 hours annual continuing education be in the subject area of ethics. Defines acceptable ethic programs.

Additional amendments/and adoptions to the OARs are for general "housekeeping" and "maintenance" as well as to change language to better reflect the "norm" in industry standards and the practices of other state agencies. In addition, the proposed amendments will provide better clarification to constituents as well as continue to conform to the current standards. The Rules Advisory Committee is comprised of Oregon licensed tax professionals and was established by the Board of Tax Practitioners for the purpose of reviewing the OARs governing tax practitioners in the State of Oregon. In addition, the establishment of the Rules Advisory Committee has provided an avenue for the Board to involve licensees in the rule making process.
Rules Coordinator: Jane Billings—(503) 373-1691

800-001-0000
Notice of Proposed Rule

Prior to the adoption, amendment, or repeal of any rule, except temporary rules adopted under ORS 183.335(5), the State Board of Tax Practitioners shall give notice of the proposed adoption, amendment, or repeal:

(1) In the Secretary of State's Bulletin.

(2) By mailing a copy of the notice to persons who have requested such notice.

(3) By mailing a copy of the notice to the following organizations or publications:

(a) Associated Press;

(b) Oregon Association of Tax Consultants;

(c) Oregon Society of Tax Consultants; and

(d) Oregon Association of Independent Accountants;

(e) Oregon Society of Enrolled Agents.

Stat. Auth.: ORS 183.341(4)
Stats. Implemented: ORS 183.341(4)
Hist.: TSE 5, f. & ef. 12-4-75; TSE 4-1981, f. & ef. 8-13-81; TSE 2-1987, f. & ef. 10-2-87; TSE 1-1993, f. & cert. ef. 2-23-93; TSE 1-1995, f. & cert. ef. 5-5-95; BTP 1-2015, f. 1-16-15, cert. ef. 2-1-15

800-010-0015
Definitions

As used in these rules, unless the context requires otherwise:

(1) "Board" means the State Board of Tax Practitioners.

(2) "Branch Office" means an office or other place of business where clients would normally or usually contact a licensee.

(3) "Client" means a person for whom a licensee performs or agrees to perform professional services for valuable consideration and the services are related directly or indirectly to the client's personal income taxes.

(4) "Confidential Information" means information furnished to a licensee for, or in connection with, the preparation of an income tax return.

(5) "Designated Consultant" means a Licensed Tax Consultant who is the responsible individual at each tax preparation business and whose responsibilities include the supervision of the preparation of all personal income tax returns for another and for valuable consideration.

(6) "Licensee" means a Licensed Tax Consultant, Licensed Tax Preparer, or any person, corporation, firm or partnership falling within the purview of ORS 673.605 to 673.735.

(7) "Resident Consultant" means the Licensed Tax Consultant who is physically present to conduct and carryout his/her duties in the principal or branch office.

(8) "Tax Consultant or Tax Preparer Practice" and a licensee's "professional practice" means any service performed or supervised by the licensee for a client, including any advice or recommendation made by the licensee to the client, when it is related directly or indirectly to the client's personal income tax return, if the licensee also prepares the client's personal income tax returns.

(9) "Tax Preparation Business" means a sole proprietorship, partnership, corporation or other entity that offers personal income tax preparation services to the public, for valuable consideration, whether operated under an individual's own name or under an assumed business or corporate name, and including tax preparation businesses operated on a full- or part-time basis.

(10) "Valuable Consideration", as used in ORS 673.615 and OAR Chapter 800, means a benefit that accrues to a person as a result of preparing, advising, or assisting in the preparation of personal tax returns for others, or offering to perform such services. Valuable consideration need not be translatable into dollars and cents.

Stat. Auth.: ORS 670.310(1) & 673.730(10)
Stats. Implemented: ORS 673.605 –673.990
Hist.: TSE 6, f. & ef. 1-5-76; TSE 2-1982, f. & ef. 5-10-82; TSE 1-1985, f. & ef. 1-15-85; TSE 6-1986, f. & ef. 12-31-86; TSE 3-1987, f. & ef. 10-2-87; TSE 1-1990, f. & cert. ef. 1-25-90; TSE 4-1991, f. & cert. ef. 10-28-91; BTP 3-2005, f. 8-31-05, cert. ef. 9-1-05; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08; BTP 1-2010, f. 1-19-10, cert. ef. 2-1-10; BTP 1-2011, f. 1-24-11, cert. ef. 2-1-11; BTP 1-2012, f. 1-30-12, cert. ef. 2-1-12; BTP 1-2015, f. 1-16-15, cert. ef. 2-1-15

800-010-0017
Incompetence and Negligence

Under ORS 673.700(3):

(1) A licensee is incompetent when he/she has engaged in conduct where a lack of ability, fitness, or knowledge to perform his/her professional functions is evident.

(2) A licensee is negligent when he/she has engaged in conduct detrimental to the client.

Stat. Auth.: ORS 670.310(1) & 673.730(10)
Stats. Implemented: ORS 673.700(3)
Hist.: TSE 8-1990, f. & cert. ef. 9-4-90; TSE 9-1990(Temp), f. & cert. ef. 10-30-90; TSE 1-1991, f. & cert. ef. 1-3-91; BTP 1-2003, f. & cert. ef. 9-23-03; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08; BTP 1-2010, f. 1-19-10, cert. ef. 2-1-10; BTP 1-2015, f. 1-16-15, cert. ef. 2-1-15

800-010-0020
Confidential Information

(1) A licensee shall not disclose any confidential information obtained in the course of professional engagement except:

(a) With the written consent of the client;

(b) After being subpoenaed by a court or governmental agency of competent jurisdiction;

(c) In response to an inquiry by the Board or its investigator; or

(d) As required by federal or state regulations.

(2) Members of the Board and its employees shall not disclose any confidential client information which comes to their attention except as required to carry out their official responsibilities.

Stat. Auth.: ORS 673.310(1), 673.730(7) & 673.730(10)
Stats. Implemented: ORS 673.730(7), 673.605 - 673.990
Hist.: TSE 6, f. & ef. 1-5-76; TSE 1-1985, f. & ef. 1-15-85; BTSE 1-2001, f. & cert. ef. 4-19-01; BTP 1-2009, f. & cert. ef. 2-5-09; BTP 1-2013, f. 1-15-13, cert. ef. 2-1-13; BTP 1-2014, f. 1-16-14, cert. ef. 2-1-14; BTP 1-2015, f. 1-16-15, cert. ef. 2-1-15

800-010-0025
Integrity and Objectivity

(1) A licensee shall not knowingly misrepresent facts while preparing, assisting, or advising in the preparation of income tax returns. A licensee may resolve doubt in favor of a client if there is reasonable support for the position.

(2) A licensee who finds that a client has made an error or omitted information or related material required on an income tax return shall promptly advise the client of such error or omission.

(3) A licensee shall not arrange for or permit a client's individual income tax refund check to be mailed or made payable to the licensee at any time, for any purpose.

(4) Commissions earned for additional personal services by the licensee, such as real estate, insurance, investment, and securities sales, may be earned if the licensee also holds any license, permit, or registration required by law to perform the services. A licensee shall disclose in writing that he/she will be compensated for other personal services. The client will acknowledge receipt of the disclosure in writing.

(5) Fees in connection with preparation of tax returns must be stated separately from, and in addition to, any other professional services provided.

(6) A licensee shall, upon written request by a client, make available or return within a reasonable time to the client, personal papers or source material in the manner furnished to the licensee by the client;

(a) A licensee who has provided a tax return to a client shall, upon written request by the client, make available within a reasonable time to the client, copies of depreciation schedules that support the return;

(b) A licensee is not required to furnish records to a client more than once under this subsection.

(7) A licensee shall not engage in fraudulent, deceptive, or dishonest conduct relating to the licensee's professional practice.

(8) A licensee shall not violate any position of trust, including positions of trust outside the licensee's professional practice.

(9) A licensee must be current on all tax return filings and all tax payment plans pertaining to the licensee and/or licensee's business before a license can be issued or renewed.

Stat. Auth.: ORS 673.310(1), 673.730(7) & 673.730(10)
Stats. Implemented: ORS 673.730(7), 673.605 - 673.990
Hist.: TSE 6, f. & ef. 1-5-76; TSE 3-1980, f. & ef. 8-22-80; TSE 1-1985, f. & ef. 1-15-85; TSE 4-1986, f. & ef. 8-15-86; TSE 3-1989, f. & cert. ef. 12-20-89; TSE 1-1992, f. 3-24-92, cert. ef. 6-1-92; BTSE 1-2001, f. & cert. ef. 4-19-01; BTP 1-2003, f. & cert. ef. 9-23-03; BTP 3-2005, f. 8-31-05, cert. ef. 9-1-05; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08; BTP 1-2009, f. & cert. ef. 2-5-09; BTP 1-2010, f. 1-19-10, cert. ef. 2-1-10; BTP 1-2014, f. 1-16-14, cert. ef. 2-1-14; BTP 1-2015, f. 1-16-15, cert. ef. 2-1-15

800-010-0030
Accountability

(1) A Licensed Tax Consultant or registered tax preparation business shall only allow persons to practice in the consultant's or tax preparation business name who are licensed as tax consultants, tax preparers, or as described in ORS 673.610.

(2) A Licensed Tax Consultant shall not permit the use of the consultant's license to enable others to establish and carry on a business for the preparation of personal income tax returns wherein the consultant's only interest is the receipt of a fee for use of the consultant's license and the Licensed Tax Consultant does not provide supervision of the tax preparation activities as defined in OAR 800-025-0050.

(3) A Licensed Tax Consultant or a Licensed Tax Preparer shall state or imply that a Licensed Tax Preparer preparing tax returns to which the consultant's license number or tax preparation business information is affixed is:

(a) Fully subject to the supervision of the Licensed Tax Consultant or registered tax preparation business; as defined in OAR 800-025-0050; or

(b) Acting as agent of the Licensed Tax Consultant or registered tax preparation business.

(4) A Licensed Tax Preparer shall not engage in the preparation of tax returns, assist in such preparation, gather tax information, or provide tax advice for valuable consideration unless the Licensed Tax Preparer is under the supervision of a Licensed Tax Consultant as defined in OAR 800-025-0050.

(5) A licensee shall not maintain a financial interest in or hold an employment position with any business entity that offers personal income tax preparation services, if any other person maintains a financial interest in the entity, or holds a management position involving authority over the business operations of the entity, and:

(a) That person's tax consultants or tax preparers license has been permanently revoked; or

(b) The Board has refused to issue or renew a license to that person; or

(c) Another state regulatory agency or the Internal Revenue Service has revoked or refused to issue or renew an occupational license, registration, or permit held or requested by that person, for conduct involving tax preparation or dishonesty.

(6) If required to do so under section (5) of this rule, a licensee shall be allowed a reasonable time, not to exceed 180 calendar days, to sever an existing relationship with a person whose license is revoked or refused.

(7) Section (5) of this rule does not apply to a licensee or a person described in subsections (5)(a) through (c) of this rule, whose only financial interest in a tax preparation business is the ownership of ten percent or less of the stock in a publicly-held corporation.

Stat. Auth.: ORS 673.310(1), 673.730(7) & 673.730(10)
Stats. Implemented: ORS 673.730(7), 673.605 - 673.990
Hist.: TSE 6, f. & ef. 1-5-76; TSE 1-1979, f. 6-14-79, ef. 6-15-79; TSE 1-1985, f. & ef. 1-15-85; TSE 8-1987, f. & ef. 12-21-87; BTSE 1-2001, f. & cert. ef. 4-19-01; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08; BTP 1-2009, f. & cert. ef. 2-5-09; BTP 1-2010, f. 1-19-10, cert. ef. 2-1-10; BTP 1-2011, f. 1-24-11, cert. ef. 2-1-11; BTP 1-2013, f. 1-15-13, cert. ef. 2-1-13; BTP 1-2015, f. 1-16-15, cert. ef. 2-1-15

800-010-0040
Identification

(1) A licensee shall include the name of the tax preparation business, permanent address, and signature (preparer name) on all federal and state personal income tax returns or electronic filing documents prepared by the licensee. This should be in addition to all other data required by the Internal Revenue Service, Department of Revenue, and State Board of Tax Practitioners. Office copies are exempt from this requirement.

(2) The state personal income tax return shall include the signature and the Board issued license number of the licensee who substantially prepared the return.

(3) In addition to the original returns filed on behalf of a client, at least one (1) copy of the complete set of the tax returns, including all accompanying forms and schedules, specifically depreciation schedules, shall be supplied to the client. A licensee is not required to provide a free copy of the tax returns to a client more than once. However, in the case of a joint tax return, each spouse is entitled, upon request, to a free copy of the tax return.

Stat. Auth.: ORS 673.310(1), 673.730(7) & 673.730(10)
Stats. Implemented: ORS 673.730(7), 673.605 - 673.990
Hist.: TSE 6, f. & ef. 1-5-76; TSE 12, f. & ef. 9-20-77; TSE 1-1978, f. & ef. 2-3-78; TSE 2-1982, f. & ef. 5-10-82; TSE 1-1985, f. & ef. 1-15-85; TSE 2-1995, f. & cert. ef. 5-5-95; BTSE 1-2001, f. & cert. ef. 4-19-01; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07; BTP 1-2009, f. & cert. ef. 2-5-09; BTP 1-2010, f. 1-19-10, cert. ef. 2-1-10; BTP 1-2011, f. 1-24-11, cert. ef. 2-1-11; BTP 1-2012, f. 1-30-12, cert. ef. 2-1-12; BTP 1-2014, f. 1-16-14, cert. ef. 2-1-14; BTP 1-2015, f. 1-16-15, cert. ef. 2-1-15

800-010-0050
Advertising and Solicitation

(1) As used in this rule, "advertise" and "advertising" means any form of printed, broadcast, or electronic material that makes known professional income tax services. This includes, but is not limited to, business cards and stationery, and all web and e-commerce advertising of an individual or tax preparation business.

(2) No licensee or tax preparation business shall advertise or solicit clients in a false, fraudulent, deceptive or misleading manner.

(3) All advertising must include either the name of a firm that has complied with ORS 673.643 or the name of the firm's Designated Licensed Tax Consultant.

(a) Only a person holding a valid Tax Consultant's License may use the designation "L.T.C.", "LTC" or the titles "Licensed Tax Consultant" or "Tax Consultant."

(b) Only a person holding a valid Tax Preparer's License may use the designation "L.T.P.", "LTP" or the title "Licensed Tax Preparer".

(4) All advertising must be reviewed and approved in advance by the designated Licensed Tax Consultant. The designated Licensed Tax Consultant and the designating tax preparation business shall each be responsible for the business's compliance with the provisions of this rule.

(5) No licensee shall advertise to give a discount unless:

(a) The discount is based upon a basic fee schedule posted in public view in the licensee's place of business; and

(b) The fees on the posted basic fee schedule are the usual and customary charges of the tax preparation business; and

(c) The basic fee schedule must include the minimum fees charged for at least the following forms and schedules: 1040, 1040A, 1040EZ, Sch. A, Sch. B, Sch. EIC, Form 2441, Sch. 8812, Oregon 40, 40N and 40P.

(6) All business advertising must include the Board issued business registration number of the firm written as: "Board of Tax Practitioners#" and/or "OBTP#" or the license number of the firm's Designated Licensed Tax Consultant written as: "Licensed Tax Consultant#" and/or "LTC#".

(7) All individual advertising must include licensee's Board issued LTC or LTP license number written as: "Licensed Tax Consultant#" and/or "LTC#" or "Licensed Tax Preparer# and/or "LTP#".

Stat. Auth.: 673.730(7) & 673.730(10)
Stats. Implemented: ORS 673.730(7), 673.605 - 673.990
Hist.: TSE 6, f. & ef. 1-5-76; TSE 2-1981(Temp), f. 2-18-81, ef. 2-19-81; TSE 3-1981, f. 7-22-81, ef. 7-23-81; TSE 4-1981, f. & ef. 8-13-81; TSE 3-1982, f. & ef. 11-19-82; TSE 1-1985, f. & ef. 1-15-85; TSE 3-1986, f. & ef. 7-14-86; TSE 2-1990, f. & cert. ef. 1-25-90; TSE 2-1992, f. & cert. ef. 5-15-92; BTSE 1-2001, f. & cert. ef. 4-19-01; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07; BTP 1-2010, f. 1-19-10, cert. ef. 2-1-10; BTP 1-2011, f. 1-24-11, cert. ef. 2-1-11; BTP 3-2011, f. 6-3-11, cert. ef. 7-1-12; BTP 1-2014, f. 1-16-14, cert. ef. 2-1-14; BTP 1-2015, f. 1-16-15, cert. ef. 2-1-15

800-015-0005
Basic Education

(1) An accredited college/university, educational service district (ESD), or a private firm that has met or is exempt from the licensure requirements of the Oregon Higher Education Coordinating Commission or a private firm offering classes only to its own employees and is exempt from the Oregon Higher Education Coordinating Commission requirements may act as a sponsor for the basic income tax course.

(2) Sponsors shall apply for course certification on a form provided by the Board.

(3) A basic course shall include:

(a) At least 80 classroom hours of basic income tax preparation instruction. If the course is offered through correspondence or online, it must be the equivalent of 80 classroom hours of instruction;

(b) Instruction in each of the subject areas specified in the Preparer Examination Index maintained by the Board;

(c) Sufficient working problems to instruct in the use of appropriate forms and schedules; and

(d) A midterm and final examination.

(4) The Board shall require a sponsor applicant to submit evidence that course materials and lesson plans comply with section (3) of this rule.

(5) Basic course sponsors shall employ only instructors to teach basic courses who are actively licensed or who fall within the exemptions of ORS 673.610(2)(4) and who prepared taxes for at least two (2) tax seasons immediately prior to teaching the course.

(a) The Board may grant a specific waiver to instructor qualifications when unusual or extenuating circumstances exist.

(b) Sponsors shall submit to the Board the names and qualifications of instructors teaching each basic course.

(c) Repeated low passage rates of an instructor's students on the tax preparers' examination could be evidence that the instructor may not be qualified to teach a basic tax preparation course.

(d) The instructor's approval to teach Basic Tax Preparation courses may be revoked by the Board.

(6) Evidence of successful course completion shall be furnished to students by course instructors on a Board approved session attendance certification form. Forms may be reproduced by course sponsors. If a student misses a portion of the class sessions, the instructor may provide makeup work.

(7) Applications for course certification shall be submitted annually at least 60 calendar days prior to the course starting. Certification shall be for the subsequent 12 months.

(8) The Board may refuse to issue or withdraw a course certification for failure to meet any of the course or instructor requirements contained in this rule.

Stat. Auth.: ORS 673.310(1) & 673.730(10)
Stats. Implemented: ORS 673.625
Hist.: TSE 9, f. & ef. 6-28-76; TSE 1-1979, f. 6-14-79, ef. 6-15-79; TSE 2-1979, f. 9-28-79, ef. 10-1-79; TSE 3-1979, f. 11-28-79, ef. 11-30-79; Renumbered from OAR 800-020-0040 by TSE 2-1980, f. & ef. 5-30-80; TSE 3-1982, f. & ef. 11-19-82; TSE 1-1985, f. & ef. 1-15-85; TSE 3-1990, f. & cert. ef. 1-25-90; TSE 7-1992, f. & cert. ef. 12-22-92; BTSE 1-2001, f. & cert. ef. 4-19-01; BTP 1-2003, f. & cert. ef. 9-23-03; BTP 3-2005, f. 8-31-05, cert. ef. 9-1-05; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08; BTP 1-2009, f. & cert. ef. 2-5-09; BTP 1-2010, f. 1-19-10, cert. ef. 2-1-10; BTP 1-2012, f. 1-30-12, cert. ef. 2-1-12; BTP 1-2015, f. 1-16-15, cert. ef. 2-1-15

800-015-0010
Continuing Education

(1) Except for renewal of an initial license, a Licensed Tax Consultant or Licensed Tax Preparer renewing a license shall attest on the renewal to have completed at least 30 hours of acceptable continuing education since the last renewal date.

(2) Each licensee shall attest on the renewal to have completed within the 30 continuing education requirement a minimum of two (2) hours of acceptable continuing education in professional conduct and ethics since the last renewal date. All active licensees are required to attest to have completed at least two (2) continuing education hours in professional conduct and ethics since the last renewal date, which may be satisfied by any professional conduct and ethics program that meets the general continuing education requirements described in section (3) of this rule.

(3) Continuing education programs in professional conduct and ethics required by subsection (2)(a) of this rule are eligible for continuing education credit if the program is offered by a sponsor approved by the Board and includes information pertaining to at least one or more of the following topics:

(a) Review of Oregon Revised Statutes and Oregon Administrative Rules pertaining to the preparation of individual income tax returns;

(b) Review of examples of issues or situations that require an understanding of Federal or State statutes, rules, and case law relevant to all licensees;

(c) Review of guidelines adopted by the Internal Revenue Office of Professional Responsibility and policies outlined in the Internal Revenue Treasury Department Circular 230;

(d) Review of the code of professional conduct adopted by the Board and set forth in OAR chapter 800, division 010;

(e) Review of recent case law pertaining to ethics and professional responsibilities for the licensed tax consultant and tax preparer profession.

(4) Each licensee shall report compliance with the continuing education requirements on the license renewal document. Licensees shall be subject to the provisions of OAR 800-015-0015 pertaining to the periodic audit of continuing education.

(5) Proof of participation in required continuing education is the responsibility of the licensee. To ensure that proof of attainment of required continuing education is available for audit or investigation by the Board, licensees shall maintain certificates for at least four (4) years following each continuing education cycle and renewal for the tax practitioner license.

(6) Continuing education credit will be accepted only for courses and seminars that comply with all Board rules regarding continuing education.

(7) The Board may verify continuing education information submitted by licensees.

(8) Education hours earned in excess of 30 hours annually cannot be carried over from one renewal period to the next. However, hours earned during the month of renewal not claimed on the current renewal may be submitted with the following year's renewal.

(9) Continuing education credit shall be granted only once during a license year for attendance at or instruction of duplicate seminars offered by the same sponsor or instructor.

(10) Continuing education credit for courses at accredited universities and colleges will be 15 hours for each semester hour credit and ten (10) hours for each quarter hour credit. For all live courses including interactive webinars, webcasts, IRS phone forums, and seminars, one (1) 50-minute education hour of continuing education credit will be granted for each hour of classroom attendance.

(11) Continuing education credits are accepted for instructors of basic or advanced courses or seminars. The credit allowed will be two (2) hours for each hour of teaching, which includes preparation time. No more than ½ total required continuing education credit can be in teaching.

(12) Correspondence and online study courses are accepted if the program and sponsor comply with all Board rules regarding continuing education and:

(a) The sponsor requires evidence of satisfactory completion of workbooks or examinations before certificates are issued.

(b) The hours credited do not exceed the credit that would be allowed in a resident course covering the same material; and

(c) Course outlines, workbooks, and exams must be submitted to the Board for approval of course content and credit hours claimed prior to offering the material to the public unless already approved by the California Tax Education Council (CTEC), or the Internal Revenue Service (IRS), or the National Association of State Boards of Accountancy (NASBA).

(13) "In-Company" instruction may be accepted if the course or seminar is presented to ten (10) or more people and all other requirements for continuing education sponsors are met. Portions of such educational sessions devoted to administrative and firm matters shall not be accepted.

(14) If a licensee claims credit for a course or seminar in the reasonable belief the instruction qualifies as acceptable continuing education, but the Board finds all or part of the hours claimed to be unacceptable, the licensee may be granted an additional period of time, not to exceed 60 calendar days, to make up the rejected hours.

(15) Licensed Tax Consultants and Licensed Tax Preparers who have extenuating circumstances and are unable to obtain all their continuing education by their license due dates may make application, by completing a form prescribed by the Board, for a waiver of continuing education hours.

Stat. Auth.: Stat. Auth.: ORS 673.310(1) & 673.730(10)
Stats. Implemented: ORS 673.645 &.673.655
Hist.: TSE 9, f. & ef. 6-28-76; TSE 1-1979, f. 6-14-79, ef. 6-15-79; TSE 2-1979, f. 9-28-79, ef. 10-1-79; TSE 3-1979, f. 11-28-79, ef. 11-30-79; TSE 2-1980, f. & ef. 5-30-80, Renumbered from OAR 800-020-0045; TSE 3-1980, f. & ef. 8-22-80; TSE 2-1982, f. & ef. 5-10-82; TSE 3-1982, f. & ef. 11-19-82; TSE 1-1985, f. & ef. 1-15-85; TSE 3-1985, f. & ef. 12-5-85; TSE 9-1987, f. & ef. 12-21-87; TSE 1-1997, f. & cert. ef. 7-2-97; BTSE 1-2001, f. & cert. ef. 4-19-01; BTP 1-2003, f. & cert. ef. 9-23-03; BTP 3-2005, f. 8-31-05, cert. ef. 9-1-05; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08; BTP 1-2009, f. & cert. ef. 2-5-09; BTP 1-2010, f. 1-19-10, cert. ef. 2-1-10; BTP 1-2011, f. 1-24-11, cert. ef. 2-1-11; BTP 1-2012, f. 1-30-12, cert. ef. 2-1-12; BTP 1-2013, f. 1-15-13, cert. ef. 2-1-13; BTP 1-2015, f. 1-16-15, cert. ef. 2-1-15

800-015-0015
Continuing Education: Audit, Required Documentation and Sanctions

(1) The Board will audit a select percentage of licensee records determined by the Board to verify compliance with continuing education requirements.

(2) Licensees notified of selection for audit of continuing education shall submit to the Board, within 30 calendar days from the date of issuance of the notification, satisfactory evidence of participation in required continuing education in accordance with OAR 800-015-0010.

(3) Documentation of a certificate of completion of attendance at a program, seminar, or course provided by a sponsor must include:

(a) Name of student;

(b) Name, address, and telephone number of sponsoring institution/association or organization;

(c) Location of program;

(d) Title of program and description of content;

(e) Name of instructor or presenter;

(f) Date(s) of attendance;

(g) Number of instruction hours;

(4) For documentation of completion of a college/university course, a licensee must submit a photocopy/electronic copy of an official transcript, diploma, certificate, statement, or affidavit.

(5) If documentation of continuing education is invalid or incomplete, the licensee must correct the deficiency within 30 calendar days from the date of notice. Failure to correct the deficiency within the prescribed time shall constitute grounds for disciplinary action.

(6) Misrepresentation of continuing education, or failing to meet continuing education requirements or documentation may result in disciplinary action, which may include but is not limited to assessment of a civil penalty and suspension or revocation of the license.

Stat. Auth.: ORS 673.310(1) & 673.730(10)
Stats. Implemented: ORS 673.645, 673.655 673.605 –673.990
Hist.: BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08; BTP 1-2009, f. & cert. ef. 2-5-09; BTP 1-2011, f. 1-24-11, cert. ef. 2-1-11; BTP 1-2012, f. 1-30-12, cert. ef. 2-1-12; BTP 1-2014, f. 1-16-14, cert. ef. 2-1-14; BTP 1-2015, f. 1-16-15, cert. ef. 2-1-15

800-015-0020
Continuing Education Program Requirements

(1) Acceptable continuing education is that which contributes directly to the expertise of the individual in the preparation of income tax returns, and is presented by a sponsor who meets the requirements of all Rules. It is the obligation of each licensee to select a course of study which will contribute to his/her competence in the preparation of income tax returns.

(2) The following general subject matters are acceptable to the extent they contribute directly to the expertise of advising, assisting, or preparing income tax returns:

(a) Taxation;

(b) Practitioner Ethics;

(c) Accounting and payroll theory;

(d) Estate, tax, or investment planning;

(e) Computer technology;

(f) Tax representation: exam, collections, or appeals;

(g) Others, if the licensee can demonstrate a direct relationship to the preparation of a client's income tax returns.

(3) Programs primarily directed towards the licensee's personal benefit, rather than that of his/her clients, and programs relating primarily to general business management, are unacceptable. Some examples of unacceptable subjects are:

(a) Memory improvement;

(b) Buying or selling a tax practice;

(c) Setting fee schedules;

(d) Character development;

(e) Behavior modification;

(f) Business management;

(g) Labor law;

(h) Economic forecasts;

(i) Learning to operate office equipment.

(4) Programs must be at least one (1) 50-minute education hour with credit given in whole hours only.

(5) Programs must be conducted by a qualified instructor whose background, training, education, or experience make it appropriate for the person to lead a discussion on the subject matter of the particular program.

(6) Licensees may not receive credit for repeat of courses taken from the same instructor within the same continuing education reporting period.

Stat. Auth.: ORS 673.310(1) & 673.730(10)

Stats. Implemented: ORS 673.645,.673.655, 673.605 –673.990

Hist.: TSE 9, f. & ef. 6-28-76; TSE 1-1979, f. 6-14-79, ef. 6-15-79; TSE 2-1979, f. 9-28-79, ef. 10-1-79; TSE 3-1979, f. 11-28-79, ef. 11-30-79; TSE 2-1980, f. & ef. 5-30-80, Renumbered from OAR 800-020-0045; TSE 1-1985, f. & ef. 1-15-85; TSE 3-1985, f. & ef. 12-5-85; TSE 2-1989, f. & cert. ef. 10-27-89; TSE 8-1992, f. & cert. ef. 12-22-92; TSE 2-1997, f. & cert. ef. 7-2-97; BTSE 1-2001, f. & cert. ef. 4-19-01; BTP 1-2003, f. & cert. ef. 9-23-03; BTP 1-2007, f. 1-12-07, cert. ef. 2-1-07; BTP 1-2009, f. & cert. ef. 2-5-09; BTP 1-2010, f. 1-19-10, cert. ef. 2-1-10; BTP 1-2012, f. 1-30-12, cert. ef. 2-1-12; BTP 1-2015, f. 1-16-15, cert. ef. 2-1-15

800-020-0015

Application for Examination

(1) Application to take the examination for a tax preparer or tax consultant must be filed with the Board on forms prescribed and furnished by the Board. The application must include the examination fee and the proctor site fee, if applicable. The application must be signed.

(2) The application and examination fee shall be filed with the Board no later than one (1) month prior to the examination date, except when the Board sets tighter deadlines due to extenuating circumstances.

(3) Completed basic course certification forms as required under OAR 800-015-0005(6) or a photocopy of an official transcript issued by an accredited college or university shall be submitted to the Board by the student with the initial application for a Tax Preparer License. The preparer applicant may file an application to take the examination before completing the basic tax course. Applicants shall furnish the Board a brief outline of courses completed and/or taught, together with a transcript or proof of instruction from the educational institution if the course(s) they completed and/or taught have not received prior approval from the Board. If the Board determines the course(s) completed and/or taught are comparable to those described in OAR 800-015-0005, the applicant shall be eligible to take the examination.

(4) A tax consultant applicant who is a Licensed Tax Preparer shall submit verification by the applicant's employer or employers, on forms prescribed and furnished by the Board, that the applicant has worked in the capacity as a Licensed Tax Preparer for not less than a cumulative total of 1100 hours during at least two (2) of the last five (5) years.

(5) An Enrolled Agent applicant who is enrolled to practice before the Internal Revenue Service, holding a valid treasury card, shall submit verification by the applicant's employer or employers, on forms prescribed and furnished by the Board, that the applicant has completed a minimum of 360 hours work experience during at least two (2) of the last five (5) years.

(6) A tax consultant applicant who is claiming equivalent tax preparer experience shall submit on forms prescribed and furnished by the Board:

(a) Verification by the applicant's employer or employers that the applicant has worked in the capacity as a Licensed Tax Preparer for not less than a cumulative total of 1100 hours during at least two (2) of the last five (5) years.

(A) The Board will accept employment as an income tax auditor or taxpayer service representative with the Internal Revenue Service or State Department of Revenue as being equivalent experience.

(B) For the purpose of meeting the work experience requirement for tax consultants, one hour of experience gained through volunteer tax preparation programs such as VITA or AARP-TCE will be accepted for each five hours spent preparing, advising or assisting in the preparation of tax returns through the volunteer program, up to a maximum of 220 hours credited. To qualify for the one (1) to five (5) hour experience credit, total hours worked in the volunteer program must be verified in writing by a supervisor knowledgeable in tax preparation.

(b) To claim experience under this section, the applicant must submit a petition signed under penalty of perjury that the work experience claimed is true, correct and complete.

(7) Applicants for the tax consultant examination must have completed, within a year prior to submitting application, a minimum of 15 hours of acceptable continuing education in personal income taxation to meet the requirements of OAR 800-015-0010 to 800-015-0030. This requirement is in addition to the required 1100 hours of work experience earned during at least two (2) of the last five (5) years.

(8) A tax practitioner applicant claiming tax consulting experience in another state shall:

(a) Submit, on a form prescribed and furnished by the Board, a petition signed under penalty of perjury, claiming self-employment as a tax practitioner for at least two (2) of the last five (5) years; and

(b) Furnish documented proof of self-employment as a tax practitioner.

(9) A tax preparer or tax consultant applicant who has worked in the capacity as a tax practitioner in another state or in an exempt status may request Board approval to substitute work experience for up to two-thirds of the classroom hours of basic income tax education otherwise required to qualify as a tax preparer or tax consultant. Approval may be granted to substitute experience for education only if:

(a) The applicant was actively engaged in tax preparation within two (2) years prior to the date of application;

(b) The applicant has at least three (3) years experience in tax preparation within the last 5 years;

(c) The applicant has gained a competency level through work experience that is equal to those applicants who have successfully completed the basic income tax course; and

(d) The applicant submits verification by the applicant's employer(s) or evidence of self- employment regarding the work experience.

(10) The Board may accept education credit for courses completed by a tax consultant applicant to substitute for a maximum of 375 hours of work experience at the rate of one (1) classroom hour of education for five (5) hours of experience if:

(a) The subject matter of the course was related to taxation;

(b) The applicant completed the course within one (1) year of applying to become a Licensed Tax Consultant; and

(c) Credit for the course is not claimed to fulfill continuing education requirements.

(11) Information required of the applicant and on the application forms shall be completed before an applicant may be admitted to an examination.

Stat. Auth.: ORS 673.310(1) & 673.730(10)

Stats. Implemented: ORS 673.625 –673.640

Hist.: TSE 8, f. & ef. 5-19-76; TSE 1-1979, f. 6-14-79, ef. 6-15-79; TSE 2-1979, f. 9-28-79, ef. 10-1-79; TSE 2-1980, f. & ef. 5-30-80; TSE 2-1982, f. & ef. 5-10-82; TSE 3-1982, f. & ef. 11-19-82; TSE 1-1985, f. & ef. 1-15-85; TSE 3-1985, f. & ef. 12-5-85; TSE 4-1988, f. & cert. ef. 11-2-88; TSE 5-1990, f. & cert. ef. 5-3-90; TSE 9-1992, f. & cert. ef. 12-22-92; BTSE 1-2001, f. & cert. ef. 4-19-01; BTP 1-2003, f. & cert. ef. 9-23-03; BTP 1-2005, f. & cert. ef. 1-5-05; BTP 3-2005, f. 8-31-05, cert. ef. 9-1-05; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08; BTP 1-2009, f. & cert. ef. 2-5-09; BTP 1-2010, f. 1-19-10, cert. ef. 2-1-10; BTP 1-2011, f. 1-24-11, cert. ef. 2-1-11; BTP 3-2011, f. 6-3-11, cert. ef. 7-1-12; BTP 1-2012, f. 1-30-12, cert. ef. 2-1-12; BTP 1-2013, f. 1-15-13, cert. ef. 2-1-13; BTP 1-2015, f. 1-16-15, cert. ef. 2-1-15

800-020-0022

Examination Conduct; Disqualification

(1) Examination Conduct: Examinations shall be conducted in a designated area with restricted access. Approval notification of an applicant's eligibility to take the examination must be issued by the Board office prior to scheduling an appointment for examination. Authorization must be provided by the Board office or proctoring site before bringing any materials, electronic equipment, or devices into the examination area. Applicants shall be required to provide a government issued photographic identification such as a driver's license before being allowed to take the examination.

(2) Examination Disqualification: A candidate may be immediately disqualified during or after the examination for conduct that interferes with the examination. Such conduct includes:

(a) Taking or attempting to take any unauthorized items, notes, materials, or devices into the examination area;

(b) Giving or attempting to give assistance to others in answering questions during the examination;

(c) Receiving or attempting to receive assistance during the examination, including assistance from other individuals, notes, books, or devices to answer questions;

(d) Removing or attempting to remove any secure examination-related information, notes, or materials from the examination site;

(e) Failing to follow directions relative to the conduct of the examination;

(f) Exhibiting behavior which impedes the normal progress of the examination; and

(g) Endangering the health or safety of a person involved in the examination.

(3) Disqualification will invalidate the examination and result in forfeiture of the examination and fees. Any candidate who has been disqualified during an exam will need to request in writing approval from the Board to retake the exam. The candidate will be required to reapply by submitting a new exam application, additional examination fees, and a letter requesting approval to retake the exam including an explanation of their actions which resulted in disqualification from the exam. If approved the examination will be scheduled at a date, time, and place determined by the Board.

Stat. Auth.: ORS 673.310(1) & 673.730(10)
Stats. Implemented: ORS 673.625 –673.640
Hist.: BTP 3-2005, f. 8-31-05, cert. ef. 9-1-05; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08; BTP 1-2012, f. 1-30-12, cert. ef. 2-1-12; BTP 1-2015, f. 1-16-15, cert. ef. 2-1-15

800-020-0030
Licenses — Renewals and Reactivation

(1) Applicants who pass the required examination and meet all other requirements shall be issued a license upon request and payment of the license fee. The licensee shall be assigned a permanent license number.

(2) Tax preparers' licenses shall expire annually on September 30. Tax Preparers are prohibited from practicing until official renewal has been processed.

(3) Tax consultants' licenses shall expire annually on May 31. Tax Consultants are prohibited from practicing until official renewal has been processed.

(4) Renewal licenses shall be issued upon receipt and validation of a signed renewal application notice, attesting to required continuing education and payment of the appropriate fees.

(5) Licensed Tax Preparers have the option to file for inactive status on or before October 15, provided the license is not in lapsed status as provided in OAR 800-020-0035(2).

(6) Licensed Tax Consultants have the option to file for inactive status on or before June 15, provided the license is not in lapsed status as provided in OAR 800-020-0035(2).

(7) If a tax preparer or tax consultant license is suspended or revoked, the individual's license and pocket identification card become the property of the Board and shall, on demand, be delivered by the holder to the Board of Tax Practitioners.

(8) Licenses that have been placed in inactive or lapsed status may be reactivated upon receipt and validation of a completed reactivation application form prescribed by the Board, attesting to required continuing education and paying the appropriate fee(s).

Stat. Auth.: ORS 670.310(1) & 673.730(10)
Stats. Implemented: ORS 673.645 - 673.667
Hist.: TSE 8, f. & ef. 5-19-76; TSE 1-1979, f. 6-14-79, ef. 6-15-79; TSE 2-1982, f. & ef. 5-10-82; TSE 1-1985, f. & ef. 1-15-85; TSE 2-1986, f. & ef. 7-14-86; TSE 2-1993, f. & cert. ef. 2-23-93; BTP 3-2005, f. 8-31-05, cert. ef. 9-1-05; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08; BTP 1-2009, f. & cert. ef. 2-5-09; BTP 1-2013, f. 1-15-13, cert. ef. 2-1-13; BTP 1-2015, f. 1-16-15, cert. ef. 2-1-15

800-020-0031
Certificates

(1) A Licensed Tax Consultant's certificate issued by the Board may be displayed by the licensee so long as the licensee holds a current valid license as a Licensed Tax Consultant. If a Licensed Tax Consultant's license has been placed in inactive or lapsed status, the holder shall no longer display the certificate.

(2) If a tax consultant's license is suspended or revoked, the certificate becomes the property of the Board and shall, on demand, be delivered by the holder to the Board of Tax Practitioners.

Stat. Auth.: ORS 670.310(1), 673.660 & 673.730(10)
Stats. Implemented: ORS 673.660 & 673.605 –673.990
Hist.: TSE 13, f. & ef. 9-20-77; TSE 1-1985, f. & ef. 1-15-85; TSE 2-1993, f. & cert. ef. 2-23-93; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08; BTP 1-2015, f. 1-16-15, cert. ef. 2-1-15

800-025-0010
Firm Names

(1) The name under which a tax preparation business offers and/or performs services must be in compliance with the laws and rules of the Oregon Corporation Division.

(2) The designation Licensed Tax Preparer or reference to the title Licensed Tax Preparer in any manner, including initials or acronyms, shall not be included as part of a firm name.

Stat. Auth.: ORS 670.310(1) & 670.730(10)
Stats. Implemented: ORS 673.643 & 673.605 –673.990
Hist.: TSE 1-1985, f. & ef. 1-15-85; TSE 4-1992, f. & cert. ef. 5-15-92; BTSE 1-2001, f. & cert. ef. 4-19-01; BTP 3-2005, f. 8-31-05, cert. ef. 9-1-05; BTP 1-2015, f. 1-16-15, cert. ef. 2-1-15

800-025-0023
Reporting Closing of Business; Address and Phone Changes

A tax preparation business shall notify the Board within 15 business days of:

(1) Termination of the tax preparation business; or

(2) A change in the mailing address, physical address, e-mail address, or telephone number(s) of the tax preparation business.

Stat. Auth.: ORS 670.310(1) & 670.730(10)
Stats. Implemented: ORS 673.643 & 673.605 - 673.990
Hist.: TSE 7-1991, f. & cert. ef. 10-28-91; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08; BTP 1-2009, f. & cert. ef. 2-5-09; BTP 1-2010, f. 1-19-10, cert. ef. 2-1-10; BTP 1-2011, f. 1-24-11, cert. ef. 2-1-11; BTP 1-2015, f. 1-16-15, cert. ef. 2-1-15

800-025-0025
Renewal of Tax Preparation Business Registration

(1) Tax preparation business registrations shall expire annually on June 15, except that combination tax preparation business registration/tax preparer licenses shall expire annually on October 15.

(2) At least 30 calendar days prior to the registration expiration date each year, the Board shall attempt to notify each tax preparation business, using the contact information they provided to the Board, that their tax preparation business registration is up for renewal.

(3) Renewal registrations shall be issued to a qualifying tax preparation business upon receipt and validation of a completed registration renewal application and the fee for registering a tax preparation business specified in OAR 800-020-0025(14) or the fee for a combined tax consultants or tax preparers license and tax preparation business registration specified in OAR 800-020-0025(15).

(4) A tax preparation business whose registration has expired shall not perform tax preparation services for the public, for a fee, or offer such services until the tax business submits a new tax preparation business registration application and the application process has been completed.

Stat. Auth.: ORS 670.310(1) & 670.730(10)
Stats. Implemented: ORS 673.643 & 673.605 - 673.990
Hist.: TSE 8-1991, f. & cert. ef. 10-28-91; BTP 1-2004, f. 1-28-04, cert. ef. 2-1-04; BTP 3-2005, f. 8-31-05, cert. ef. 9-1-05; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08; BTP 1-2009, f. & cert. ef. 2-5-09; BTP 1-2010, f. 1-19-10, cert. ef. 2-1-10; BTP 1-2011, f. 1-24-11, cert. ef. 2-1-11; BTP 1-2015, f. 1-16-15, cert. ef. 2-1-15

800-025-0030
Branch Offices

(1) A tax preparation business shall not operate any branch office until:

(a) The tax preparation business has complied with all laws and rules of the Board concerning tax business registration;

(b) The mailing address, physical address, e-mail, phone number(s) of the branch office, and the name and license number of the resident consultant for the branch office have been submitted to the Board; and

(c) The tax preparation business has paid an annual fee for the branch office registration for that location as required under OAR 800-020-0025(19).

(2) Branch office registrations shall expire annually on the expiration date of the associated tax business registration.

(3) At least 30 calendar days before the expiration of a branch office registration, the Board shall attempt to notify each tax preparation business, using the contact information the tax preparation business has provided to the Board that their tax preparation branch office registration is up for renewal.

(4) Renewal branch office registrations shall be issued to qualifying tax preparation businesses upon receipt of the required annual registration fee.

(5) A tax preparation business operating branch offices shall notify the Board within 15 business days of:

(a) Change of mailing address, physical address, e-mail address, or phone number(s) of the branch office.

(b) Change in Resident Consultant and/or Designated Consultant of the branch office.

(c) Closing the branch office.

(6) Branch offices must be conducted under the same name as the principal office. This name and current registration shall be posted in public view in each branch office.

(7) The name of the Designated Consultant and the name of the Resident Consultant must be posted in public view in each branch office.

Stat. Auth.: ORS 670.310(1) & 670.730(10)
Stats. Implemented: ORS 673.643 & 673.605 - 673.990
Hist.: TSE 1-1985, f. & ef. 1-15-85; TSE 10-1991, f. & cert. ef. 10-28-91; TSE 5-1992, f. 5-15-92, cert. ef. 7-1-92; TSE 2-1996, f. & cert. ef. 12-30-96; BTP 3-2005, f. 8-31-05, cert. ef. 9-1-05; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08; BTP 1-2009, f. & cert. ef. 2-5-09; BTP 1-2010, f. 1-19-10, cert. ef. 2-1-10; BTP 1-2011, f. 1-24-11, cert. ef. 2-1-11; BTP 1-2015, f. 1-16-15, cert. ef. 2-1-15

800-025-0040
Designated Consultants

(1) A tax preparation business shall not engage in the preparation of personal income tax returns for the public, or offer such services, until the business has designated a Licensed Tax Consultant or other authorized person ("Designated Consultant") as the responsible individual. A form prescribed by the Board shall be signed by the Designated Consultant and signed by the owner or authorized representative of the tax preparation business.

(2) The Designated Consultant shall be responsible for all tax preparation activities of the business. The Designated Consultant and the designating business shall each be responsible for the business compliance with laws and rules of the Board.

(3) A Designated Consultant will cease to be responsible for a business's tax preparation

services upon receipt by the Board of written notice from the consultant or business.

(4) A Licensed Tax Consultant may act as the Designated Consultant for only one tax preparation business, except by Board approval for written application for waiver.

(5) An application for waiver to serve as a Designated Consultant for more than one (1) tax preparation business shall set forth the following:

(a) The name and address of the tax preparation business for which the Licensed Tax Consultant is presently serving as the Designated Consultant;

(b) The name and address of the additional tax preparation business for which the Licensed Tax Consultant is requesting approval to serve as the Designated Consultant;

(c) A detailed plan how each tax preparation business will be supervised in carrying out the duties as a Designated Consultant;

(d) The financial relationship of the proposed Designated Consultant and the tax preparation businesses; and

(e) Unusual or extenuating circumstances why approval should be granted.

(6) In determining whether a Licensed Tax Consultant will be approved to act as a Designated Consultant for more than one (1) tax preparation business, the Board:

(a) May approve an application for waiver only wherein the Licensed Tax Consultant has an ownership interest in the tax preparation business or unusual or extenuating circumstances exist resulting in undue hardship such as the death of a Designated Consultant. The Board may limit the Licensed Tax Consultant designation period; and

(b) Shall consider the Licensed Tax Consultant's past record of compliance with ORS 673.605 to 673.735, rules of the Board, statutes of the State of Oregon, together with information set forth in the application for waiver, particularly the feasibility of the plan in supervising the corporation, firm, or partnership.

(7) A tax preparation business shall notify the Board in writing within 15 business days of any change in status of its Designated Consultant.

(8) A Designated Consultant shall notify the Board in writing within 15 business days of any change in their status as Designated Consultant.

Stat. Auth.: ORS 670.310(1) & 670.730(10)
Stats. Implemented: ORS 673.643 & 673.605 - 673.990
Hist.: TSE 8, f. & ef. 5-19-76; TSE 3-1980, f. & ef. 8-22-80; TSE 2-1982, f. & ef. 5-10-82; TSE 3-1982, f. & ef. 11-19-82; TSE 1-1985, f. & ef. 1-15-85; Renumbered from 800-020-0050; TSE 4-1989, f. & cert. ef. 12-20-89; TSE 11-1991, f. & cert. ef. 10-28-91; TSE 10-1992, f. & cert. ef. 12-22-92; BTP 3-2005, f. 8-31-05, cert. ef. 9-1-05; BTP 1-2006, f. & cert. ef. 9-5-06; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07; BTP 1-2009, f. & cert. ef. 2-5-09; BTP 1-2010, f. 1-19-10, cert. ef. 2-1-10; BTP 1-2014, f. 1-16-14, cert. ef. 2-1-14; BTP 1-2015, f. 1-16-15, cert. ef. 2-1-15

800-025-0060
Consultant in Residence

(1) A Licensed Tax Consultant shall be in residence at each principal and branch office. "Tax consultant in residence" means that a Licensed Tax Consultant is physically present to conduct and carry out his/her duties in the principal or branch office for at least 50 percent of the time an office is open to the public for tax preparation, assistance, and advice during each week from January 1 to the federal filing deadline without extension and during each month for the remainder of the year for year round offices in accordance with OAR 800-025-0050.

(2) The Board may waive the Licensed Tax Consultant in residence requirement of subsection (1) upon written application, which details how the management and supervision of principal and branch offices will effectively be accomplished.

(3) In granting or denying a written application for waiver, the Board shall evaluate each case on an individual basis, considering the following factors:

(a) Distance between offices supervised by a Licensed Tax Consultant.

(b) Past compliance of waiver applicants with ORS 673.605 to 673.735 and rules of the Board.

(c) Whether the policies and procedures described in the application will result in effective management and supervision of Licensed Tax Preparers in the absence of a Resident Consultant.

(d) Sickness or death of a Licensed Tax Consultant; and

(e) Any other unusual or unforeseen circumstances making such waiver necessary.

(4) Applicants shall apply annually for waiver of the resident consultant rule. The application shall provide all of the information described in guidelines established by the Board for applying for waivers. Except in emergency circumstances resulting in undue hardship. Waiver applications will not be accepted after January 31 for branch offices intended to operate at any time during the period January 1 to the federal filing deadline without extension of the same calendar year. Approved waivers shall expire on the expiration date of the associated tax business registration or a date established by the Board.

(5) All applications must be acted upon by the Board. Disapproval of an application by the Board may be appealed.

(6) The supervising Licensed Tax Consultant of an office for which a waiver has been approved shall meet in person with Licensed Tax Preparers in the office at least twice weekly to review the work of each Licensed Tax Preparer and respond to questions.

(7) A tax preparation business shall notify the Board in writing within 15 business days of any change in status of its Resident Consultant.

(8) A Resident Consultant shall notify the Board in writing within 15 business days of any change in their status as Resident Consultant.

Stat. Auth.: ORS 670.310(1) & 670.730(10)
Stats. Implemented: ORS 673.643 & 673.605 - 673.990
Hist.: TSE 1-1985, f. & ef. 1-15-85; TSE 5-1986, f. & ef. 10-6-86; TSE 6-1987, f. & ef. 10-2-87; TSE 3-1988, f. & cert. ef. 8-26-88; TSE 5-1995, f. & cert. ef. 5-5-95; TSE 2-1996, f. & cert. ef. 12-30-96; BTSE 1-2001, f. & cert. ef. 4-19-01; BTP 3-2005, f. 8-31-05, cert. ef. 9-1-05; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08; BTP 1-2009, f. & cert. ef. 2-5-09; BTP 1-2011, f. 1-24-11, cert. ef. 2-1-11; BTP 1-2014, f. 1-16-14, cert. ef. 2-1-14; BTP 1-2015, f. 1-16-15, cert. ef. 2-1-15

800-025-0070
Keeping of Records

(1) If a Licensed Tax Consultant is employed by another Licensed Tax Consultant, the records shall be kept by the employing Licensed Tax Consultant.

(2) If the Licensed Tax Consultant who has been designated as responsible for the tax return preparation activities and decisions of the corporation, firm, or partnership, ceases to be connected with the corporation, firm, or partnership, the records shall be retained by the corporation, firm, or partnership.

(3) The records of the returns shall be kept for a period of not less than four (4) years after the date of the preparation, advice, or assistance.

Stat. Auth.: ORS 670.310(1) & 670.730(10)
Stats. Implemented: ORS 673.643 & 673.605 - 673.990
Hist.: TSE 8, f. & ef. 5-19-76; TSE 1-1985, f. & ef. 1-15-85; Renumbered from 800-020-0070; BTP 2-2007, f. 1-12-07, cert. ef. 2-1-07; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08; BTP 1-2009, f. & cert. ef. 2-5-09; BTP 1-2015, f. 1-16-15, cert. ef. 2-1-15

800-030-0030
Inspections, Evaluations and Investigations

(1) A business owner shall allow Board representatives to inspect or evaluate the business/branch office or conduct an investigation. Obstructing or hindering the normal progress of an investigation, inspection or evaluation; threatening or exerting physical harm; or enabling

another individual or employee to impede an investigation, inspection or evaluation may result in disciplinary action.

(2) Business owners must contact the Board within five (5) business days unless extenuating circumstances exist to make any necessary arrangements for an inspection, evaluation, or to allow the Board to conduct an investigation if the Board has been unable to perform an inspection, evaluation, or conduct an investigation because the business was closed when visited.

Stat. Auth.: ORS 670.310(1) & 670.730(10)
Stats. Implemented: ORS 673.605 - 673.990
Hist.: BTP 1-2011, f. 1-24-11, cert. ef. 2-1-11; BTP 1-2015, f. 1-16-15, cert. ef. 2-1-15

800-030-0050
Obtaining Information and Purchasing Board-Provided Materials and Services

Materials and services available to the public and licensees through the Tax Board may be obtained or purchased as follows:

(1) In response to telephone requests, the Board office may provide the tax practitioner name, license number, whether the license is active or expired, tax preparation business location, business telephone number and whether a discipline record exists.

(2) A copy of the Oregon Revised Statutes Chapter 673 and Oregon Administrative Rules Chapter 800 may be provided upon request at no charge for the first request. A charge will be assessed for additional/multiple copies.

(3) All requests for any information other than that listed in sub-section (1) and (2) of this rule must be submitted in writing to the Board office.

(4) The Board may charge for copies of its records. The types of records that the Board can charge for copies includes, but is not limited to, such material as copies of certificate(s), license(s), registration(s), Board meeting materials that are available to the public, general information, duplicating requests requiring multiple records search, or the compiling and creation of official documents.

(5) Fees shall not exceed the Board's actual costs for copying the record(s) requested including, but not limited to, the Board's cost for locating, compiling, making available for inspection, obtaining legal, or other professional advice related to the request, reviewing the records in order to delete exempt material, supervising a person's inspection of original records, preparing the copy in paper, audio, or electronic format, certifying documents as true copies, and delivery of such record(s).

(6) All fees assessed must be paid before public records are made available. Estimates/fees for processing requests for public records may be given when requested. Person(s) making the public records request is responsible for the actual costs regardless of the estimate.

(7) Persons who want to obtain copies of the following records may learn the charge for them by contacting the Board office:

(a) A list of names, addresses and places of tax preparation business for all licensed tax practitioners currently on file with the Agency:

(b) A list of records, regardless of whether status is active, inactive, expired or archived;

(c) One (1) or more photocopies of any Board document or portion thereof;

(d) Copies of Board meeting minutes or committee meeting minutes/reports.

(8) Advertising services provided by the Board for a fee which can be obtained by contacting the Board office:

(a) Advertising for help-wanted, sale of a tax preparation business, and tax related services, or products in the Board newsletter;

(b) Advertising of Tax Consultant or tax preparation business on the Board Web site. Licensees and tax preparation businesses must be in good standing with the Board to obtain and maintain this service.

(c) All advertising is subject to the review and approval of the Board.

(9) Charges for records may be waived or substantially reduced if the request is in the public's interest, pursuant to ORS 192.440(4) & (5).

(10) The following fees apply to requests for the following types of public records, information, and services provided by the Board:

(a) Fee for a list of current licensees, which includes; license number, name, mailing address is $25.

(b) Fee for a monthly subscription to a list of current licensees is $120 per year. Lists provided between the 1st – 10th of each month.

(c) Fee for duplicates of tape recordings of Board meetings, disciplinary hearings, etc. that are available to the public are $5 each, plus labor at an hourly rate of $25, mailing costs, and any Department of Justice costs that may need to be incurred.

(d) Fee for Board /committee meeting materials, available to the public, is:

(A) $10 per Board /committee meetings' minutes.

(B) $5 per Board /committee notice and agendas.

(e) Fees for advertising for help-wanted and tax related services or products in Board newsletter:

(A) $10 per 3 3/8 inch line or part line.

(B) $350 for a full page ad.

(C) $180 for a half page ad.

(D) $100 for a quarter page ad.

(E) $50 for a business card size ad.

(f) Fee for advertising of a tax consultant or tax preparation business or as an employee of a tax preparation business on the Board Web site:

(A) Name, business address (physical and e-mail), and phone is $10 per year per county.

(B) An additional $10 per county annual fee may be charged for a link to a tax preparation business related website.

(g) Fee for multiple records search including duplicating of documents is labor at an hourly rate of $30, per page duplicating .05 cents, mailing costs, and any Department of Justice costs that may need to be incurred.

(h) Fee for making general photocopies is labor at an hourly rate of $25, per page duplicating .05 cents, mailing costs, and any Department of Justice costs that may need to be incurred.

Stat. Auth.: ORS 192.440, 670.310(1) & 673.730(10)
Stats. Implemented: ORS 192.440
Hist.: TSE 5-1986, f. & ef. 10-6-86; TSE 6-1990, f. & cert. ef. 5-3-90; BTSE 1-1999, f. & cert. ef. 11-23-99; BTSE 1-2001, f. & cert. ef. 4-19-01; BTP 1-2003, f. & cert. ef. 9-23-03; BTP 3-2004, f. 10-11-04 cert. ef. 11-1-04; BTP 1-2008, f. 1-14-08, cert. ef. 2-1-08; BTP 1-2009, f. & cert. ef. 2-5-09; BTP 1-2010, f. 1-19-10, cert. ef. 2-1-10; BTP 1-2011, f. 1-24-11, cert. ef. 2-1-11; BTP 1-2015, f. 1-16-15, cert. ef. 2-1-15

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Bureau of Labor and Industries
Chapter 839

Rule Caption: Amendments to clarify, conform with authorities, correct citations.
Adm. Order No.: BLI 2-2015
Filed with Sec. of State: 1-28-2015
Certified to be Effective: 1-28-15
Notice Publication Date: 10-1-2014
Rules Amended: 839-010-0000, 839-010-0010, 839-010-0020, 839-010-0100, 839-010-0200, 839-010-0205, 839-010-0210, 839-010-0300, 839-010-0305, 839-010-0310
Subject: Amendments to clarify, conform with authorities, correct citations.
Rules Coordinator: Marcia Ohlemiller—(971) 673-0784

839-010-0000
Purpose and Scope

(1) The Civil Rights Division of the Oregon Bureau of Labor and Industries enforces the provisions of ORS 441.174, 652.355, 653.060, 659A.199, 659A.200 to 659A.233 and OL Ch 519, Sec.7 2013, prohibiting discrimination based on whistleblowing disclosures or activities that are described in the statutes. These rules apply to all such complaints and inquiries received on or after the effective date of these rules.

(2) The purpose of these rules is to clarify the provisions of the statutes.

(3) In accordance with ORS 659A.820, an individual claiming a violation of 441.174, 652.355, 653.060, 659A.199, 659A.200 to 659A.233, OL Ch 519, Sec. 7 2013 or these rules may file a complaint with the Civil Rights Division, as provided in OAR 839-003-0025.

(4) The Oregon Safe Employment Act (OSEA) protects employees complaining regarding ORS 654.001 to .295, providing for safety and health conditions in places of employment, workplace safety committees; hazard communication and hazardous substances, and health and sanitation inspections. 654.412 to .423, providing for safety of health care employees; 654.750 to .780, providing for hazardous chemicals in agriculture. Rules for OSEA are found in chapter 839 division 4.

Stat. Auth.: ORS 652.355, 653.060, 659A.221 & 659A.805
Stats. Implemented: ORS 441.174, 652.355, 653.060, 659A.199, 659A.200 - 659A.233 & OL Ch 519, Sec. 7 2013
Hist.: BL 9-1991, f. & cert. ef. 8-29-91; BL 4-1996, f. & cert. ef. 3-12-96; BLI 17-2000, f. & cert. ef. 8-11-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 39-2007, f. 12-28-07, cert. ef. 1-1-08; BLI 12-2013, f. & cert. ef. 12-30-13; BLI 2-2015, f. & cert. ef. 1-28-15

839-010-0010
Definitions

As used in ORS 659A.200 to 659A.224 and these rules:

(1) "Abuse of authority" means to deliberately exceed or make improper use of delegated or inherent authority or to employ it in an illegal manner.

(2) "Agency" for the purposes of OAR 839-010-0010 to 839-010-0060 refers to the state or any agency of or political subdivision in the state.

(3) "Disciplinary action" means any adverse action including dismissal, demotion, transfer, reassignment, supervisory reprimand, warning of possible dismissal, or withholding of work, whether or not the action affects or will affect employee compensation.

(4) "Disclosure" means a formal or informal internal or extra-agency communication, not including a communication concerning policy decisions that lawfully exercise discretionary authority unless the employee providing the disclosure reasonably believes that the disclosure evidences:

(a) A violation of any federal or state law, rule, or regulation by the agency;

(b) Mismanagement;

(c) Gross misuse or waste of public resources or funds;

(d) Abuse of authority in connection with the administration of a public program or the execution of a public contract; or

(e) A substantial and specific danger to public health or safety resulting from agency action.

(5) "Employee" means a person:

(a) Employed by or under contract with the state or any agency of or political subdivision in the state;

(b) Employed by or under contract with any person authorized to act on behalf of the state, or agency of the state or subdivision in the state, with respect to control, management or supervision of any employee;

(c) Employed by the public corporation created under ORS 656.751;

(d) Employed by the public corporation established under ORS 741.001;

(e) Employed by a contractor who performs services for the state, agency or subdivision, other than employees of a contractor under contract to construct a public improvement; and

(f) Employed by or under contract with any person authorized by contract to act on behalf of the state, agency or subdivision.

(6) "Gross waste of funds" means an expenditure that is significantly out of proportion to the benefit expected to accrue to the agency and is more than a debatable expenditure.

(7) "Mismanagement" means serious agency misconduct having the effect of actually or potentially undermining the agency's ability to fulfill its public mission.

(8) "Public employer" means:

(a) The state or any agency of or political subdivision in the state; and

(b) Any person authorized to act on behalf of the state, or any agency of or political subdivision in the state, with respect to control, management or supervision of any employee.

(9) "Reckless disregard for its truth or falsity" means a conscious disregard of a substantial and justifiable risk that the information disclosed is false.

(10) "Substantial and specific danger" means a specified risk of serious injury, illness, peril or loss, to which the exposure of the public is a gross deviation from the standard of care or competence that a reasonable person would observe in the same situation.

Stat. Auth.: ORS 659A.805 & 659A.221
Stats. Implemented: ORS 659A.233, 659A.200 - 659A.224 & 2014 OL Ch. 78, Sec. 2
Hist.: BL 9-1991, f. & cert. ef. 8-29-91; BL 4-1996, f. & cert. ef. 3-12-96; BLI 17-2000, f. & cert. ef. 8-11-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 39-2007, f. 12-28-07, cert. ef. 1-1-08; BLI 2-2015, f. & cert. ef. 1-28-15

839-010-0020
Prohibited Discrimination by Public Employers

(1) Oregon public employee whistleblower statutes prohibit public employers from taking action against or prohibiting employees from:

(a) Responding to legislative requests;

(b) Disclosing information the employee believes is evidence of violation of laws or disclosing evidence of mismanagement, gross waste or abuse of authority; or

(c) Reporting public endangerment resulting from an action by a public employer.

(2) No public employer may require an employee to give notice prior to making any disclosure described in sections (1)(a), (b) and (c) of this rule.

(3) No public employer may identify the employee who discloses the following information during any investigation of the information provided by the employee without the written consent of the employee:

(a) Matters described in ORS 659A.203(1)(b); and

(b) Reports required by ORS 659A.206(2).

(4) No public employer may prohibit or take action against employees for disclosing that a person receiving public assistance is also subject to arrest.

Stat. Auth.: ORS 659A.805 & 659A.221
Stats. Implemented: ORS 659A.233 & 659A.200 - 659A.224
Hist.: BL 9-1991, f. & cert. ef. 8-29-91; BLI 17-2000, f. & cert. ef. 8-11-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 39-2007, f. 12-28-07, cert. ef. 1-1-08; BLI 2-2015, f. & cert. ef. 1-28-15

839-010-0100
Prohibited Discrimination by Employers

(1) ORS 659A.199 prohibits any employer with one or more employees in Oregon from discharging, demoting, suspending, or in any manner discriminating or retaliating against an employee with regard to promotion, compensation or other terms, conditions or privileges of employment for the reason that the employee has in good faith reported information to anyone that the employee believes is evidence of a violation of any state or federal law, rule or regulation.

(2) ORS 659A.230 prohibits any employer with one or more employees in Oregon from discriminating or retaliating against an employee because the employee has in good faith, or the employer believes the employee has:

(a) Reported to any person, orally or in writing, criminal activity by any person;

(b) Reported to any person, orally or in writing, any activity the employee believed to be criminal;

(c) Caused criminal charges to be brought against any person, whether by the complainant's information or by a complaint, as defined in ORS 131.005(3) and (4);

(d) Cooperated with a law enforcement agency criminal investigation, whether or not under subpoena;

(e) Brought a civil proceeding against an employer; or

(f) Testified at a civil proceeding or criminal trial, whether or not under subpoena. (With regard to civil proceedings, see also OAR 839-010-0140.)

(3) ORS 659A.233 prohibits any employer with one or more employees in Oregon from discriminating or retaliating against a current, former, or any other employer's employee because the employee has in good faith:

(a) Reported possible violations of ORS chapter 441, ORS 443.400 to 443.455;

(b) Testified at an unemployment compensation hearing; or

(c) Testified at a hearing conducted pursuant to ORS chapter 657.

(4) ORS 652.355 prohibits any employer with one or more employees in Oregon from discriminating or retaliating against a current, former, or any other employer's employee because:

(a) The employee has made a wage claim or has discussed with anyone, inquired of anyone, or consulted an attorney or agency about a wage claim; or

(b) The employee has caused to be instituted, has testified in or is about to testify in any proceedings under or related to ORS 652.310 to 652.414.

(5) ORS 653.060 prohibits any employer with one or more employees in Oregon from discharging or in any other manner discriminating against a current, former, or any other employer's employee because:

(a) The employee has made an oral or written complaint to anyone that the employee has not been paid wages in accordance with ORS 653.010 to 653.261;

(b) The employee has caused to be instituted or is about to cause to be instituted or has testified or is about to testify in any proceeding under or related to ORS 653.010 to 653.261.

Stat. Auth.: ORS 659A.805, 652.355(2) & 653.060(2)
Stats. Implemented: ORS 659A.230, 652.355, 653.060 & 659A.199
Hist.: BL 4-1996, f. & cert. ef. 3-12-96; BLI 6-1998, f. & cert. ef. 10-22-98; BLI 17-2000, f. & cert. ef. 8-11-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 39-2007, f. 12-28-07, cert. ef. 1-1-08; BLI 11-2010, f. & cert. ef. 2-24-10; BLI 2-2015, f. & cert. ef. 1-28-15

839-010-0200
Statement of Purpose

(1) ORS 441.174 prohibits a hospital from retaliating against a nursing staff because the nursing staff has taken "whistleblower" actions detailed in the statute.

(2) The purpose of these rules is to clarify the provisions of the statutes.

(3) In accordance with ORS 441.178, an individual claiming a violation of ORS 441.174, or these rules, may file a complaint with the Civil Rights Division, as provided in OAR 839-003-0025.

Stat. Auth: ORS 659A.805 & 441.178
Stats. Implemented: ORS 441.174 & 441.178
Hist.: BLI 4-2005, f. 1-6-05, cert. ef. 1-7-05; BLI 2-2015, f. & cert. ef. 1-28-15

839-010-0205
Definitions

For purposes of ORS 441.174 and these rules:

(1) "Affiliated hospital" means a hospital that has a business relationship with another hospital.

(2) "Hospital" means an acute inpatient care facility as defined in ORS 442.470 or a hospital as described in ORS 442.015:

(a) "Acute inpatient care facility" means a licensed hospital with an organized medical staff, with permanent facilities that include inpatient beds, and with comprehensive medical services, including physician services and continuous nursing services under the supervision of registered nurses, to provide diagnosis and medical or surgical treatment primarily for but not limited to acutely ill patients and accident victims. ORS 442.470.

(b) "Hospital" means a facility with an organized medical staff, with permanent facilities that include inpatient beds and with medical services, including physician services and continuous nursing services under the supervision of registered nurses, to provide diagnosis and medical or surgical treatment primarily for but not limited to acutely ill patients and accident victims, to provide treatment for the mentally ill or to provide treatment in special inpatient care facilities. ORS 442.015.

(3) "Manager" means a person who:

(a) Has authority to direct and control the work performance of nursing staff;

(b) Has authority to take corrective action regarding a violation of law or a rule or a violation of professional standards of practice, about which a nursing staff has complained; or

(c) Has been designated by a hospital to receive the notice described in ORS 441.174(2) and OAR 839-010-0210(1).

(4) "Nursing staff" means a registered nurse, a licensed practical nurse, a nursing assistant or any other assistive nursing personnel.

(5) "Public body" has the meaning given that term in ORS 30.260.

(6) "Retaliatory action" means the discharge, suspension, demotion, harassment, denial of employment or promotion, or layoff of a nursing staff, or other adverse action taken against a nursing staff in the terms or conditions of employment of the nursing staff by a hospital, because the nursing staff:

(a) Discloses or intends to disclose to a manager, a private accreditation organization or a public body an activity, policy or practice of the hospital or of a hospital that the nursing staff reasonably believes is in violation of law or a rule or is a violation of professional standards of practice that the nursing staff reasonably believes poses a risk to the health, safety or welfare of a patient or the public;

(b) Provides information to or testifies before a private accreditation organization or a public body conducting an investigation, hearing or inquiry into an alleged violation of law or rule or into an activity, policy or practice that may be in violation of professional standards of practice by a hospital that the nursing staff reasonably believes poses a risk to the health, safety or welfare of a patient or the public;

(c) Objects to or refuses to participate in any activity, policy or practice of a hospital that the nursing staff reasonably believes is in violation of law or rule or is a violation of professional standards of practice that the nursing staff reasonably believes poses a risk to the health, safety or welfare of a patient or the public; or

(d) Participates in a committee or peer review process or files a report or a complaint that discusses allegations of unsafe, dangerous or potentially dangerous care.

(7) For purposes of subsection (6) of this rule, "other adverse action" includes, but is not limited to:

(a) Constructive discharge as defined in OAR 839-005-0035;

(b) A significant or material change in a term or condition of employment, such as transferring a nursing staff to another location, shift or work schedule, or reducing work hours or remuneration for services;

(c) Making a decision that causes a significant or material change in an employment benefit;

(d) Removal of significant or material duties or responsibilities;

(e) Restriction or prohibition of access to the hospital or other facility, whether or not the action affects or will affect pay or other compensation;

(f) Withholding career-advancing opportunities such as training or participation in seminars or committees; or

(g) Supervisory reprimands, warnings of possible dismissal or withholding of work.

(8) For purposes of ORS 441.174 and these rules, a nursing staff "reasonably believes" if:

(a) A reasonable nursing staff in the circumstances would believe that an activity, policy or practice of a hospital:

(A) Is in violation of law or a rule or is in violation of professional standards of practice; or

(B) Poses a risk to the health, safety or welfare of a patient or the public; or

(b) An activity, policy or practice is in violation of law or rule or is in violation of professional standards of practice.

Stat. Auth.: ORS 659A.805 & 441.178
Stats. Implemented: ORS 441.172 & 441.178
Hist.: BLI 4-2005, f. 1-6-05, cert. ef. 1-7-05; BLI 2-2015, f. & cert. ef. 1-28-15

839-010-0210
Exceptions to Retaliatory Action

(1) Except as provided in section 2 of this rule, the protection against retaliatory action provided for in ORS 441.174(1) and OAR 839-010-0205(6) and (7) does not apply to a nursing staff unless the nursing staff, before making a disclosure to a private accreditation organization or a public body as described in ORS 441.174(1)(a) and OAR 839-010-0205(6)(a):

(a) Gives written notice to a manager of the hospital of the activity, policy, practice or violation of professional standards of practice that the nursing staff reasonably believes poses a risk to public health; and

(b) Provides the manager a reasonable opportunity to correct the activity, policy, practice or violation.

(2) A nursing staff is not required to comply with the provisions ORS 441.174(2) and OAR 839-010-0205(1) if the nursing staff:

(a) Is reasonably certain that the activity, policy, practice or violation is known to one or more managers of the hospital or an affiliated hospital and an emergency situation exists;

(b) Reasonably fears physical harm as a result of the disclosure; or

(c) Makes the disclosure to a private accreditation organization or a public body for the purpose of providing evidence of an activity, policy, practice or violation of a hospital or an affiliated hospital that the nursing staff reasonably believes is a crime.

(3) For the purposes of subsection (2) of this rule, a nursing staff "reasonably believes is a crime" means:

(a) The activity, policy, practice or violation of law or rule is a crime; or

(b) Whether or not the activity, policy, practice or violation of law or rule is a crime, a reasonable nursing staff in the circumstances would believe that it is a crime.

Stat. Auth: ORS 659A.805 & 441.178
Stats. Implemented: ORS 441.174
Hist.: BLI 4-2005, f. 1-6-05, cert. ef. 1-7-05; BLI 2-2015, f. & cert. ef. 1-28-15

839-010-0300
Application

These rules apply to a person who pays money or offers other valuable consideration for obtaining signatures of electors on a state initiative, referendum, or recall petition or on a prospective petition of a state measure to be initiated.

Stat. Auth.: ORS 659A.805
Stats. Implemented: 2013 OL Ch. 519, Sec. 7
Hist.: BLI 12-2013, f. & cert. ef. 12-30-13; BLI 2-2015, f. & cert. ef. 1-28-15

839-010-0305
Unlawful Employment Practice

In addition to the conduct prohibited in ORS 659A.199, it is an unlawful employment practice for a person described in OAR 839-010-0300 to discriminate or retaliate against another person with respect to hire or tenure, compensation or other terms, conditions or privileges of employment for the reason that the person has in good faith reported information that the person believes is evidence of a violation of a state or federal election law, rule or regulation.

Stat. Auth.: ORS 659A.805
Stats. Implemented: 2013 OL Ch. 519, Sec. 7
Hist.: BLI 12-2013, f. & cert. ef. 12-30-13; BLI 2-2015, f. & cert. ef. 1-28-15

839-010-0310
Inspection

(1) The Commissioner of the Bureau of Labor and Industries may inspect the accounts of a chief petitioner of an initiative or referendum petition relating to a state measure who pays any person money or other valuable consideration to obtain signatures on the petition or prospective petition, under reasonable circumstances at any time before the deadline for filing signatures on the petition or during the period specified for retention of the accounts, as provided in ORS 260.262(4).

(2) The right of inspection may be enforced by a writ of mandamus issued by any court of competent jurisdiction.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 260.262(4)
Hist.: BLI 12-2013, f. & cert. ef. 12-30-13; BLI 2-2015, f. & cert. ef. 1-28-15

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Department of Agriculture
Chapter 603

Rule Caption: Establishes quarantine zone for poultry and poultry products in designated area of Malheur County, Oregon.
Adm. Order No.: DOA 2-2015(Temp)
Filed with Sec. of State: 1-28-2015
Certified to be Effective: 1-28-15 thru 7-26-15
Notice Publication Date:
Rules Adopted: 603-011-0900, 603-011-0910, 603-011-0920, 603-011-0930, 603-011-0940
Subject: These rules establish an emergency quarantine area in Malheur County, Oregon prohibiting the movement of poultry or poultry products into or out of the designated area of Malheur County without a permit obtained from the USDA Animal Plant Health Inspection Service. A quarantine area 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

603-011-0900
Highly Pathogenic Avian Influenza (HPAI) H5N8, Emergency Quarantine and Movement Restrictions

In January 2015, HPAI strain H5N2 was confirmed in a backyard domestic poultry flock in Canyon County, Idaho. A portion of the mandatory 10-kilometer control zone established by the USDA, APHIS and the Idaho Department of Agriculture around the infected premises in Idaho overlaps into Malheur 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 Malheur County. These rules implement the emergency quarantine and apply to all poultry and poultry products going into and out of the quarantine area in Malheur County, Oregon.

Stat. Auth.: ORS 561.510 - 561.600, 596.210, 596.311, 596.331, 596.388 - 596.416, 596.990, 561.991 & 561.995
Stats. Implemented: ORS 561.510 - 561.600, 596.210, 596.311, 596.331 & 596.388 - 596.416
Hist.: DOA 2-2015(Temp), f. & cert. ef. 1-28-15 thru 7-26-15

603-011-0910
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, 561.991 & 561.995
Stats. Implemented: ORS 561.510 - 561.600, 596.210, 596.311, 596.331 & 596.388 - 596.416
Hist.: DOA 2-2015(Temp), f. & cert. ef. 1-28-15 thru 7-26-15

603-011-0920
Emergency Quarantine Restricting Movement

(1) Area under restriction: The emergency quarantine includes the portion of a 10 kilometer zone overlapping into Oregon that was established around a HPAI H5N2 premises located in Canyon County, Idaho and more specifically depicted on the map attached as Attachment A.

(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 the quarantine area. 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 the quarantine area 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, 561.991 & 561.995
Stats. Implemented: ORS 561.510 - 561.600, 596.210, 596.311, 596.331 & 596.388 - 596.416
Hist.: DOA 2-2015(Temp), f. & cert. ef. 1-28-15 thru 7-26-15

603-011-0930
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, 561.991 & 561.995
Stats. Implemented: ORS 561.510 - 561.600, 596.210, 596.311, 596.331 & 596.388 - 596.416
Hist.: DOA 2-2015(Temp), f. & cert. ef. 1-28-15 thru 7-26-15

603-011-0940
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. ATTACHMENT A: [Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 561.510 - 561.600, 596.210, 596.311, 596.331, 596.388 - 596.416, 596.990, 561.991 & 561.995
Stats. Implemented: ORS 561.510 - 561.600, 596.210, 596.311, 596.331 & 596.388 - 596.416
Hist.: DOA 2-2015(Temp), f. & cert. ef. 1-28-15 thru 7-26-15

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Rule Caption: Establishes rules for growing and handling Industrial Hemp and Agricultural Hemp seed.
Adm. Order No.: DOA 3-2015
Filed with Sec. of State: 1-29-2015
Certified to be Effective: 1-29-15
Notice Publication Date: 12-1-2014
Rules Adopted: 603-048-0010, 603-048-0050, 603-048-0100, 603-048-0110, 603-048-0200, 603-048-0250, 603-048-0300, 603-048-0400, 603-048-0500, 603-048-0600, 603-048-0700, 603-048-0800, 603-048-0900, 603-048-1000
Subject: This rule establishes: Regulations for Industrial Hemp and Agricultural Hemp seed as described in ORS 571.300 to 571.315; Processes and fees for licenses and permits; Processes and fees for Sampling, Inspection and Testing; Establishes violations and penalties.
Rules Coordinator: Sue Gooch—(503) 986-4583

603-048-0010
Definitions

The following definitions apply to OAR 603-048-0050 through 603-048-1000 unless the context requires otherwise.

(1) "Agricultural hemp seed" means Cannabis sativa seed that meets any labeling, quality and other standards set by the Oregon Department of Agriculture (department) and that is intended for sale or is sold to, or purchased by, licensed growers for planting.

(2) "Crop" means any contiguous field of industrial hemp grown under a single license.

(3) "Composite Sample" means the combined total number of hemp samples of the same variety, taken from the plants of one field of industrial hemp.

(3) "Field" means any contiguous property not separated by fence, road, ditch, or crop.

(4) "Flagrant" means the respondent had actual knowledge that the conduct was unlawful and consciously set out to commit the violation.

(5) "Grower" means a person, joint venture or cooperative that produces unprocessed industrial hemp, including agricultural hemp seed.

(6) "Handler" means a person, joint venture or cooperative that receives industrial hemp for processing into commodities, products or agricultural hemp seed.

(7) "Hemp Commodities or Products" means mature stalks of the industrial hemp plant, fiber produced from such stalks and any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom).

(8) "Industrial hemp":

(a) Means all non-seed parts and varieties of the Cannabis sativa plant, whether growing or not, that contain a crop-wide average tetrahydrocannabinol concentration that does not exceed 0.3 percent on a dry weight basis.

(b) Means any Cannabis sativa seed that:

(A) Is part of a growing crop;

(B) Is retained by a grower for future planting; or

(C) Is for processing into, or use as, agricultural hemp seed.

(c) Does not mean industrial hemp commodities or products.

(9) "Lot" means a definite quantity of industrial hemp of a single variety, grown in one field.

Stat. Auth.: ORS 569.445, 571.300 - 571.315 & 633.511 - 633.996
Stats. Implemented: ORS 571.300 - 571.315
Hist.: DOA 3-2015, f. & cert. ef. 1-29-15

603-048-0050
Production and Handling of Industrial Hemp

(1) No person, joint venture or cooperative may grow, handle, possess or process industrial hemp without first obtaining an industrial hemp license from the Department. Growers and handlers of industrial hemp must comply with all terms and conditions of a license issued by the Department.

(2) No person, joint venture or cooperative may grow, handle, or possess agricultural hemp seed without first obtaining an agricultural hemp seed production permit from the Department except that a licensed grower may retain seed from each industrial hemp crop to ensure a sufficient supply of seed for that grower for the following year provided the seed retained is not sold or transferred.

(3) Agricultural hemp seed that is sold, offered or exposed for sale within this state must comply with all requirements established in ORS 633.511 to 633.750 or any rule of the Department implementing those statutes.

(4) Every licensed grower or handler of industrial hemp, or holder of an agricultural hemp seed production permit must keep records as specified in OAR 603-048-0400.

(5) A grower of industrial hemp or agricultural hemp seed may not change the location of fields or the number of acres produced, unless the Department is first notified in writing, on forms provided by the Department, including a map indicating the changes.

(6) Growers of industrial hemp or agricultural hemp seed must notify the Department a minimum of 14 days prior to the intended harvest date to allow the Department to take and test samples.

Stat. Auth.: ORS 569.445, 571.300 - 571.315 & 633.511 - 633.996
Stats. Implemented: ORS 571.300 - 571.315
Hist.: DOA 3-2015, f. & cert. ef. 1-29-15

603-048-0100
Licensing and Permits

(1) All persons, joint venture or cooperative engaged in growing, handling, possession and commerce in industrial hemp must obtain an industrial hemp license.

(2) In addition to an industrial hemp license, all persons, joint venture or cooperative engaged in growing, handling, possession and commerce in agricultural hemp seed, must obtain an agricultural hemp seed production permit.

(3) The application for a license to grow and handle industrial hemp, or a permit to grow and handle agricultural hemp seed, must be submitted in writing to the Department on forms provided by the Department. Applications must include the following information:

(a) The name, and address of the applicant;

(b) The global positioning system (GPS) coordinates taken at the approximate center of the growing area(s) and legal description for all properties proposed to be used to handle industrial hemp;

(c) When the application is for growing industrial hemp or permit for agricultural hemp seed, a license or permit application must also include:

(A) The number of acres to be cultivated and showing that at least 2.5 acres will be cultivated;

(B) A map of the land area showing the boundaries and dimensions of the growing area(s) in acres or square feet, the number of acres in each field, and the location of different varieties within the growing area(s) if applicable;

(C) Estimated harvest date for each year's crop.

(d) The applicant's acknowledgment and agreement to the following terms and conditions:

(A) Any information provided to the Department may be publicly disclosed and be provided to law enforcement agencies without notice to the applicant;

(B) The applicant agrees to allow for inspection, sampling and testing that the Department deems necessary to administer the laws governing industrial hemp growing and handling;

(C) The applicant agrees to submit all required reports, by applicable due dates specified by the Department;

(D) The applicant agrees to pay all fees and charges for licenses, and or permits, and other fees associated with sampling, inspection and testing.

(E) The applicant's signature and attestation that the information in the application is true and correct.

(e) License and permit fees as specified in OAR 603-048-0600.

(4) In addition to information as required by OAR 603-048-0100 (3), all applicants for industrial hemp license, or agricultural hemp seed production permit, and upon request of the department, must make available for review a valid U.S., state, or federal-issued photographic identification that includes last name, first name, and date of birth from the applicant. Acceptable forms of current U.S., state or federal issued photographic identification include but are not limited to:

(a) Drivers license;

(b) State identification card;

(c) Passport; or

(d) Military identification card.

Stat. Auth.: ORS 569.445, 571.300 - 571.315 & 633.511 - 633.996
Stats. Implemented: ORS 571.300 - 571.315
Hist.: DOA 3-2015, f. & cert. ef. 1-29-15

603-048-0110
Renewal of Licenses and Permits

(1) An industrial hemp license or agricultural hemp seed production permit is valid for a three-year term unless revoked and may be renewed as provided in OAR 603-048-0110. An industrial hemp license and an agricultural hemp seed production permit is a personal privilege that is nontransferable.

(2) Licenses and permits may be renewed for additional (3) year terms in a manner consistent with these rules.

(3) An application to renew a license to grow and handle industrial hemp, or to renew a permit to grow and handle agricultural hemp seed, must be submitted in writing to the Department on forms provided by the Department and must contain the information as in OAR 603-048-0100. Required fees must accompany all applications for renewal of a license.

(4) The Department may refuse to renew a license for industrial hemp, or an agricultural hemp seed production permit, if the applicant has a record of noncompliance with ORS 571.300 to 571.315, a license or permit requirement term or condition, a Department rule relating to industrial hemp or agricultural hemp seed, or noncompliance with a final order of the Department that is specifically directed to the licensee or permitee's operations or activities.

Stat. Auth.: ORS 569.445, 571.300 - 571.315 & 633.511 - 633.996
Stats. Implemented: ORS 571.300 - 571.315
Hist.: DOA 3-2015, f. & cert. ef. 1-29-15

603-048-0200
Review and Approval of License and Permit Applications, License and Permit Conditions

(1) Within 60 days of receiving an application, the Department shall determine whether an application or an application to renew contains the information required and is complete and not defective, including the payment of all required fees. If the Department determines that the application is incomplete or defective or that all fees have not been paid, the Department shall return any or all fees and the application, and may not issue the license or permit.

(2) Within 30 days of determining that an application contains all the required information and is complete and not defective, the Department may issue a license or permit.

(3) An industrial hemp license authorizes a person, joint venture or cooperative to grow and handle industrial hemp and is valid for a three-year term effective January 1, through December 31 of the third year after issuance, unless revoked. A license may be renewed as provided in OAR 603-048-0110. Licenses shall contain the following conditions:

(a) A condition requiring that the following be immediately reported to the Department:

(A) Any changes in the name or location of the individual or business entity holding the license.

(B) Any changes in the ownership of the land used to cultivate industrial hemp;

(C) Any changes in the ownership or structure of the entity holding an industrial hemp license;

(D) Any loss or theft of an industrial hemp crop.

(b) A condition requiring the licensee to keep the records as specified in OAR 603-048-0400.

(c) A condition requiring an Annual Report as provided in OAR 603-048-0300.

(d) A condition requiring the licensee to notify the Department a minimum of 14 days prior to the intended harvest date to allow the Department to take and test samples prior to harvest.

(e) General conditions specifying that the Department may inspect and sample industrial hemp as authorized in ORS 561.275 and ORS 571.305, to administer the laws governing industrial hemp production or to assure compliance with applicable statutes, rules, permit and license requirements or any Department order.

(f) A condition specifying the license is nontransferable.

(4) An agricultural hemp seed production permit authorizes a person, joint venture or cooperative with a valid, unsuspended industrial hemp license, to grow and handle agricultural hemp seed that is intended for sale or is sold to, or purchased by industrial hemp licensee's for planting, growing or handling and is valid for a three-year term effective January 1, through December 31 of the third year after issuance, unless revoked. A permit may be renewed as provided in OAR 603-048-0110. Permits must contain the following conditions:

(a) A condition that a license for industrial hemp is required to obtain a permit authorizing growing or handling of agricultural hemp seed.

(b) A condition requiring that the following be immediately reported to the Department:

(A) Any changes in the name or location of the individual or business entity holding the license or permit or the facility used for handling agricultural hemp seed;

(B) Any changes in the location of the industrial hemp fields used to produce agricultural hemp seed or change in the number of acres of industrial hemp seed produced may not occur unless the licensee first notifies the Department of any changes and provides a map indicating the changes.

(C) Any changes in the ownership of the land used to cultivate industrial hemp or agricultural hemp seed;

(D) Any changes in the ownership or structure of the entity holding an industrial hemp license or agricultural hemp seed production permit;

(E) Any loss or theft of an industrial hemp crop or agricultural hemp seed.

(c) A condition requiring the grower or handler to keep the records as specified in OAR 603-048-0400.

(d) A condition requiring an annual report as provided in OAR 603-048-0300.

(e) A condition requiring the licensee to notify the Department a minimum of 14 days prior to the intended harvest date to allow the Department to take and test samples prior to harvest.

(f) A condition specifying that the permit is nontransferable.

(g) General conditions specifying that the Department may inspect and sample agricultural hemp seed as authorized in ORS 561.275 and 571.305 to administer the laws governing agricultural hemp seed or to assure compliance with applicable statutes, rules, permit and license requirements or any Department order.

(h) General conditions that, in addition to meeting all laws and regulations pertaining to industrial hemp growers and handlers, ORS 571.300 to 571.315 and OAR 603-048-0010 to 603-048-1000, all production, storing, processing, handling, packaging, labeling, marketing and selling of agricultural hemp seed must meet all applicable State seed laws and regulations as specified in ORS 633.511 through 633.996 and seed regulations, OAR 603-056-0030 to 603-056-0490

Stat. Auth.: ORS 569.445, 571.300 - 571.315 & 633.511 - 633.996
Stats. Implemented: ORS 571.300 - 571.315
Hist.: DOA 3-2015, f. & cert. ef. 1-29-15

603-048-0250
Retaining Agricultural Hemp Seed

As provided for in ORS 571.305(6), a grower of industrial hemp or agriculture hemp seed may retain seed from each industrial hemp crop to ensure a sufficient supply of seed for that grower for the following year.

(1) A grower does not need an agricultural hemp seed production permit in order to retain seed for future planting.

(2) Agricultural hemp seed may not be retained for future planting when official test results indicate the Tetrahydrocannabinol concentration exceeds 0.3 percent on a dry weight basis, in the crop from which it was harvested.

(3) Seed retained by a grower may not be sold or transferred and does not need to meet other seed standards set by the Department.

(4) Seed retained by a grower may not be more than needed for the following year.

Stat. Auth.: ORS 569.445, 571.300 - 571.315 & 633.511 - 633.996
Stats. Implemented: ORS 571.300 - 571.315
Hist.: DOA 3-2015, f. & cert. ef. 1-29-15

603-048-0300
Annual Reporting Requirements

(1) Annually, and within 21 days of planting industrial hemp, growers must supply the following information to the Department on forms provided by the Department:

(a) The licensee shall certify to the Department the planted acreages of industrial hemp;

(b) Variety and documentation of seed;

(c) The total number of lots, as defined in OAR 603-048-0010(9), of industrial hemp;

(d) The name and address of the intended Oregon licensed industrial hemp handler/s, receiving each lot of hemp crop. If within 21 days of planting a handler has not been selected, the grower must notify the department that a handler has not been selected, and upon determining the handler, must immediately report to the Department the name and address of the Oregon licensed handler.

(e) The Grower must notify the Department a minimum of 14 days prior to the intended harvest date to allow the Department to take and test samples.

(2) Annually, and within 21 days after the completion of harvesting of industrial hemp, growers must supply the following information to the Department on forms provided by the Department:

(a) The total amount in pounds, produced from each lot of industrial hemp;

(b) The name and address of the licensed handler/s, or licensed and permitted handler/s receiving each lot of industrial hemp. If within 21 days of harvesting a handler has not been selected, the grower must notify the department that a handler has not been selected, and upon determining the handler, must immediately report to the Department the name and address of the Oregon licensed handler.

(3) Annually, and within 21 days of receiving industrial hemp, licensed handlers must supply the following information to the Department on forms provided by the Department:

(a) Intended type of handling and disposition of all products received;

(b) Name and address of the Oregon licensed industrial hemp grower/s, supplying industrial hemp.

(4) Annually and within 21 days of planting agricultural hemp seed, permitted growers must supply the following information to the Department on forms provided by the Department:

(a) The permittee shall certify to the Department the annual planted acreages of agricultural hemp seed on forms provided by the Department;

(b) Variety and documentation of seed;

(c) The total number of lots, as defined in OAR 603-048-0010(9), of agricultural hemp seed;

(d) Name and address of the Oregon permitted agricultural hemp seed handler/s, receiving growers agricultural hemp seed. If within 21 days of planting a handler has not been selected, the grower must notify the department that a handler has not been selected, and upon determining the handler, must immediately report to the Department the name and address of the Oregon licensed handler.

(e) The Grower must notify the Department a minimum of 14 days prior to the intended harvest date to allow the Department to take and test samples.

(5) Annually, and within 21 days after the completion of harvesting of agricultural hemp seed, permitted growers must supply the following information to the Department on forms provided by the Department:

(a) The total amount in pounds, produced from each lot of agricultural hemp seed;

(b) The name and address of the licensed and permitted handler/s receiving each lot of agricultural hemp seed. If within 21 days of harvesting a handler has not been selected, the grower must notify the department that a handler has not been selected, and upon determining the handler, must immediately report to the Department the name and address of the Oregon licensed and permitted handler.

(6) Annually, and within 21 days of receiving agricultural hemp seed, licensed and permitted handlers must supply the following information to the Department on forms provided by the Department:

(a) Intended type of handling and disposition of all products received;

(b) Name and address of the Oregon licensed and permitted grower/s, supplying the agricultural hemp seed.

(7) Immediate Reports

(a) The holder of any industrial hemp license or agricultural hemp seed production permit shall immediately notify the Department of the following:

(A) Changes to the name, address, or telephone number of the license or permit holder;

(B) Changes in the ownership of the land used to cultivate industrial hemp or agricultural hemp seed;

(C) Changes in the ownership or structure of the entity holding an industrial hemp license or agricultural hemp seed production permit;

(D) Loss or theft of an industrial hemp or agricultural seed crop.

Stat. Auth.: ORS 569.445, 571.300 - 571.315 & 633.511 - 633.996
Stats. Implemented: ORS 571.300 - 571.315
Hist.: DOA 3-2015, f. & cert. ef. 1-29-15

603-048-0400
Records Required for Industrial Hemp Growers, Handlers and Agricultural Hemp Seed Producers and Handlers

(1) All holders of an industrial hemp license or an agricultural hemp seed production permit shall keep the following records:

(a) When receiving agricultural hemp seed for planting, growers must keep the following records:

(A) Name and address of the supplier;

(B) Amount specified in weight received;

(C) Seed stock lot number;

(D) Varietal records;

(b) Upon harvesting, growers must keep the following records:

(A) Name and address of the buyer;

(B) Description of product delivered;

(i) Industrial hemp;

(ii) Agricultural hemp seed.

(C) Amount of each product, specified in weight, delivered;

(D) Official test report records for tetrahydrocannabinol.

(c) When receiving industrial hemp, handlers must keep the following records;

(A) Name and address of the supplier(s);

(B) Amount of industrial hemp, specified in weight, received;

(C) Official test report records for tetrahydrocannabinol.

(d) In the case of agricultural hemp seed, and in addition to those records required by ORS 633.511 to 633.996, handlers must keep the following records:

(A) Name and address of the supplier(s);

(B) Amount of agricultural hemp seed, specified in weight, received;

(C) Official test report records for tetrahydrocannabinol;

(D) Name and address of each licensed purchaser.

(2) A complete record of each seed lot must be maintained for 3 years after disposition of the entire lot; the file sample, as described in OAR 603-048-0700, may be discarded one (1) year after disposition of the entire lot.

(3) In addition to these records, all permitted growers, handlers and dealers of agricultural hemp seed must keep records as required in ORS 633.511 through 633.996 and seed regulations, OAR 603-056-0030 through 603-056-0490.

Stat. Auth.: ORS 569.445, 571.300 - 571.315 & 633.511 - 633.996
Stats. Implemented: ORS 571.300 - 571.315
Hist.: DOA 3-2015, f. & cert. ef. 1-29-15

603-048-0500
Probation, Suspension, Revocation and Re-issuance of License and Permits

In addition to any other liability or penalty provided by law, the Department may, consistent with ORS Chapter 183, refuse to issue, refuse to renew, revoke or suspend any license or permit whenever it finds the licensee or permittee has violated the statutes or rules governing industrial hemp, or a license or permit requirement, or for violation of any rule of the department that pertains to agricultural operations or activities other than industrial hemp growing or handling; or a final order of the Department that is specifically directed to the grower's or handler's industrial hemp operations or activities.

(1) Upon issuance of a civil penalty the Department shall also place the license or permit holder on probation. The conditions of probation shall be related to violations of the Oregon industrial hemp Law or regulations.

(a) Probation shall be established for the purpose of monitoring and documentation of corrective actions of the licensee, which relate to previous violations.

(b) The duration of a probationary period shall be at least one year for civil penalties totaling $10,000 or more.

(c) If, in the opinion of the Department, persons on probationary status have complied with regulatory requirements and have corrected conditions related to issuance of a violation, the Department may terminate probation before the probationary period has expired.

(2) Consistent with the provisions of ORS Chapter 183, the Department may suspend an industrial hemp license or agricultural hemp seed production permit for:

(a) Failure to pay appropriate fees as described in these rules;

(b) Any violation of, or repeated violations of the laws governing industrial hemp or violation of any license or permit condition;

(c) Failure to adhere to a final order containing probationary conditions;

(d) Any violation of or multiple or flagrant violations of the laws or rules governing industrial hemp;

(e) Any violation of any rule of the Department that pertains to agricultural operation or activities other than industrial hemp or agricultural hemp seed;

(f) Failure to cooperate in matters under investigation conducted pursuant to ORS 571.305 to 315 or these rules.

(3) Consistent with the provisions of ORS Chapter 183, the Department may revoke an industrial hemp license or agricultural hemp seed production permit on the following grounds:

(a) Continuing failure to pay appropriate fees as described in these rules;

(b) One or more final orders requiring suspension of an industrial hemp license or agricultural hemp seed production permit;

(c) One or multiple flagrant violations of the laws governing industrial hemp or violation of any license or permit condition;

(d) One or multiple flagrant violations of any rules of the department pertaining to agricultural operations or activities other than industrial hemp growing or handling;

(e) Continuing failure to cooperate in matters under investigation.

(4) Re-issuance of license: A suspended license may be reinstated following correction of items listed in section (2) of this rule or upon the completion of a suspension period. A revoked license may be re-issued following correction of items listed in 603-048-0500 section (3) above, as determined by the Department.

Stat. Auth.: ORS 569.445, 571.300 - 571.315 & 633.511 - 633.996
Stats. Implemented: ORS 571.300 - 571.315
Hist.: DOA 3-2015, f. & cert. ef. 1-29-15

603-048-0600
Industrial hemp Fees, License, Permits and Inspection Fees

(1) The following designated triennial license fees shall be applicable to each described activity under authority of ORS 571.305:

(a) Industrial Hemp License $1,500.00; and

(b) Agricultural Hemp Seed Production Permit $1,500.00.

(2) Sampling and Inspection: All sampling and inspection as described in OAR 603-048-0700 will be provided on a first come, first served basis, as qualified staff is available. The cost of services shall include:

(a) A charge for a minimum of four hours of service at a rate of $92 per hour;

(b) Travel time at the rate of $92 per hour;

(c) Mileage, lodging and per diem reimbursed at rates established by the Department of Administrative Services;

(3) Mileage Charges: Mileage may be charged in addition to all inspection fees or time charges, at the rate per mile established by the Department of Administrative Services, when travel is required.

(4) Overtime Charges: For all inspection services performed during the following times (which will be considered overtime), the regular inspection fees or hourly charges shall be charged plus $ 30 per hour for all time involved. Overtime charges shall be figured to the nearest one-half hour:

(a) After eight hours (per scheduled shift) or 6:00 p.m., whichever comes first, on Monday through Friday of each week;

(b) At any time on Saturdays or Sundays; and

(c) At any time on any day which is declared by law to be a holiday for state employees.

(5) Overtime Service Charge: The minimum overtime service charge for Saturdays, Sundays and other legal holidays shall be four hours.

(6) No Service Days: No service will be given on Thanksgiving, Christmas, or New Years days.

(7) Laboratory Charges shall be $350 per test.

Stat. Auth.: ORS 569.445, 571.300 - 571.315 & 633.511 - 633.996
Stats. Implemented: ORS 571.300 - 571.315
Hist.: DOA 3-2015, f. & cert. ef. 1-29-15

603-048-0700
Sampling and Inspection

Industrial hemp fields, industrial hemp handling facilities, and facilities handling, processing, cleaning, storing and selling agricultural hemp seed must be readily accessible for monitoring, sampling, testing and inspection purposes. As authorized in ORS 561.279 and 571.305, the licensees or permit holders shall allow Department officials to enter industrial hemp fields or handling facilities for inspection. The following sampling and testing protocols apply:

(1) Growers of industrial hemp and agricultural hemp seed must notify the Department a minimum of 14 days prior to the intended harvest date to allow the Department to take and test samples.

(2) The Department shall conduct inspection, sampling and testing for tetrahydrocannabinol content of all fields annually when at least 50% of plants' seeds are resistant to compression. Inspection and sampling shall include:

(a) A composite sample weighing no less than 2 pounds, that is representative of a single variety in a field, shall be taken by the Department for official testing.

(b) When more than one variety is present in a field, a separate composite sample weighing no less than 2 pounds shall be taken, which is representative of each single variety of industrial hemp present in the field, and shall be tested as a separate lot of industrial hemp.

(c) Each two (2) pound composite sample shall be divided equally into 2 one (1) pound sample. One sample shall be tested for tetrahydrocannabinol, the other shall be held by the department as a file sample.

Stat. Auth.: ORS 569.445, 571.300 - 571.315 & 633.511 - 633.996
Stats. Implemented: ORS 571.300 - 571.315
Hist.: DOA 3-2015, f. & cert. ef. 1-29-15

603-048-0800
Equipment and Machinery Cleaning

Any person operating or having control over equipment or machinery that is used to sow or harvest the hemp shall ensure that the equipment or machinery is thoroughly cleaned before the equipment or machinery is moved over any public road or from one farm to another.

Stat. Auth.: ORS 569.445
Stats. Implemented: ORS 571.300 - 571.315
Hist.: DOA 3-2015, f. & cert. ef. 1-29-15

603-048-0900
Enforcement and Civil Penalty for Industrial Hemp Law Violation

(1) In addition to any other liability or penalty provided by law, any person who violates any provision of ORS 571.300 to 571.315, a rule adopted pursuant thereto or the terms or conditions of any license, permit or order issued by the State Department of Agriculture under 571.300 to 571.315, shall be subject to a civil penalty not to exceed $2,500 per violation and/or a suspension or revocation of their industrial hemp license or agricultural hemp seed production permit as provided in 571.305 and 571.315.

(2) If a civil penalty is imposed, the Department shall issue a written notice to the person being assessed the penalty consistent with ORS Chapter 183. Contested cases will be conducted pursuant to ORS Chapter 183. Each violation may be considered a separate and distinct offense.

Stat. Auth.: ORS 561 & 571
Stats. Implemented: ORS 571.300 - 571.315
Hist.: DOA 3-2015, f. & cert. ef. 1-29-15

603-048-1000
Violations and Penalties

Classification of Violations

(1) Violations are flagrant violations classified as follows:

(a) Class 1 violations:

(A) ORS 571.305(1) or OAR 603-048-0050

(B) Providing false information on an application for a license or permit, or application to renew a license or permit;

(C) Falsifying, or failure to keep or provide, information and records as required by the Department;

(D) Possession of hemp with Tetrahydrocannabinol concentration that exceeds 0.3 percent on a dry weight basis;

(E) Harvesting without notifying the Department;

(F) Repeat violations of Class 2 or Class 3 violations.

(b) Class 2 violations are any violations in which the person acted in a negligent manner:

(A) Failure to pay fees for inspection and testing;

(B) Violation of any other rule, regulation or requirement as required by OAR 603-048.

(c) Class 3 violations are negligent violations of:

(A) OAR 603-048-0050

(B) Providing false information on an application for a license or permit, or application to renew a license or permit;

(C) Falsifying or failure to keep or provide, information and records as required by the Department;

(D) Possession of hemp with Tetrahydrocannabinol concentration that exceeds 0.3 percent on a dry weight basis

(2) Civil Penalty amounts for each classification:

(a) Class 1 violation, $2,500;

(b) Class 2 violation, $1000;

(c) Class 3 violation, $ 500.

Stat. Auth.: ORS 569.445, 571.300 - 571.315 & 633.511 - 633.996
Stats. Implemented: ORS 571.300 - 571.315
Hist.: DOA 3-2015, f. & cert. ef. 1-29-15

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Rule Caption: Tualatin River Watershed Agricultural Water Quality Management Area Rules.
Adm. Order No.: DOA 4-2015
Filed with Sec. of State: 1-29-2015
Certified to be Effective: 1-29-15
Notice Publication Date: 10-1-2014
Rules Amended: 603-095-0100, 603-095-0120, 603-095-0140, 603-095-0180
Rules Repealed: 603-095-0160
Subject: The rules effectuate the implementation of the Tualatin River Watershed Agricultural Water Quality Management Area Plan developed under ORS 568.900 through 568.933 and OAR Chapter 603 Division 90.
Rules Coordinator: Sue Gooch—(503) 986-4583

603-095-0100
Purpose

(1) These rules have been developed to help implement a water quality management area plan for the Tualatin River Watershed Agricultural Water Quality Management Area pursuant to authorities vested in the Oregon Department of Agriculture (department) through ORS 568.900-568.933 and 561.190-561.191. The plan is known as the Tualatin River Watershed Agricultural Water Quality Management Area Plan.

(2) The purpose of these rules is to provide requirements for landowners and operators (as defined in ORS 568.903) in the Tualatin River Watershed Agricultural Water Quality Management Area to prevent and control water pollution from agricultural activities and soil erosion and to meet water quality standards.

Stat. Auth.: ORS 561.190 - 561.561.191 & 568.912
Stats. Implemented: ORS 568.900 - 568.933
Hist.: AD 3-1996, f. & cert. ef. 4-9-96; DOA 4-2015, f. & cert. ef. 1-29-15

603-095-0120
Geographic and Programmatic Scope

(1) The Tualatin River Watershed Agricultural Water Quality Management Area includes the drainage area of the Tualatin River upstream from the confluence with the Willamette River near West Linn. The physical boundaries of the Tualatin River Watershed are mapped in Appendix A of these rules.

(2) Operational boundaries for the land base under the purview of these rules include all lands within the Tualatin River Watershed Agricultural Water Quality Management Area in agricultural use, agricultural and rural lands lying idle or on which management has been deferred, and forested lands with agricultural activities, except for public lands managed by federal agencies, Tribal Trust lands, and activities subject to the Oregon Forest Practices Act (ORS Chapter 527).

(3) Current productive agricultural use or profitability is not required for the provisions of these rules to apply.

(4) For lands in agricultural use within other Designated Management Agencies' or state agency jurisdictions, the department and the appropriate Local Management Agency will work with these Designated Management Agencies to assure that provisions of these rules apply and that any services or fees are not duplicated.

[ED. NOTE: Appendices referenced are available from the agency.]
Stat. Auth.: ORS 561.190 - 561.191 & 568.912
Stats. Implemented: ORS 568.900 - 568.933
Hist.: AD 3-1996, f. & cert. ef. 4-9-96; DOA 4-2015, f. & cert. ef. 1-29-15

603-095-0140
Requirements

All landowners or operators conducting activities on lands described in OAR 603-095-0120(2) and (3) must comply with the following rules: A landowner or operator is responsible for only those conditions caused by activities conducted on land managed by the landowner or operator. These rules do not apply to conditions resulting from unusual weather events or other exceptional circumstances that could not have been reasonably anticipated.

(1) Erosion:

(a) There must be no visible evidence of erosion resulting from agricultural activities in a location where the eroded sediment could enter waters of the state.

(b) Visible evidence of erosion consists of one or more of the following features:

(A) Sheet wash, noted by visible pedestalling, surface undulations, and/or flute marks on bare or sparsely-vegetated ground; or

(B) Active gullies, as described in OAR 603-095-0010(1); or

(C) Multiple rills, which have the form of gullies but are smaller in cross section than one square foot; or

(D) Soil deposition that could enter surface water; or

(E) Streambanks breaking down, eroding, tension-cracking, shearing, or slumping beyond the level that would be anticipated from natural disturbances given natural hydrologic characteristics; or

(F) Underground drainage tile outlets that contribute to soil or bank erosion.

(c) Private roads used for agricultural activities, including road surfaces, fill, ditch lines, and associated structures, must not contribute sediment to waters of the state. All private roads used for agricultural activities not subject to the Oregon Forest Practices Act are subject to this regulation.

(2) Streamside Vegetation:

(a) Landowners or operators must allow vegetation, consistent with site capability, to become established along perennial and intermittent streams to protect water quality by providing shade, filtering out pollutants from surface runoff, and protecting streambank integrity during high stream flows, such as would be expected to follow a 25-year, 24-hour storm.

(b) If any agricultural activity disturbs enough streamside vegetation to impair the conditions and functions described in 603-095-0140(2)(a), the landowner or operator must replant or restore the disturbed area with vegetation that will provide the functions required in 603-095-0140(2)(a).

(c) Agricultural activities are allowed if they do not impair the conditions and functions described in 603-095-0140(2)(a).

(3) Irrigation Water: Irrigation discharge, both surface and subsurface, that enters waters of the state must not exceed water quality standards or cause pollution of the receiving water.

(4) Nutrient Management: Landowners and operators must store and use feed, fertilizer, manure, and other sources of crop nutrients in a manner that prevents transport of pollutants to waters of the state.

(5) Waste: Persons subject to these rules must not violate any provision of ORS 468B.025 or 468B.050.

Stat. Auth.: ORS 561.190 - 561.191 & 568.912
Stats. Implemented: ORS 568.900 - 568.933
Hist.: AD 3-1996, f. & cert. ef. 4-9-96; DOA 3-2004, f. & cert. ef. 1-23-04; DOA 4-2015, f. & cert. ef. 1-29-15

603-095-0180
Complaints and Investigations

(1) When the department receives notice of an alleged occurrence of agricultural pollution through a written complaint, its own observation, notification by another agency, or other means, the department may conduct an investigation. The department may coordinate inspection activities with the appropriate Local Management Agency (as defined in ORS 568.906).

(2) Each notice of an alleged occurrence of agricultural pollution will be evaluated in accordance with the criteria in ORS 568.900 through 568.933, or any rules adopted thereunder, to determine whether an investigation is warranted.

(3) Any person alleging any violation of ORS 568.900 through 568.933, or any rules adopted thereunder, may file a complaint with the department.

(4) The department will evaluate and may investigate a complaint filed by a person under section OAR 603-095-0180(3) if the complaint is in writing, signed and dated by the complainant, and indicates the location and description of:

(a) The waters of the state allegedly being damaged or impacted; and

(b) The property allegedly being managed under conditions violating criteria described in ORS 568.900 to 568.933, or any rules adopted thereunder.

(5) As used in section OAR 603-095-0180(4) "person" does not include any local, state, or federal agency.

(6) If the department determines that a violation of ORS 568.900 through 568.933 or any rules adopted thereunder has occurred, the landowner may be subject to the enforcement procedures of the department outlined in OAR 603-090-0060 through 603-090-0120. Appendix A: Map. [Appendix not included. See ED. NOTE.]

[ED. NOTE: Appendices referenced are available from the agency.]
Stat. Auth.: ORS 561.190 - 561.191
Stats. Implemented: ORS 568.900 - 568.933
Hist.: AD 3-1996, f. & cert. ef. 4-9-96; DOA 4-2015, f. & cert. ef. 1-29-15

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Department of Consumer and Business Services, Division of Finance and Corporate Securities
Chapter 441

Rule Caption: Establishes a securities registration exemption for Oregon intrastate offerings by Oregon small businesses.
Adm. Order No.: FCS 2-2015
Filed with Sec. of State: 1-28-2015
Certified to be Effective: 1-28-15
Notice Publication Date: 11-1-2014
Rules Amended: 441-035-0005
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 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 new Oregon Intrastate 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 how securities are offered to the public.
Rules Coordinator: Selley Greiner—(503) 947-7484

441-035-0005
Self-Executing Transaction Exemptions

(1) Except for ORS 59.035(11), OAR 441-035-0045, and the Oregon Intrastate Offering Exemption (OIO) at 441-035-0070 et seq., exemptions available pursuant to ORS 59.035 are self-executing and do not require filing or a fee.

(2) Persons relying on exemptions from registration have the burden of proof, pursuant to ORS 59.275, in establishing the availability of an exemption.

Stat. Auth.: ORS 59.285
Stats. Implemented: ORS 59.035, 59.195 & 59.275
Hist.: FCS 7-2000, f. & cert.ef. 6-2-00; FCS 2-2015, f. & cert. ef. 1-28-15

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

Rule Caption: Recognition of preexisting conditions; effects of compensable injury versus accepted conditions
Adm. Order No.: WCD 1-2015
Filed with Sec. of State: 1-29-2015
Certified to be Effective: 3-1-15
Notice Publication Date: 12-1-2014
Rules Adopted: 436-035-0006
Rules Amended: 436-009-0005, 436-010-0005, 436-010-0280, 436-030-0005, 436-030-0020, 436-030-0034, 436-030-0035, 436-030-0065, 436-030-0135, 436-030-0165, 436-035-0005, 436-035-0007, 436-035-0008, 436-035-0012, 436-035-0013, 436-035-0014, 436-035-0016, 436-035-0018, 436-035-0250, 436-105-0500, 436-105-0520, 436-110-0350, 436-120-0005
Subject: The agency has amended OAR 436-030, Claim Closure and Reconsideration, and OAR 436-035, Disability Rating Standards, to reflect the decision of the Oregon Supreme Court in Schleiss v. SAIF (364 Or. 637 (2013)). A contributing cause to impairment must be a statutorily recognized preexisting condition to qualify for apportionment. In injury claims, to be recognized as a preexisting condition, a condition must be (1) arthritis or an arthritic condition, or (2) diagnosed or treated prior to the compensable injury. In an occupational disease claim, to be recognized as a preexisting condition, a condition must precede the onset of the claimed occupational disease. Revised rules limit apportionment to those losses that existed before the compensable injury and that qualify as preexisting conditions.

The agency has amended OAR 436-009, Oregon Medical Fee and Payment Rules, 436-010, Medical Services, 436-030, Claim Closure and Reconsideration, 436-035, Disability Rating Standards, 436-105, Employer-at-Injury Program, 436-110 Preferred Worker Program, and 436-120, Vocational Assistance to Injured Workers, to reflect the decision of the Oregon Court of Appeals in Brown v. SAIF (262 Or. App. 640 (2014)). The court found that the legislative history established that an insurer's obligation to specify the accepted conditions for a claim was not intended to have a negative impact on the injured worker's right to benefits resulting from the compensable injury; specifically, the legislature did not mean to equate "compensable injury" with an "accepted condition." Revised rules distinguish definitions and actions that are relevant to compensable injuries from those definitions and actions that are relevant to accepted conditions.
Rules Coordinator: Fred Bruyns—(503) 947-7717

436-009-0005
Definitions

(1) Unless a term is specifically defined elsewhere in these rules or the context otherwise requires, the definitions of ORS Chapter 656 are hereby incorporated by reference and made part of these rules.

(2) Abbreviations used in these rules are either defined in the rules in which they are used or defined as follows:

(a) ANSI means the American National Standards Institute.

(b) ASC means ambulatory surgery center.

(c) CMS means Centers for Medicare & Medicaid Services.

(d) CPT® means Current Procedural Terminology published by the American Medical Association.

(e) DME means durable medical equipment.

(f) DMEPOS means durable medical equipment, prosthetics, orthotics, and supplies

(g) EDI means electronic data interchange.

(h) HCPCS means Healthcare Common Procedure Coding System published by CMS.

(i) IAIABC means International Association of Industrial Accident Boards and Commissions.

(j) ICD-9-CM means International Classification of Diseases, Ninth Revision, Clinical Modification, Vol. 1, 2 & 3 by US Department of Health and Human Services.

(k) ICD-10-CM means International Classification of Diseases, Tenth Revision, Clinical Modification.

(l) ICD-10-PCS means International Classification of Diseases, Tenth Revision, Procedure Coding System.

(m) MCO means managed care organization certified by the director.

(n) NPI means national provider identifier.

(o) OSC means Oregon specific code.

(p) PCE means physical capacity evaluation.

(q) WCE means work capacity evaluation.

(3) "Administrative review" means any decision making process of the director requested by a party aggrieved with an action taken under these rules except the hearing process described in OAR 436-001.

(4) An "ambulatory surgery center" (ASC) means:

(a) Any distinct entity licensed by the state of Oregon, and operated exclusively for the purpose of providing surgical services to patients not requiring hospitalization; or

(b) Any entity outside of Oregon similarly licensed, or certified by Medicare or a nationally recognized agency as an ASC.

(5) "Attending physician" has the same meaning as described in ORS 656.005(12)(b). See "Matrix for Health Care Provider types" Appendix F.

(6) "Authorized nurse practitioner" means a nurse practitioner licensed under ORS 678.375 to 678.390 who has certified to the director that the nurse practitioner has reviewed informational materials about the workers' compensation system provided by the director and has been assigned an authorized nurse practitioner number by the director.

(7) "Board" means the Workers' Compensation Board and includes its Hearings Division.

(8) "Chart note" means a notation made in chronological order in a medical record in which the medical service provider records such things as subjective and objective findings, diagnosis, treatment rendered, treatment objectives, and return to work goals and status.

(9) "Clinic" means a group practice in which several medical service providers work cooperatively.

(10) "CMS form 2552" (Hospital and Hospital Health Care Complex Cost Report) means the annual report a hospital makes to Medicare.

(11) "Current procedural terminology" or "CPT"® means the Current Procedural Terminology codes and terminology most recently published by the American Medical Association unless otherwise specified in these rules.

(12) "Days" means calendar days.

(13) "Division" means the Workers' Compensation Division of the Department of Consumer and Business Services.

(14) "Enrolled" means an eligible worker has received notification from the insurer that the worker is being required to receive treatment under the provisions of an MCO. However, a worker may not be enrolled who would otherwise be subject to an MCO contract if the worker's primary residence is more than 100 miles outside the managed care organization's certified geographical service area.

(15) "Fee discount agreement" means a direct contract entered into between a medical service provider or clinic and an insurer to discount fees to the medical service provider or clinic under OAR 436-009-0018.

(16) "Hearings division" means the Hearings Division of the Workers' Compensation Board.

(17) "Hospital" means an institution licensed by the State of Oregon as a hospital.

(a) "Inpatient" means a patient who is admitted to a hospital prior to and extending past midnight for treatment and lodging.

(b) "Outpatient" means a patient not admitted to a hospital prior to and extending past midnight for treatment and lodging. Medical services provided by a health care provider such as emergency room services, observation room, or short stay surgical treatments which do not result in admission are also considered outpatient services.

(18) "Initial claim" means the first open period on the claim immediately following the original filing of the occupational injury or disease claim until the worker is first declared to be medically stationary by an attending physician or authorized nurse practitioner. For nondisabling claims, the "initial claim" means the first period of medical treatment immediately following the original filing of the occupational injury or disease claim ending when the attending physician or authorized nurse practitioner does not anticipate further improvement or need for medical treatment, or there is an absence of treatment for an extended period.

(19) "Insurer" means the State Accident Insurance Fund Corporation; an insurer authorized under ORS chapter 731 to transact workers' compensation insurance in the state; or, an employer or employer group that has been certified under ORS 656.430 meeting the qualifications of a self-insured employer under ORS 656.407.

(20) "Interim medical benefits" means those services provided under ORS 656.247 on initial claims with dates of injury on or after January 1, 2002, that are not denied within 14 days of the employer's notice of the claim.

(21) "Interpreter" means a person who:

(a) Provides oral or sign language translation; and

(b) Owns, operates, or works for a business that receives income for providing oral or sign language translation. It does not include a medical provider, medical provider's employee, or a family member or friend of the patient.

(22) "Interpreter services" means the act of orally translating between a medical provider and a patient who speak different languages, including sign language. It includes reasonable time spent waiting at the location for the medical provider to examine or treat the patient as well as reasonable time spent on necessary paperwork for the provider's office.

(23) "Mailed or mailing date," for the purposes of determining timeliness under these rules, means the date a document is postmarked. Requests submitted by facsimile or "fax" are considered mailed as of the date printed on the banner automatically produced by the transmitting fax machine. Hand-delivered requests will be considered mailed as of the date stamped by the Workers' Compensation Division. Phone or in-person requests, where allowed under these rules, will be considered mailed as of the date of the request.

(24) "Managed care organization" or "MCO" means an organization formed to provide medical services and certified in accordance with OAR chapter 436, division 015.

(25) "Medical provider" means a medical service provider, a hospital, medical clinic, or vendor of medical services.

(26) "Medical service" means any medical treatment or any medical, surgical, diagnostic, chiropractic, dental, hospital, nursing, ambulances, and other related services, and drugs, medicine, crutches and prosthetic appliances, braces and supports and where necessary, physical restorative services.

(27) "Medical service provider" means a person duly licensed to practice one or more of the healing arts.

(28) "Medical treatment" means the management and care of a patient for the purpose of combating disease, injury, or disorder. Restrictions on activities are not considered treatment unless the primary purpose of the restrictions is to improve the worker's condition through conservative care.

(29) "Parties" mean the worker, insurer, MCO, attending physician, and other medical provider, unless a specific limitation or exception is expressly provided for in the statute.

(30) "Physical capacity evaluation" means an objective, directly observed, measurement of a patient's ability to perform a variety of physical tasks combined with subjective analyses of abilities by patient and evaluator. Physical tolerance screening, Blankenship's Functional Evaluation, and Functional Capacity Assessment will be considered to have the same meaning as Physical Capacity Evaluation.

(31) "Provider network" means a health service intermediary other than an MCO that facilitates transactions between medical providers and insurers through a series of contractual arrangements.

(32) "Report" means medical information transmitted in written form containing relevant subjective or objective findings. Reports may take the form of brief or complete narrative reports, a treatment plan, a closing examination report, or any forms as prescribed by the director.

(33) "Residual functional capacity" means a patient's remaining ability to perform work-related activities. A residual functional capacity evaluation includes, but is not limited to, capability for lifting, carrying, pushing, pulling, standing, walking, sitting, climbing, balancing, bending/stooping, twisting, kneeling, crouching, crawling, and reaching, and the number of hours per day the patient can perform each activity.

(34) "Specialist physician" means a licensed physician who qualifies as an attending physician and who examines a patient at the request of the attending physician or authorized nurse practitioner to aid in evaluation of disability, diagnosis, and/or provide temporary specialized treatment. A specialist physician may provide specialized treatment for the compensable injury or illness and give advice or an opinion regarding the treatment being rendered, or considered, for a patient's compensable injury.

(35) "Type A attending physician" means an attending physician under ORS 656.005(12)(b)(A). See "Matrix for Health Care Provider Types" Appendix F.

(36) "Type B attending physician" means an attending physician under ORS 656.005(12)(b)(B). See "Matrix for Health Care Provider Types" Appendix F.

(37) "Usual fee" means the medical provider's fee charged to the general public for a given service.

(38) "Work capacity evaluation" means a physical capacity evaluation with special emphasis on the ability to perform a variety of vocationally oriented tasks based on specific job demands. Work Tolerance Screening will be considered to have the same meaning as Work Capacity Evaluation.

(39) "Work hardening" means an individualized, medically prescribed and monitored, work oriented treatment process. The process involves the patient participating in simulated or actual work tasks that are structured and graded to progressively increase physical tolerances, stamina, endurance, and productivity to return the patient to a specific job.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.000 et seq., 656.005, 656.726(4)

Hist.: WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96; WCD 20-1996, f. 10-2-96, cert. ef. 1-1-97; WCD 5-1998, f. 4-3-98, cert. ef. 7-1-98; WCD 9-1999, f. 5-27-99, cert. ef. 7-1-99; WCD 3-2002, f. 2-25-02 cert. ef. 4-1-02; WCD 6-2003, f. 5-28-03, cert. ef. 7-1-03; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 3-2006, f. 3-14-06, cert. ef. 4-1-06; WCD 2-2007, f. 5-23-07, cert. ef. 7-1-07; WCD 10-2007, f. 11-1-07, cert. ef. 1-1-08; WCD 5-2008, f. 12-15-08, cert. ef. 1-1-09; WCD 3-2010, f. 5-28-10, cert. ef. 7-1-10; WCD 1-2011, f. 3-1-11, cert. ef. 4-1-11; WCD 3-2014, f. 3-12-14, cert. ef. 4-1-14; WCD 1-2015, f. 1-29-15, cert. ef. 3-1-15

436-010-0005
Definitions

For the purpose of these rules, OAR 436-009, and OAR 436-015, unless the context otherwise requires:

(1) "Administrative Review" means any decision making process of the director requested by a party aggrieved with an action taken under these rules except the hearing process described in OAR 436-001.

(2) "Attending Physician," unless otherwise provided by a Managed Care Organization contract, has the same meaning as described in ORS 656.005(12)(b). See "Matrix for Health Care Provider types" Appendix A.

(3) "Authorized nurse practitioner" means a nurse practitioner licensed under ORS 678.375 to 678.390 who has certified to the director that the nurse practitioner has reviewed informational materials about the workers' compensation system provided by the director and has been assigned an authorized nurse practitioner number by the director.

(4) "Board" means the Workers' Compensation Board and includes its Hearings Division.

(5) "Chart note" means a notation made in chronological order in a medical record in which the medical service provider records such things as subjective and objective findings, diagnosis, treatment rendered, treatment objectives, and return to work goals and status.

(6) "Coordinated Health Care Program" means an employer program providing for the coordination of a separate policy of group health insurance coverage with the medical portion of workers' compensation coverage, for some or all of the employer's workers, which provides the worker with health care benefits even if a worker's compensation claim is denied.

(7) "Current Procedural Terminology" or "CPT"® means the Current Procedural Terminology codes and terminology most recently published by the American Medical Association unless otherwise specified in these rules.

(8) "Customary Fee" means a fee that falls within the range of fees normally charged for a given service.

(9) "Days" means calendar days.

(10) "Direct control and supervision" means the physician is on the same premises, at the same time, as the person providing a medical service ordered by the physician. The physician can modify, terminate, extend, or take over the medical service at any time.

(11) "Direct medical sequela" means a condition that is clearly established medically and originates or stems from an accepted condition. For example: The accepted condition is low back strain with herniated disc at L4-5. The worker develops permanent weakness in the leg and foot due to the accepted condition. The weakness is considered a "direct medical sequela."

(12) "Division" means the Workers' Compensation Division of the Department of Consumer and Business Services.

(13) "Eligible" means an injured worker who has filed a claim and is employed by an employer who is located in an MCO's authorized geographical service area, covered by an insurer who has a contract with that MCO. "Eligible" also includes a worker with an accepted claim having a date of injury prior to contract when that worker's employer later becomes covered by an MCO contract.

(14) "Enrolled" means an eligible injured worker has received notification from the insurer that the worker is being required to treat under the auspices of the MCO. However, a worker may not be enrolled who would otherwise be subject to an MCO contract if the worker's primary residence is more than 100 miles outside the managed care organization's certified geographical service area.

(15) "Health Care Practitioner or Health Care Provider" has the same meaning as a "medical service provider."

(16) "HCFA form 2552" (Hospital Care Complex Cost Report) means the annual report a hospital makes to Medicare.

(17) "Hearings Division" means the Hearings Division of the Workers' Compensation Board.

(18) "Home Health Care" means medically necessary medical and medically related services provided in the injured worker's home environment. These services might include, but are not limited to, nursing care, medication administration, personal hygiene, or assistance with mobility and transportation.

(19) "Hospital" means an institution licensed by the State of Oregon as a hospital.

(20) ICD-9-CM means International Classification of Diseases, Ninth Revision, Clinical Modification, Vol. 1, 2 & 3 by US Department of Health and Human Services.

(21) ICD-10-CM means International Classification of Diseases, Tenth Revision, Clinical Modification.

(22) "Initial Claim" means the first open period on the claim immediately following the original filing of the occupational injury or disease claim until the worker is first declared to be medically stationary by an attending physician or authorized nurse practitioner. For nondisabling claims, the "initial claim" means the first period of medical treatment immediately following the original filing of the occupational injury or disease claim ending when the attending physician or authorized nurse practitioner does not anticipate further improvement or need for medical treatment, or there is an absence of treatment for an extended period.

(23) "Inpatient" means an injured worker who is admitted to a hospital prior to and extending past midnight for treatment and lodging.

(24) "Insurer" means the State Accident Insurance Fund Corporation; an insurer authorized under ORS chapter 731 to transact workers' compensation insurance in the state; or, an employer or employer group that has been certified under ORS 656.430 meeting the qualifications of a self-insured employer under ORS 656.407.

(25) "Interim Medical Benefits" means those services provided under ORS 656.247 on initial claims with dates of injury on or after January 1, 2002 that are not denied within 14 days of the employer's notice of the claim.

(26) "Mailed or Mailing Date," for the purposes of determining timeliness under these rules, means the date a document is postmarked. Requests submitted by facsimile or "fax" are considered mailed as of the date printed on the banner automatically produced by the transmitting fax machine. Hand-delivered requests will be considered mailed as of the date stamped or punched in by the Workers' Compensation Division. Phone or in-person requests, where allowed under these rules, will be considered mailed as of the date of the request.

(27) "Managed Care Organization" or "MCO" means an organization formed to provide medical services and certified in accordance with OAR chapter 436, division 015.

(28) "Medical Evidence" includes, but is not limited to: expert written testimony; written statements; written opinions, sworn affidavits, and testimony of medical professionals; records, reports, documents, laboratory, x-ray and test results authored, produced, generated, or verified by medical professionals; and medical research and reference material utilized, produced, or verified by medical professionals who are physicians or medical record reviewers in the particular case under consideration.

(29) "Medical Service" means any medical treatment or any medical, surgical, diagnostic, chiropractic, dental, hospital, nursing, ambulances, and other related services, and drugs, medicine, crutches and prosthetic appliances, braces and supports and where necessary, physical restorative services.

(30) "Medical Service Provider" means a person duly licensed to practice one or more of the healing arts.

(31) "Medical Provider" means a medical service provider, a hospital, medical clinic, or vendor of medical services.

(32) "Medical Treatment" means the management and care of a patient for the purpose of combating disease, injury, or disorder. Restrictions on activities are not considered treatment unless the primary purpose of the restrictions is to improve the worker's condition through conservative care.

(33) "Outpatient" means a worker not admitted to a hospital prior to and extending past midnight for treatment and lodging. Medical services provided by a health care provider such as emergency room services, observation room, or short stay surgical treatments which do not result in admission are also considered outpatient services.

(34) "Parties" mean the worker, insurer, MCO, attending physician, and other medical provider, unless a specific limitation or exception is expressly provided for in the statute.

(35) "Physical Capacity Evaluation" means an objective, directly observed, measurement of a worker's ability to perform a variety of physical tasks combined with subjective analyses of abilities by worker and evaluator. Physical tolerance screening, Blankenship's Functional Evaluation, and Functional Capacity Assessment will be considered to have the same meaning as Physical Capacity Evaluation.

(36) "Physical Restorative Services" means those services prescribed by the attending physician or authorized nurse practitioner to address permanent loss of physical function due to hemiplegia, a spinal cord injury, or to address residuals of a severe head injury. Services are designed to restore and maintain the injured worker to the highest functional ability consistent with the worker's condition. Physical restorative services are not services to replace medical services usually prescribed during the course of recovery.

(37) "Report" means medical information transmitted in written form containing relevant subjective or objective findings. Reports may take the form of brief or complete narrative reports, a treatment plan, a closing examination report, or any forms as prescribed by the director.

(38) "Residual Functional Capacity" means an individual's remaining ability to perform work-related activities. A residual functional capacity evaluation includes, but is not limited to, capability for lifting, carrying, pushing, pulling, standing, walking, sitting, climbing, balancing, bending/stooping, twisting, kneeling, crouching, crawling, and reaching, and the number of hours per day the worker can perform each activity.

(39) "Specialist Physician" means a licensed physician who qualifies as an attending physician and who examines a worker at the request of the attending physician or authorized nurse practitioner to aid in evaluation of disability, diagnosis, or provide temporary specialized treatment. A specialist physician may provide specialized treatment for the compensable injury or illness and give advice or an opinion regarding the treatment being rendered, or considered, for a workers' compensable injury.

(40) "Usual Fee" means the medical provider's fee charged the general public for a given service.

(41) "Work Capacity Evaluation" means a physical capacity evaluation with special emphasis on the ability to perform a variety of vocationally oriented tasks based on specific job demands. Work Tolerance Screening will be considered to have the same meaning as Work Capacity Evaluation.

(42) "Work Hardening" means an individualized, medically prescribed and monitored, work oriented treatment process. The process involves the worker participating in simulated or actual work tasks that are structured and graded to progressively increase physical tolerances, stamina, endurance, and productivity to return the worker to a specific job.

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

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.000 et seq. & 656.005

Hist.: WCB 4-1976, f. 10-20-76, ef. 11-1-76; WCD 7-1978(Admin), f. & ef. 6-5-78; WCD 2-1980(Admin), f. 1-28-80, ef. 2-1-80; WCD 5-1982(Admin), f. 2-23-82, ef. 3-1-82; WCD 1-1984(Admin), f. & ef. 1-16-84; WCD 2-1985(Admin), f. 4-29-85, ef. 6-3-85; Renumbered from 436-069-0005, 5-1-85; WCD 6-1985(Admin), f. 12-10-85, ef. 1-1-86; WCD 4-1986(Admin), f. 6-26-86, ef. 7-1-86; WCD 2-1987(Admin), f. 2-20-87, ef. 3-16-87; WCD 1-1988, f. 1-20-88, cert. ef. 2-1-88; WCD 1-1990, f. 1-5-90, cert. ef. 2-1-90; WCD 12-1990(Temp), f. 6-20-90, cert. ef. 7-1-90; WCD 14-1990(Temp), f. & cert. ef. 7-20-91; WCD 16-1990(Temp), f. & cert. ef. 8-17-90; WCD 30-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 11-1992, f. 6-11-92, cert. ef. 7-1-92; WCD 13-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96; WCD 11-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 9-2002, f. 9-27-02, cert. ef. 11-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 5-2006, f. 6-15-06, cert. ef. 7-1-06; WCD 11-2007, f. 11-1-07, cert. ef. 1-2-08; WCD 7-2013, f. 11-12-13, cert. ef. 1-1-14; WCD 3-2014, f. 3-12-14, cert. ef. 4-1-14; WCD 1-2015, f. 1-29-15, cert. ef. 3-1-15

436-010-0280
Determination of Impairment

(1) On disabling claims, when the worker becomes medically stationary, the attending physician must complete a closing exam or refer the worker to a consulting physician for all or part of the closing exam. For workers under the care of an authorized nurse practitioner or a type B attending physician other than a chiropractic physician, the provider must refer the worker to a type A attending physician to do a closing exam if there is a likelihood the worker has permanent impairment. The closing exam must be completed under OAR 436-030 and 436-035.

(2) The attending physician or authorized nurse practitioner has 14 days from the medically stationary date to send the closing report to the insurer. Within eight days of the medically stationary date, the attending physician may arrange a closing exam with a consulting physician. This exam does not count as an IME or a change of attending physician.

(3) When an attending physician requests a consulting physician to do the closing exam, the consulting physician has seven days from the date of the exam to send the report for the concurrence or objections of the attending physician. The attending physician must also state, in writing, whether they agree or disagree with all or part of the findings of the exam. Within seven days of receiving the report, the attending physician must make any comments in writing and send the report to the insurer. (See "Matrix for Health Care Provider types" Appendix A)

(4) The attending physician must specify the worker's residual functional capacity or refer the worker for completion of a second level physical capacities exam or work capacities exam (as described in OAR 436-009-0060) pursuant to the following:

(a) A physical capacities exam when the worker has not been released to return to regular work, has not returned to regular work, has returned to modified work, or has refused an offer of modified work.

(b) A work capacities exam when there is question of the worker's ability to return to suitable and gainful employment. It may also be required to specify the worker's ability to perform specific job tasks.

(5) If the insurer issues a major contributing cause denial on the accepted claim and the worker is not medically stationary, the attending physician must do a closing exam. An authorized nurse practitioner or a type B attending physician other than a chiropractic physician must refer the worker to a type A attending physician for a closing exam. (See "Matrix for Health Care Provider types" Appendix A)

(6) The closing report must include all of the following:

(a) Findings of permanent impairment.

(A) In initial injury claims. In an initial injury claim, the closing report must include objective findings of any permanent impairment that is caused in any part by an accepted condition, a direct medical sequela of an accepted condition, or a condition directly resulting from the work injury.

(B) In new or omitted condition claims. In a new or omitted condition claim, the closing report must include objective findings of any permanent impairment that is caused in any part by an accepted new or omitted condition or a direct medical sequela of an accepted new or omitted condition.

(C) In aggravation claims. In an aggravation claim, the closing report must include objective findings of any permanent impairment that is caused in any part by an accepted worsened condition or a direct medical sequela of an accepted worsened condition.

(D) In occupational disease claims. In an occupational disease claim, the closing report must include objective findings of any permanent impairment that is caused in any part by an accepted occupational disease or a direct medical sequela of an accepted occupational disease.

(b) Findings documenting permanent work restrictions.

(A) Release to regular work. If the worker has no permanent work restriction, the closing report must include a statement indicating that:

(i) The worker has no permanent work restriction; or

(ii) The worker is released, without restriction, to the job held at the time of injury.

(B) In initial injury claims. In an initial injury claim, the closing report must include objective findings documenting any permanent work restriction that:

(i) Prevents the worker from returning to the job held at the time of injury; and

(ii) Is caused in any part by an accepted condition, a direct medical sequela of an accepted condition, or a condition directly resulting from the work injury.

(C) In new or omitted condition claims. In a new or omitted condition claim, the closing report must include objective findings documenting any permanent work restriction that:

(i) Prevents the worker from returning to the job held at the time of injury; and

(ii) Is caused in any part by an accepted new or omitted condition or a direct medical sequela of an accepted new or omitted condition.

(D) In aggravation claims. In an aggravation claim, the closing report must include objective findings documenting any permanent work restriction that:

(i) Prevents the worker from returning to the job held at the time of injury; and

(ii) Is caused in any part by an accepted worsened condition or a direct medical sequela of an accepted worsened condition.

(E) In occupational disease claims. In an occupational disease claim, the closing report must include objective findings documenting any permanent work restriction that:

(i) Prevents the worker from returning to the job held at the time of injury; and

(ii) Is caused in any part by an accepted occupational disease or a direct medical sequela of an accepted occupational disease.

(c) Statements regarding the validity of impairment findings. A statement regarding the validity of an impairment finding is required in the following circumstances:

(A) If the examining physician determines that a finding of impairment is invalid, the closing report must include a statement that identifies the basis for the determination that the finding is invalid.

(B) If the examining physician determines that a finding of impairment is valid but the finding is not addressed by any applicable validity criteria under Bulletin 239, the closing report must include a statement that identifies the basis for the determination that the finding is valid.

(C) If the examining physician chooses to disregard applicable validity criteria under Bulletin 239 because the criteria are medically inappro-

priate for the worker, the closing report must include a statement that describes why the criteria would be inappropriate.

(7) The director may prescribe by bulletin what comprises a complete closing report, including, but not limited to, those specific clinical findings related to the specific body part or system affected. The bulletin may also include the impairment reporting format or form to be used as a supplement to the narrative report.

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

Stat. Auth.: ORS 656.726(4) & 656.245(2)(b)

Stats. Implemented: ORS 656.245 & 656.252

Hist.: WCD 5-1982(Admin), f. 2-23-82, ef. 3-1-82; WCD 1-1984(Admin), f. & ef. 1-16-84; Renumbered from 436-069-0601, 5-1-85; WCD 1-1990, f. 1-5-90, cert. ef. 2-1-90; WCD 12-1990(Temp), f. 6-20-90, cert. ef. 7-1-90; WCD 30-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 11-1992, f. 6-11-92, cert. ef. 7-1-92; WCD 13-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96, Renumbered from 436-010-0080; WCD 11-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 5-2006, f. 6-15-06, cert. ef. 7-1-06; WCD 11-2007, f. 11-1-07, cert. ef. 1-2-08; WCD 12-2007(Temp), f. 12-14-07, cert. ef. 1-2-08 thru 6-29-08; WCD 2-2008, f. 6-13-08, cert. ef. 6-30-08; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10; WCD 5-2011, f. 11-18-11, cert. ef. 1-1-12; WCD 3-2014, f. 3-12-14, cert. ef. 4-1-14; WCD 1-2015, f. 1-29-15, cert. ef. 3-1-15

436-030-0005
Definitions

Except where the context requires otherwise, the construction of these rules is governed by the definitions given in the Workers' Compensation Law and as follows:

(1) "Authorized Nurse Practitioner" means a nurse practitioner authorized to provide compensable medical services under ORS 656.245 and OAR 436-010.

(2) "Day" means calendar day unless otherwise specified (e.g., "working day").

(3) "Direct medical sequela" means a condition that is clearly established medically and originates or stems from an accepted condition. For example: The accepted condition is low back strain with herniated disc at L4-5. The worker develops permanent weakness in the leg and foot due to the accepted condition. The weakness is considered a "direct medical sequela."

(4) "Director" means the director of the Department of Consumer and Business Services, or the director's delegate for the matter.

(5) "Division" means the Workers' Compensation Division of the Department of Consumer and Business Services.

(6) "Instant Fatality" means a compensable claim for death benefits where the worker dies within 24 hours of the injury.

(7) "Insurer" means the State Accident Insurance Fund, an insurer authorized under ORS Chapter 731 to transact workers' compensation insurance in Oregon, a self-insured employer, or a self-insured employer group.

(8) "Mailed or Mailing Date," for the purposes of determining timeliness under these rules, means the date a document is postmarked. Requests submitted by electronic transmission (by facsimile or "fax") will be considered mailed as of the date printed on the banner automatically produced by the transmitting fax machine. Hand-delivered requests will be considered mailed as of the date stamped or punched in by the Workers' Compensation Division. Phone or in-person requests, where allowed under these rules, will be considered mailed as of the date of the request.

(9) "Notice of Closure" means a notice to the worker issued by the insurer to:

(a) Close an accepted disabling claim, including fatal claims;

(b) Correct, rescind, or rescind and reissue a Notice of Closure previously issued; or

(c) Reduce permanent total disability to permanent partial disability.

(10) "Reconsideration" means review by the director of an insurer's Notice of Closure.

(11) "Statutory closure date" means the date the claim satisfies the criteria for closure under ORS 656.268(1)(b) and (c).

(12) "Statutory appeal period" means the time frame for appealing a Notice of Closure or Order on Reconsideration.

(13) "Work disability," for purposes of determining permanent disability, means the separate factoring of impairment as modified by age, education, and adaptability to perform the job at which the worker was injured.

(14) "Worksheet" means a summary of facts used to derive the awards stated in the Notice of Closure.

Stat. Auth.: ORS 656.268, 656.726

Stats. Implemented: ORS 656.005, 656.268, 656.726

Hist.: WCD 8-1978(Admin), f. 6-30-78, ef. 7-10-78; WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), 12-30-81, ef. 1-1-82; Renumbered from 436-065-0004, 5-1-85; WCD 13-1987, f. 12-18-87, ef. 1-1-88; WCD 5-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 31-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95; WCD 8-1996, f. 2-14-96, cert. ef. 2-17-96; WCD 17-1997, f. 12-22-97, cert. ef. 1-15-98; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10; WCD 1-2015, f. 1-29-15, cert. ef. 3-1-15

436-030-0020
Requirements for Claim Closure

(1) Issuance of a Notice of Closure. Unless the worker is enrolled and actively engaged in training, the insurer must issue a Notice of Closure on an accepted disabling claim within 14 days when:

(a) Medical information establishes that there is sufficient information to determine the extent of permanent disability and indicates that the worker is medically stationary;

(b) The compensable injury is no longer the major contributing cause of the worker's combined or consequential condition(s), a major contributing cause denial has been issued, and there is sufficient information to determine the extent of permanent disability;

(c) The worker fails to seek medical treatment for 30 days for reasons within the worker's control and the worker has been notified of pending actions in accordance with these rules;

(d) The worker fails to attend a mandatory closing examination for reasons within the worker's control and the worker has been notified of pending actions in accordance with these rules; or

(e) A worker receiving permanent total disability benefits has materially improved and is capable of regularly performing work at a gainful and suitable occupation.

(2) Sufficient Information. For purposes of determining the extent of permanent disability, "sufficient information" requires :a qualifying statement of no permanent disability under subsection (a) of this section or a qualifying closing report under subsection (b) of this section. Additional documentation is required under subsection (c) of this section unless there is clear and convincing evidence that an attending physician or authorized nurse practitioner has released the worker to the job held at the time of injury or that the worker has returned to the job held at the time of injury.

(a) Qualifying statements of no permanent disability. A statement indicating that there is no permanent disability is sufficient if it meets all of the following requirements:

(A) Qualified providers. An authorized nurse practitioner or attending physician must provide or concur with the statement.

(B) Support by the medical record. The statement must be supported by the medical record. If the medical record reveals otherwise, a closing examination and report specified under subsection (b) of this section are required.

(C) In initial injury claims. In an initial injury claim, the statement must clearly indicate the following:

(i) There is no reasonable expectation of any permanent impairment caused in any part by an accepted condition, a direct medical sequela of an accepted condition, or a condition directly resulting from the work injury; and

(ii) There is no reasonable expectation of any permanent work restriction that:

(I) Prevents the worker from returning to the job held at the time of injury; and

(II) Is caused in any part by an accepted condition, a direct medical sequela of an accepted condition, or a condition directly resulting from the work injury.

(D) In new or omitted condition claims. In a new or omitted condition claim, the statement must clearly indicate the following:

(i) There is no reasonable expectation of any permanent impairment caused in any part by an accepted new or omitted condition or a direct medical sequela of an accepted new or omitted condition; and

(ii) There is no reasonable expectation of any permanent work restriction that:

(I) Prevents the worker from returning to the job held at the time of injury; and

(II) Is caused in any part by an accepted new or omitted condition or a direct medical sequela of an accepted new or omitted condition.

(E) In aggravation claims. In an aggravation claim, the statement must clearly indicate the following:

(i) There is no reasonable expectation of any permanent impairment caused in any part by an accepted worsened condition or a direct medical sequela of an accepted worsened condition; and

(ii) There is no reasonable expectation of any permanent work restriction that:

(I) Prevents the worker from returning to the job held at the time of injury; and

(II) Is caused in any part by an accepted worsened condition or a direct medical sequela of an accepted worsened condition.

(F) In occupational disease claims. In an occupational disease claim, the statement must clearly indicate the following:

(i) There is no reasonable expectation of any permanent impairment caused in any part by an accepted occupational disease or a direct medical sequela of an accepted occupational disease; and

(ii) There is no reasonable expectation of any permanent work restriction that:

(I) Prevents the worker from returning to the job held at the time of injury; and

(II) Is caused in any part by an accepted occupational disease or a direct medical sequela of an accepted occupational disease.

(b) Qualifying closing reports. A closing medical examination and report are required if there is a reasonable expectation of permanent disability. A closing report is sufficient if it meets all of the following requirements:

(A) Qualified providers. A type A attending physician or a chiropractic physician serving as the attending physician must provide or concur with the closing report.

(B) Release to regular work. If the worker has no permanent work restriction, the closing report must include a statement indicating that:

(i) The worker has no permanent work restriction; or

(ii) The worker is released, without restriction, to the job held at the time of injury.

(C) In initial injury claims. In an initial injury claim, the closing report must include detailed documentation of all measurements, findings, and limitations regarding:

(i) Any permanent impairment caused in any part by an accepted condition, a direct medical sequela of an accepted condition, or a condition directly resulting from the work injury; and

(ii) Any permanent work restriction that:

(I) Prevents the worker from returning to the job held at the time of injury; and

(II) Is caused in any part by an accepted condition, a direct medical sequela of an accepted condition, or a condition directly resulting from the work injury.

(D) In new or omitted condition claims. In a new or omitted condition claim, the closing report must include detailed documentation of all measurements, findings, and limitations regarding:

(i) Any permanent impairment caused in any part by an accepted new or omitted condition or a direct medical sequela of an accepted new or omitted condition; and

(ii) Any permanent work restriction that:

(I) Prevents the worker from returning to the job held at the time of injury; and

(II) Is caused in any part by an accepted new or omitted condition or a direct medical sequela of an accepted new or omitted condition.

(E) In aggravation claims. In an aggravation claim, the closing report must include detailed documentation of all measurements, findings, and limitations regarding:

(i) Any permanent impairment caused in any part by an accepted worsened condition or a direct medical sequela of an accepted worsened condition; and

(ii) Any permanent work restriction that:

(I) Prevents the worker from returning to the job held at the time of injury; and

(II) Is caused in any part by an accepted worsened condition or a direct medical sequela of an accepted worsened condition.

(F) In occupational disease claims. In an occupational disease claim, the closing report must include detailed documentation of all measurements, findings, and limitations regarding:

(i) Any permanent impairment caused in any part by an accepted occupational disease or a direct medical sequela of an accepted occupational disease; and

(ii) Any permanent work restriction that:

(I) Prevents the worker from returning to the job held at the time of injury; and

(II) Is caused in any part by an accepted occupational disease or a direct medical sequela of an accepted occupational disease.

(c) Additional documentation. Unless there is clear and convincing evidence that an attending physician or authorized nurse practitioner has released the worker to the job held at the time of injury (for dates of injury on or after January 1, 2006) or that the worker has returned to the job held at the time of injury, all of the following is required:

(A) An accurate description of the physical requirements of the worker's job held at the time of injury, which has been provided by certified mail to the worker and the worker's legal representative, if any, either before closing the claim or at the time the claim is closed;

(B) The worker's wage established consistent with OAR 436-060;

(C) The worker's date of birth;

(D) Except as provided in OAR 436-030-0015(4)(d), the worker's work history for the period beginning five years before the date of injury to the mailing date of the Notice of Closure, including tasks performed or level of SVP, and physical demands; and

(E) The worker's level of formal education.

(3) When determining disability and issuing the Notice of Closure, the insurer must apply all statutes and rules consistent with their provisions, particularly as they relate to major contributing cause denials, worker's failure to seek treatment, worker's failure to attend a mandatory examination, medically stationary status, temporary disability, permanent partial and total disability, review of permanent partial and total disability.

(4) When issuing a Notice of Closure, the insurer must prepare and attach a summary worksheet, "Notice of Closure Worksheet", Form 440-2807 (Form 2807), as described by bulletin of the director.

(5) The "Notice of Closure", Form 440-1644 (Form 1644), is effective the date it is mailed to the worker and to the worker's attorney if the worker is represented, regardless of the date on the Notice itself.

(6) The notice must be in the form and format prescribed by the director in these rules and include only the following:

(a) The worker's name, address, and claim identification information;

(b) The appropriate dollar value of any individual scheduled or unscheduled permanent disability based on the value per degree for injuries occurring before January 1, 2005 or, for injuries occurring on or after January 1, 2005, the appropriate dollar value of any "whole person" permanent disability, including impairment and work disability as determined appropriate under OAR 436-035;

(c) The body part(s) awarded disability, coded to the table of body part codes as prescribed by the director;

(d) The percentage of loss of the specific body part(s), including either the number of degrees that loss represents as appropriate for injuries occurring before January 1, 2005, or the percentage of the whole person the worker's loss represents as appropriate for injuries occurring on or after January 1, 2005;

(e) If there is no permanent disability award for this Notice of Closure, a statement to that effect;

(f) The duration of temporary total and temporary partial disability compensation;

(g) The date the Notice of Closure was mailed;

(h) The medically stationary date or the date the claim statutorily qualifies for closure under OAR 436-030-0035 or 436-030-0034;

(i) The date the worker's aggravation rights end;

(j) The worker's appeal rights;

(k) A statement that the worker has the right to consult with the Ombudsman for Injured Workers;

(l) For claims with dates of injury before January 1, 2005, the rate in dollars per degree at which permanent disability, if any, will be paid based on date of injury as identified in Bulletin 111;

(m) For claims with dates of injury on or after January 1, 2005, the state's average weekly wage applicable to the worker's date of injury;

(n) The worker's return to work status;

(o) A general statement that the insurer has the authority to recover an overpayment;

(p) A statement that the worker has the right to be represented by an attorney; and

(q) A statement that the worker has the right to request a vocational eligibility evaluation under ORS 656.340.

(7) The Notice of Closure (Form 440-1644) must be accompanied by the following:

(a) The brochure "Understanding Claim Closure and Your Rights";

(b) A copy of summary worksheet Form 2807 containing information and findings which result in the data appearing on the Notice of Closure;

(c) An accurate description of the physical requirements of the worker's job held at the time of injury unless it is not required under section (2)(a) of this rule or it was previously provided under section (2)(b)(A) of this rule;

(d) The Updated Notice of Acceptance at Closure which clearly identifies all accepted conditions in the claim and specifies those which have

been denied and are on appeal or which were the basis for this opening of the claim; and

(e) A cover letter that:

(A) Specifically explains why the claim has been closed (e.g., expiration of a period of suspension without the worker resolving the problems identified, an attending physician stating the worker is medically stationary, worker failure to treat without attending physician authorization or establishing good cause for not treating, etc.);

(B) Lists and describes enclosed documents; and

(C) Notifies the worker about the end of temporary disability benefits, if any, and the anticipated start of permanent disability benefits, if any.

(8) A copy of the Notice of Closure must be mailed to each of the following persons at the same time, with each copy clearly identifying the intended recipient:

(a) The worker;

(b) The employer;

(c) The director; and

(d) The worker's attorney, if the worker is represented.

(9) The worker's copy of the Notice of Closure must be mailed by both regular mail and certified mail return receipt requested.

(10) An insurer may use electronically produced Notice of Closure forms if consistent with the form and format prescribed by the director.

(11) Insurers may allow adjustments of benefits awarded to the worker under the documentation requirements of OAR 436-060-0170 for the following purposes:

(a) To recover payments for permanent disability which were made prematurely;

(b) To recover overpayments for temporary disability; and

(c) To recover overpayments for other than temporary disability such as prepaid travel expenses where travel was not completed, prescription reimbursements, or other benefits payable under ORS 656.001 to 656.794.

(12) The insurer may allow overpayments made on a claim with the same insurer to be deducted from compensation to which the worker is entitled but has not yet been paid.

(13) If after claim closure, the worker becomes enrolled and actively engaged in an approved training program under OAR 436-120, a new Notice of Closure must be issued consistent with the following:

(a) In claims with dates of injury on or after January 1, 2005, the insurer must redetermine work disability when:

(A) The worker has ended training; and either

(B) The worker is medically stationary; or

(C) The claim otherwise qualifies for closure in accordance with these rules.

(b) For claims with dates of injury before January 1, 2005, permanent disability must be redetermined by the insurer when:

(A) The worker has ended training; and either

(B) The worker is medically stationary; or

(C) The claim otherwise qualifies for closure in accordance with these rules, except

(D) When the worker became medically stationary after June 7, 1995 for a scheduled disability. Then the scheduled disability must remain unchanged from the last award of compensation in that claim unless the condition did not remain medically stationary through training.

(c) For claims with dates of injury before January 1, 2005, if the worker has remained medically stationary throughout training and the closing examination is six months old or older, a current medical examination is required for redetermination unless the worker's attending physician provides a written statement that there has been no change in the worker's accepted condition since the previous closing examination.

(14) When, after a claim is closed, the insurer changes or is ordered to change the worker's weekly wage upon which calculation of the work disability portion of a permanent disability award may be based, the insurer must notify the parties and the division of the change and the effect of the change on any permanent disability award. For purposes of this rule, the insurer must complete Form 440-1502 consistent with the instructions of the director and distribute it within 14 days of the change.

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

Stat. Auth.: ORS 656.268, 656.726

Stats. Implemented: ORS 656.210, 656.212, 656.214, 656.268, 656.726, 656.745

Hist.: WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0006, 5-1-85; WCD 13-1987, f. 12-18-87, ef. 1-1-88; WCD 5-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 31-1991, f. 12-10-90, cert. ef. 12-26-90; WCD 5-1992, f. 1-17-92, cert. ef. 2-20-92; WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95; WCD 8-1996, f. 2-14-96, cert. ef. 2-17-96; WCD 17-1997, f. 12-22-97, cert. ef. 1-15-98; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 11-2007, f. 11-1-07, cert. ef. 1-2-08; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-100; WCD 1-2015, f. 1-29-15, cert. ef. 3-1-15

436-030-0034

Administrative Claim Closure

(1) The insurer must close a claim when the worker is not medically stationary and the worker fails to seek treatment for more than 30 days without the instruction or approval of the attending physician or authorized nurse practitioner and for reasons within the worker's control. In order to close a claim under this section, the insurer must:

(a) Wait for the 30-day lack of treatment period to expire or any additional time period recommended by the attending physician or authorized nurse practitioner before sending the worker written notification by certified mail informing the worker of the following:

(A) The worker's responsibility to seek medical treatment in a timely manner;

(B) The consequences for failing to seek treatment in a timely manner which include, but are not limited to, claim closure and possible loss or reduction of a disability award; and

(C) The claim will be closed unless the worker establishes within 14 days that:

(i) Treatment has resumed by attending an existing appointment or scheduling a new appointment; or

(ii) The reasons for not treating were outside the worker's control.

(b) Wait the 14 day period given in the notification letter to allow the worker to provide evidence that the lack of treatment was either authorized by the attending physician or authorized nurse practitioner or beyond the worker's control.

(c) Determine whether claim closure is appropriate based on the information received.

(d) Rate all permanent disability apparent in the record (e.g., irreversible findings) at the time of claim closure.

(e) Use 30 days from the last treatment provided or any additional time period authorized by the attending physician or authorized nurse practitioner as the date the claim qualifies for closure on the Notice of Closure.

(2) Regardless of whether the worker is medically stationary, the insurer must close a claim when a worker has not sought treatment for more than 30 days with a health care provider authorized under ORS 656.005 and 656.245 (e.g., a worker enrolled in a managed care organization (MCO) who treats with a physician outside the MCO is not treating with an authorized health care provider). To close a claim under this section, the insurer must follow the requirements in section (1) of this rule and inform the worker that the reason for the impending closure is because the worker failed to treat with an authorized health care provider.

(3) A claim must be closed when the worker fails to attend a mandatory closing examination for reasons within the worker's control. To close a claim under this section, the insurer must:

(a) Inform the worker in writing sent by certified mail, at least 10 days prior to the mandatory closing examination of:

(A) The date, time, and place of the examination;

(B) The worker's responsibility to attend the examination;

(C) The consequences for failing to attend, which include, but are not limited to, claim closure and the possible loss or reduction of a disability award; and

(D) The worker's responsibility to provide information to the insurer regarding why the examination was not attended, if the reason was beyond the worker's control.

(b) Wait 7 days from the date of the missed exam to allow the worker to demonstrate good cause for failing to attend before closing the claim.

(c) Use the date of the failed mandatory closing examination as the date the claim qualifies for closure on the Notice of Closure.

(4) The insurer may close the claim under section (1) of this rule, regardless of whether the worker is medically stationary, when a closing exam has been scheduled between a worker and attending physician directly and the worker fails to attend the examination.

(5) A claim may be closed when the worker is not medically stationary and a major contributing cause denial has been issued on an accepted combined condition.

(a) The major contributing cause denial must inform the worker that claim closure may result from the issuance of the denial and provide all other information required by these rules.

(b) When a major contributing cause denial has been issued following the acceptance of a combined condition, the date the claim qualifies for closure is the date the insurer receives sufficient information to determine the extent of any permanent disability under OAR 436-030-0020(2) or the date of the denial, whichever is later.

(6) When two or more of the above events occur concurrently, the earliest date the claim qualifies for closure is used to close the claim.

(7) The attending physician or authorized nurse practitioner must be copied on all notification and denial letters applicable to this rule.

(8) When the director has issued a suspension order under OAR 436-060-0095 or 436-060-0105, the date the claim qualifies for closure is the date of the suspension order.

Stat. Auth.: ORS 656.262, 656.268, 656.726
Stats. Implemented: ORS 656.268, 656.726
Hist.: WCD 5-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 31-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 5-1992, f. 1-17-92, cert. ef. 2-20-92; WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95; WCD 8-1996, f. 2-14-96, cert. ef. 2-17-96; WCD 17-1997, f. 12-22-97, cert. ef. 1-15-98; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 11-2007, f. 11-1-07, cert. ef. 1-2-08; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10; WCD 1-2015, f. 1-29-15, cert. ef. 3-1-15

436-030-0035
Determining Medically Stationary Status

(1) A worker is medically stationary in the following circumstances:

(a) In initial injury claims. In an initial injury claim, a worker is medically stationary when the attending physician, authorized nurse practitioner, or a preponderance of medical opinion declares that all accepted conditions, direct medical sequela of accepted conditions, and conditions directly resulting from the work injury are either "medically stationary" or "medically stable" or when the provider uses other language meaning the same thing.

(b) In new or omitted condition claims. In a new or omitted condition claim, a worker is medically stationary when the attending physician, authorized nurse practitioner, or a preponderance of medical opinion declares that all accepted new or omitted conditions and direct medical sequela of accepted new or omitted conditions are either "medically stationary" or "medically stable" or when the provider uses other language meaning the same thing.

(c) In aggravation claims. In an aggravation claim, a worker is medically stationary when the attending physician, authorized nurse practitioner, or a preponderance of medical opinion declares that all accepted worsened conditions and direct medical sequela of accepted worsened conditions are either "medically stationary" or "medically stable" or when the provider uses other language meaning the same thing.

(d) In occupational disease claims. In an occupational disease claim, a worker is medically stationary when the attending physician, authorized nurse practitioner, or a preponderance of medical opinion declares that all accepted occupational diseases and direct medical sequela of accepted occupational diseases are either "medically stationary" or "medically stable" or when the provider uses other language meaning the same thing.

(2) When there is a conflict in the medical opinions as to whether a worker is medically stationary, more weight is given to medical opinions that are based on the most accurate history, on the most objective findings, on sound medical principles, and clear and concise reasoning.

(3) Where there is not a preponderance of medical opinion stating a worker is or is not medically stationary, deference will generally be given to the opinion of the attending physician. However, in cases where expert analysis is important, deference is given to the opinion of the physician with the greatest expertise in, and understanding of, the worker's medical condition.

(4) When there is a conflict as to the date upon which a worker became medically stationary, the following conditions govern the determination of the medically stationary date. The date a worker is medically stationary is the earliest date that a preponderance is established under sections (1) and (2) of this rule. The date of the examination, not the date of the report, controls the medically stationary date.

(5) The insurer must request the attending physician, as defined in ORS 656.005(12)(b)(A), to concur or comment when the attending physician arranges or refers the worker for a closing examination with another physician to determine the extent of impairment or when the insurer refers a worker for an independent medical examination. A concurrence with another physician's report is an agreement in every particular, including the medically stationary impression and date, unless the physician expressly states to the contrary and explains the reasons for disagreement. Concurrence cannot be presumed in the absence of the attending physician's response.

(6) A worker is medically stationary on the date of the examination when so specified by a physician. When a specific date is not indicated, a worker is presumed medically stationary on the date of the last examination, prior to the date of the medically stationary opinion. Physician projected medically stationary dates cannot be used to establish a medically stationary date.

(7) If the worker is incarcerated or confined in some other manner and unable to freely seek medical treatment, the insurer must arrange for medical examinations to be completed at the facility where the worker is located or at some other location accessible to the worker.

(8) If a worker dies and the attending physician has not established a medically stationary date, for purposes of claim closure, the medically stationary date is the date of death.

Stat. Auth.: ORS 656.268, 656.726
Stats. Implemented: ORS 656.268
Hist.: WCD 5-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 31-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 5-1992, f. 1-17-92, cert. ef. 2-20-92; WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95; WCD 8-1996, f. 2-14-96, cert. ef. 2-17-96; WCD 17-1997, f. 12-22-97, cert. ef. 1-15-98; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 11-2007, f. 11-1-07, cert. ef. 1-2-08; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10; WCD 1-2015, f. 1-29-15, cert. ef. 3-1-15

436-030-0065
Review of Permanent Total Disability Awards

(1) The insurer must reexamine each permanent total disability claim at least once every two years or when requested to do so by the director to determine if the worker has materially improved, either medically or vocationally, and is capable of regularly performing work at a suitable and gainful occupation. The insurer must notify the worker and the worker's attorney if the worker is represented whenever the insurer intends to reexamine the worker's permanent total disability status. Workers who fail to cooperate with the reexamination may have benefits suspended under OAR 436-060-0095.

(2) A worker receiving permanent total disability benefits must submit to a vocational evaluation, if requested by the director, insurer, or self-insured employer under ORS 656.206(8).

(3) Any decision by the insurer to reduce permanent total disability must be communicated in writing to the worker, and to the worker's attorney if the worker is represented, and accompanied by documentation supporting the insurer's decision. That documentation must include: medical reports, including sufficient information necessary to determine the extent of permanent partial disability, vocational and investigation reports (including visual records, if available) that demonstrate the worker's ability to regularly perform a suitable and gainful occupation, and all other applicable evidence.

(4) An award of permanent total disability for scheduled injuries before July 1, 1975, may be considered for reduction only when the insurer has evidence that the medical condition has improved.

(5) Except for section (4) of this rule, an award of permanent total disability may be reduced only when the insurer has a preponderance of evidence that the worker has materially improved, either medically or vocationally, and is regularly performing work at a suitable and gainful occupation or is currently capable of doing so. Preexisting disability must be included in redetermination of the worker's permanent total disability status.

(6) When the insurer reduces a permanent total disability claim, the insurer must, based upon sufficient information to determine the extent of permanent partial disability, issue a Notice of Closure that reduces the permanent total disability and awards permanent partial disability, if any.

(7) Notices of Closure reducing permanent total disability are appealable to the Hearings Division.

(8) If a worker is receiving permanent total disability benefits and sustains a new compensable injury, the worker is eligible for additional benefits for the new compensable injury, except that the worker's eligibility for compensation for the new compensable injury is limited to medical benefits under ORS 656.245 and permanent partial disability benefits for impairment, as determined in the manner set forth in ORS 656.214(2).

Stat. Auth.: ORS 656.268, 656.726
Stats. Implemented: ORS 656.206, 656.214, 656.268, 656.283, 656.319, 656.325, 656.331, 656.726
Hist.: WCD 13-1987, f. 12-18-87, ef. 1-1-88; WCD 31-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 5-1992, f. 1-17-92, cert. ef. 2-20-92; WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95; WCD 8-1996, f. 2-14-96, cert. ef. 2-17-96; WCD 17-1997, f. 12-22-97, cert. ef. 1-15-98; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10; WCD 1-2015, f. 1-29-15, cert. ef. 3-1-15

436-030-0135
Reconsideration Procedure

(1) Within 14 days from the date of the director's notice of the start of the reconsideration proceeding, the insurer must provide the director and the worker or the worker's attorney, in chronological order by document date, all documents pertaining to the claim which include, but are not limited to, the complete medical record and all official action and notices on the claim.

(2) The request for reconsideration and all other information submitted to the director by any party during the reconsideration process must be

copied to all interested parties. Failure to comply with this requirement may result in the information not being included as part of the record on reconsideration.

(3) The director may issue an order rescinding a Notice of Closure if any of the following apply:

(a) The claim is not closed as prescribed by rule.

(b) In a claim closed under ORS 656.268(1)(a), the worker was not medically stationary at the time of claim closure.

(c) In a claim closed under ORS 656.268(1)(a) or 656.268(1)(b), the claim was closed without sufficient information to determine the extent of permanent disability under OAR 436-030-0020(2).

(d) In a claim closed under ORS 656.268(1)(c), the claim was not closed in strict compliance with OAR 436-030-0034.

(4) When a worker has requested and cashed a lump sum payment, under ORS 656.230, of an award granted by a Notice of Closure, the director will not consider the adequacy of that award in a reconsideration proceeding.

(5) When a new condition is accepted after a prior claim closure, and the newly accepted condition is subsequently closed, the director and the parties may mutually agree to consolidate requests for review of the closures into one reconsideration proceeding, provided the director has jurisdiction and neither of the closures have become final by operation of law.

(6) The reconsideration order may affirm, reduce, or increase the compensation awarded by the Notice of Closure.

(7) After the reconsideration order has been issued and before the end of the 30-day appeal period for the order on reconsideration, if a party discovers that additional documents were not provided by the opposing party in accordance with this rule, the Order on Reconsideration may be abated and withdrawn to give the party an opportunity to respond to the new information.

Stat. Auth.: ORS 656.726
Stats. Implemented: ORS 656.268
Hist.: WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95; WCD 8-1996, f. 2-14-96, cert. ef. 2-17-96; WCD 17-1997, f. 12-22-97, cert. ef. 1-15-98; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 11-2007, f. 11-1-07, cert. ef. 1-2-08; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10; WCD 1-2015, f. 1-29-15, cert. ef. 3-1-15

436-030-0165
Medical Arbiter Examination Process

(1) The director will select a medical arbiter physician or a panel of physicians in accordance with ORS 656.268(8)(d).

(a) Any party that objects to a physician on the basis that the physician is not qualified under ORS 656.005(12)(b) must notify the director of the specific objection before the examination. If the director determines that the physician is not qualified to be a medical arbiter on the specific case, an examination will be scheduled with a different physician.

(b) When the worker resides outside the state of Oregon, a medical arbiter examination may be scheduled out-of-state with a physician who is licensed within that state to provide medical services in the same manner as required by ORS 656.268(8).

(c) Arbiters or panel members will not include any health care provider whose examination or treatment is the subject of the review.

(d) The insurer must pay all costs related to the completion of the medical arbiter process in this rule.

(2) If the director determines there are enough appropriate physicians available to create a list of possible arbiters and it is practicable, each party will be given the opportunity to agree on a physician and to remove one physician from the list through the process described below:

(a) The director will send the list to the parties electronically or by overnight mail.

(b) If the parties agree on a physician, every party must send a signed, written notice of that choice to the director.

(c) A party can remove a physician from the list, even when the parties have agreed on a physician to conduct the exam, by submitting a signed, written notice of that choice to the director.

(d) To be effective, the written notice of agreement on or rejection of a physician must be received by the director within three working days of the date the director sent the list.

(3) The worker's disability benefits will be suspended when the director determines the worker failed to attend or cooperate with the medical arbiter examination, unless the worker establishes a "good cause" reason for missing the examination or for not cooperating with the arbiter. The worker must call the director within 24 hours of the missed examination to provide any "good cause" reason.

(a) Notice of the examination will be considered adequate notice if the appointment letter is mailed to the last known address of the worker and to the worker's attorney, if the worker is represented.

(b) For the purposes of this rule, non-cooperation includes, but is not limited to, refusal to complete any reasonable action necessary to evaluate the worker's impairment. However, it does not include circumstances such as a worker's inability to carry out any part of the examination due to excessive pain or when the physician reports the findings as medically invalid.

(c) Failure of the worker to respond within the time frames outlined in statute for completion of the reconsideration proceeding may be considered a failure to establish "good cause."

(4) If a worker misses the medical arbiter examination, the director will determine whether or not there was a "good cause" reason for missing the examination.

(5) Upon determination that there was not a "good cause" reason for missing the examination, or that the worker failed to cooperate with the arbiter, the worker's disability benefits will be suspended and the reconsideration proceeding postponed for up to an additional 60 days.

(6) The suspension will be lifted if any of the following occur during the additional 60-day postponement period:

(a) The worker establishes a "good cause" reason for missing or failing to cooperate with the examination;

(b) The worker withdraws the request for reconsideration; or

(c) The worker attends and cooperates with a rescheduled arbiter examination.

(7) If none of the events that end the suspension under section (6) of this rule occur before the expiration of the 60-day additional postponement, the suspension of benefits will remain in effect.

(8) The medical arbiter or panel of medical arbiters must perform a record review or examine the worker as requested by the director and perform such tests as may be reasonable and necessary to establish the worker's impairment.

(a) The parties must submit to the director any issues they wish the medical arbiter or panel of medical arbiters to address within 14 days of the date of the director's notice of the start of the reconsideration proceeding. The parties must not submit issues directly to the medical arbiter or panel of medical arbiters. The medical arbiter or panel of medical arbiters will only consider issues appropriate to the reconsideration proceeding.

(b) The report of the medical arbiter or panel of medical arbiters must address all questions raised by the director.

(c) The medical arbiter will provide copies of the arbiter report to the director, the worker or the worker's attorney, and the insurer within five working days after completion of the arbiter review. The cost of providing copies of such additional reports must be reimbursed according to OAR 436-009-0060 and must be paid by the insurer.

(9) When a worker's medical condition prevents the worker from fully participating in a medical arbiter examination that must be conducted to determine findings of impairment, the director may send a letter to the parties requesting consent to defer the reconsideration proceeding. The medical condition that prevents the worker from participating in the medical arbiter examination does not need to be related to the work injury.

(a) If the parties agree to the deferral, the reconsideration proceeding will be deferred until the medical record reflects the worker's condition has stabilized sufficiently to allow for examination to obtain the impairment findings. The parties must notify the director when it is appropriate to schedule the medical arbiter examination and provide the necessary medical records when requested. Interim medical information that may be helpful to the director and the medical arbiter in assessing and describing the worker's impairment may be submitted at the time the parties notify the director that the medical arbiter examination can be scheduled. The director will determine whether the interim medical information is consistent with the provisions of ORS 656.268(6) and (8).

(b) If deferral is not appropriate, at the director's discretion either a medical arbiter examination or a medical arbiter record review may be obtained, or the director may issue an Order on Reconsideration based on the record available at claim closure and other evidence submitted in accordance with ORS 656.268(6).

(10) All costs related to record review, examinations, tests, and reports of the medical arbiter must be paid under OAR 436-009-0015, 436-009-0040, and 436-009-0060.

(11) When requested by the Hearings Division, the director may schedule a medical arbiter examination for a worker who has appealed a Notice of Closure rescinding permanent total disability benefits under ORS 656.206.

Stat. Auth.: ORS 656.726
Stats. Implemented: ORS 656.268

Hist.: WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95; WCD 11-1995(Temp), f. & cert. ef. 8-23-95; WCD 8-1996, f. 2-14-96, cert. ef. 2-17-96; WCD 17-1997, f. 12-22-97, cert. ef. 1-15-98; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 10-2001, f. 11-16-01, cert. ef. 1-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 11-2007, f. 11-1-07, cert. ef. 1-2-08; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10; WCD 5-2011, f. 11-18-11, cert. ef. 1-1-12; WCD 1-2015, f. 1-29-15, cert. ef. 3-1-15

436-035-0005
Definitions

As used in OAR 436-035-0001 through 436-035-0500, unless the context requires otherwise:

(1) "Activities of daily living (ADL)" include, but are not limited to, the following personal activities required by an individual for continued well-being: eating/nutrition; self-care and personal hygiene; communication and cognitive functions; and physical activity, e.g., standing, walking, kneeling, hand functions, etc.

(2) "Ankylosis" means a bony fusion, fibrous union, or arthrodesis of a joint. Ankylosis does not include pseudarthrosis or articular arthropathies.

(3) "Date of issuance" means the mailing date of a notice of closure or Order on Reconsideration under ORS 656.268 and ORS 656.283(6).

(4) "Dictionary of Occupational Titles" or (DOT) means the publication of the same name by the U.S. Department of Labor, Fourth Edition Revised 1991.

(5) "Direct medical sequela" means a condition that is clearly established medically and originates or stems from an accepted condition. For example: The accepted condition is low back strain with herniated disc at L4-5. The worker develops permanent weakness in the leg and foot due to the accepted condition. The weakness is considered a "direct medical sequela".

(6) "Earning capacity" means impairment as modified by age, education, and adaptability.

(7) "Irreversible findings" for the purposes of these rules are:

(a) Arm:

(A) Arm angulation;

(B) Radial head resection;

(C) Shortening;

(b) Eye:

(A) Enucleation;

(B) Lens implant;

(C) Lensectomy.

(c) Gonadal: Loss of gonads resulting in absence of, or an abnormally high, hormone level.

(d) Hand:

(A) Carpal bone fusion;

(B) Carpal bone removal.

(e) Kidney: Nephrectomy;

(f) Leg:

(A) Knee angulation;

(B) Length discrepancy;

(C) Meniscectomy;

(D) Patellectomy.

(g) Lung: Lobectomy;

(h) Shoulder:

(A) Acromionectomy;

(B) Clavicle resection.

(i) Spine;

(A) Compression, spinous process, pedicle, laminae, articular process, odontoid process, and transverse process fractures;

(B) Diskectomy;

(C) Laminectomy.

(j) Spleen: Splenectomy;

(k) Urinary tract diversion:

(A) Cutaneous ureterostomy without intubation;

(B) Nephrostomy or intubated uresterostomy;

(C) Uretero-Intestinal.

(l) Other:

(A) Amputations/resections;

(B) Ankylosed/fused joints;

(C) Displaced pelvic fracture ("healed" with displacement);

(D) Loss of opposition;

(E) Organ transplants (heart, lung, liver, kidney);

(F) Prosthetic joint replacements.

(8) "Medical arbiter" means a physician under ORS 656.005(12)(b)(A) appointed by the director under OAR 436-010-0330.

(9) "Offset" means to reduce a current permanent partial disability award, or portions of the award, by a prior Oregon workers' compensation permanent partial disability award from a different claim.

(10) "Physician's release" means written notification, provided by the attending physician to the worker and the worker's employer or insurer, releasing the worker to work and describing any limitations the worker has.

(11) "Preexisting condition"

(a) Injury claims. For all industrial injury claims with a date of injury on or after Jan. 1, 2002, "preexisting condition" means a condition that:

(A) Is arthritis or an arthritic condition; or

(B) Was treated or diagnosed before:

(i) The initial injury in a claim for an initial injury or omitted condition;

(ii) The onset of the new medical condition in a claim for a new medical condition; or

(iii) The onset of the worsened condition in a claim for an aggravation under ORS 656.273 or 656.278.

(b) Occupational disease claims. For all occupational disease claims with a date of injury on or after Jan. 1, 2002, "preexisting condition" means a condition that precedes the onset of the claimed occupational disease, or precedes a claim for worsening under ORS 656.273 or 656.278.

(12) "Preponderance of medical evidence" or "opinion" does not necessarily mean the opinion supported by the greater number of documents or greater number of concurrences; rather it means the more probative and more reliable medical opinion based upon factors including, but not limited to, one or more of the following:

(a) The most accurate history,

(b) The most objective findings,

(c) Sound medical principles, or

(d) Clear and concise reasoning.

(13) "Redetermination" means a reevaluation of disability under ORS 656.267, 656.268(10), 656.273, and 656.325.

(14) "Regular work" means the job the worker held at the time of injury.

(15) "Scheduled disability" means a compensable permanent loss of use or function that results from injuries to those body parts listed in ORS 656.214(3)(a) through (5).

(16) "Social-vocational factors" means age, education, and adaptability factors under ORS 656.726(4)(f).

(17) "Superimposed condition" means a condition that arises after the compensable injury or disease that contributes to the worker's overall disability or need for treatment but is not the result of the original injury or disease. Disability from a superimposed condition is not rated. For example: The compensable injury results in a low back strain. Two months after the injury, the worker becomes pregnant (non-work related). The pregnancy is considered a "superimposed condition."

(18) "Unscheduled disability" means permanent loss of earning capacity as a result of a compensable injury, as described in these rules and arising from those losses under OAR 436-035-0330 through 436-035-0450.

(19) "Work disability," for the purposes of determining permanent disability, means impairment as modified by age, education, and adaptability to perform the job at which the worker was injured.

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.005, 656.214, 656.267, 656.268, 656.273, 656.325 & 656.726

Hist.: WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; WCD 18-1990(Temp), f. 9-14-90, cert. ef. 10-1-90; WCD 20-1990(Temp), f. & cert. ef. 11-20-90; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 1-1997, f. 1-9-97, cert. ef. 2-15-97; WCD 6-1998, f. 5-13-98, cert. ef. 7-1-98; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 10-2007, f. 11-1-07, cert. ef. 1-1-08; WCD 2-2010, f. 5-5-10, cert. ef. 6-1-10; WCD 8-2012, f. 11-26-12, cert. ef. 1-1-13; WCD 1-2015, f. 1-29-15, cert. ef. 3-1-15

436-035-0006
Determination of Benefits for Disability Caused by the Compensable Injury

(1) In injury claims. In an injury claim, permanent disability caused by the compensable injury includes disability caused by:

(a) An accepted condition;

(b) A direct medical sequela of an accepted condition; or

(c) A condition directly resulting from the work injury, except that disability caused by a consequential condition under ORS 656.005(7)(a)(A), a combined condition under 656.005(7)(a)(B), or a preexisting condition under 656.225 is only awarded if the consequential, combined, or preexisting condition is accepted.

(2) In new or omitted condition claims. In a new or omitted condition claim, permanent disability caused by the compensable injury includes disability caused by:

(a) An accepted new or omitted condition; or

(b) A direct medical sequela of an accepted new or omitted condition.

(3) In aggravation claims. In an aggravation claim, permanent disability caused by the compensable injury includes disability caused by:

(a) An accepted worsened condition; or

(b) A direct medical sequela of an accepted worsened condition.

(4) In occupational disease claims. In an occupational disease claim, permanent disability caused by the compensable injury includes disability caused by:

(a) An accepted occupational disease; or

(b) A direct medical sequela of an accepted occupational disease.

Stat. Auth.: ORS 656.726

Stats. Impltd.: ORS 656.005, 656.214, 656.225, 656.268, 656.726 & 656.802

Hist.: WCD 1-2015, f. 1-29-15, cert. ef. 3-1-15

436-035-0007
General Principles

436-035-0007

General Principles

(1) Eligibility for impairment.

(a) Eligibility, generally. A worker is eligible for an award for impairment if:

(A) The worker suffers permanent loss of use or function of a body part or system;

(B) The loss is established by a preponderance of medical evidence based upon objective findings of impairment; and

(C) The loss is caused in any part by the compensable injury.

(b) Apportionment. A worker's award for impairment is limited to the amount of impairment caused by the compensable injury.

(A) If loss of use or function of a body part or system is entirely caused by the compensable injury, the worker is eligible for the full award provided for the loss under the rating standards in this division of rules.

(B) If loss of use or function of a body part or system is partly caused by the compensable injury, the following provisions apply:

(i) The worker is eligible for an award for impairment for:

(I) The portion of the loss caused by the compensable injury; and

(II) The portion of the loss caused by a condition that does not qualify as a preexisting condition but that existed before the initial injury in an initial injury or omitted condition claim, before the onset of the accepted new medical condition in a new condition claim, or before the onset of the accepted worsened condition in an aggravation claim.

(ii) The worker is not eligible for an award for impairment for the portion of the loss caused by:

(I) A denied condition;

(II) A superimposed condition; or

(III) A preexisting condition, as defined by OAR 436-035-0005(11) and ORS 656.005(24), unless the preexisting condition is otherwise compensable.

(C) If loss of use or function of a body part or system is not caused in any part by the compensable injury, the loss is not due to the compensable injury and the worker is not eligible for an award for impairment.

(2) Eligibility for work disability. An award for impairment is modified by the factors of age, education, and adaptability if the worker is eligible for an award for work disability. A worker is eligible for an award for work disability if:

(a) The worker is eligible for an award for impairment;

(b) An attending physician or authorized nurse practitioner has not released the worker to the job held at the time of injury;

(c) The worker has not returned to the job held at the time of injury; and

(d) The worker is unable to return to the job held at the time of injury because the worker has a permanent work restriction that is caused in any part by the compensable injury.

(3) When a new or omitted medical condition has been accepted since the last arrangement of compensation, the extent of permanent disability must be redetermined.

(a) Redetermination includes the rating of the new impairment attributed to the accepted new or omitted medical condition and the reevaluation of the worker's social-vocational factors. The following applies to claims with a date of injury on or after Jan. 1, 2005:

(A) When there is a previous work disability award and there is no change in the worker's restrictions but impairment values increase, work disability must be awarded based on the additional impairment.

(B) When there is not a previous work disability award but the accepted new or omitted medical condition creates restrictions that do not allow the worker to return to regular work, the work disability must be awarded based on any previous and current impairment values.

(b) When performing a redetermination of the extent of permanent disability under this section, the amount of impairment caused by a condition other than the accepted new or omitted condition is not reevaluated and is given the same impairment value as established at the last arrangement of compensation.

(4) When a worker has a prior award of permanent disability under Oregon workers' compensation law, disability is determined under OAR 436-035-0015 (offset) for purposes of determining disability only as it pertains to multiple Oregon workers' compensation claims.

(5) Establishing impairment.

(a) Impairment is established based on objective findings of the attending physician under ORS 656.245(2)(b)(C) and OAR 436-010-0280.

(b) On reconsideration, when a medical arbiter is used, impairment is established based on objective findings of the medical arbiter, except where a preponderance of the medical evidence demonstrates that different findings by the attending physician are more accurate and should be used.

(c) A determination that loss of use or function of a body part or system is due to the compensable injury is a finding regarding the worker's impairment.

(d) A determination that loss of use or function of a body part or system is due to the compensable injury must be established by the attending physician or medical arbiter.

(6) Objective findings made by a consulting physician or other medical providers (e.g., occupational or physical therapists) at the time of closure may be used to determine impairment if the worker's attending physician concurs with the findings.

(7) If there is no measurable impairment under these rules, no award of permanent partial disability is allowed.

(8) Pain is considered in the impairment values in these rules to the extent that it results in valid measurable impairment. For example: The medical provider determines that giveaway weakness is due to pain attributable to the compensable injury. If there is no measurable impairment, no award of permanent disability is allowed for pain. To the extent that pain results in disability greater than that evidenced by the measurable impairment, including the disability due to expected waxing and waning of the worker's compensable injury, this loss of earning capacity is considered and valued under OAR 436-035-0012 and is included in the adaptability factor.

(9) Methods used by the examiner for making findings of impairment are the methods described in these rules and further outlined in Bulletin 239, and are reported by the physician in the form and format required by these rules.

(10) Range of motion is measured using the goniometer, except when measuring spinal range of motion; then an inclinometer must be used. Reproducibility of abnormal motion is used to validate optimum effort.

(a) For obtaining goniometer measurements, center the goniometer on the joint with the base in the neutral position. Have the worker actively move the joint as far as possible in each motion with the arm of the goniometer following the motion. Measure the angle that subtends the arc of motion. To determine ankylosis, measure the deviation from the neutral position.

(b) There are three acceptable methods for measuring spinal range of motion: the simultaneous application of two inclinometers, the single fluid-filled inclinometer, and an electronic device capable of calculating compound joint motion. The examiner must take at least three consecutive measurements of mobility, which must fall within 10% or 5 degrees (whichever is greater) of each other to be considered consistent. The measurements must be repeated up to six times to obtain consecutive measurements that meet these criteria. Inconsistent measurements may be considered invalid and that portion of the examination disqualified. If acute spasm is noted, the worker should be reexamined after the spasm resolves.

(11) Validity is established for findings of impairment under the criteria noted in these rules and further outlined in Bulletin 239, unless the validity criteria for a particular finding is not addressed, or is determined by physician opinion to be medically inappropriate for a particular worker. Upon examination, findings of impairment that are determined to be ratable under these rules are rated unless the physician determines the findings are invalid. When findings are determined invalid, the findings receive a value of zero. If the validity criteria are not met but the physician determines the findings are valid, the physician must provide a written rationale, based on sound medical principles, explaining why the findings are valid. For purposes of this rule, the straight leg raising validity test (SLR) is not the sole criterion used to invalidate lumbar range of motion findings.

(12) Except for contralateral comparison determinations under OAR 436-035-0011(3), loss of opposition determination under 436-035-0040, averaging muscle values under 436-035-0011(8), and impairment determined under ORS 656.726(4)(f), only impairment values listed in these rules are to be used in determining impairment. Prorating or interpolating between the listed values is not allowed. For findings that fall between the listed impairment values, the next higher appropriate value is used for rating.

(13) Values found in these rules consider the loss of use, function, or earning capacity directly associated with the compensable injury. When a worker's impairment findings do not meet the threshold (minimum) findings established in these rules, no value is granted.

(a) Not all surgical procedures result in loss of use, function, or earning capacity. Some surgical procedures improve the use and function of body parts, areas, or systems or ultimately may contribute to an increase in earning capacity. Accordingly, not all surgical procedures receive a value under these rules.

(b) Not all medical conditions or diagnoses result in loss of use, function, or earning capacity. Accordingly, not all medical conditions or diagnoses receive a value under these rules.

(14) Waxing and waning of signs or symptoms related to a worker's compensable injury are already contemplated in the values provided in these rules. There is no additional value granted for the varying extent of waxing and waning of the compensable injury. Waxing and waning means there is not an actual worsening of the condition under ORS 656.273.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 656.726
Stats. Implemented.: ORS 656.005, 656.214, 656.245, 656.267, 656.268, 656.273 & 656.726
Hist.: WCD 5-1975, f. 2-6-75, ef. 2-25-75; WCD 8-1978(Admin), f. 6-30-78, ef. 7-10-78; WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0005, 5-1-85; WCD 13-1987, f. 12-18-87, ef. 1-1-88; WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; Renumbered from 436-030-0120; WCD 5-1988, f. 9-2-88, cert. ef. 8-19-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; WCD 18-1990(Temp), f. 9-14-90, cert. ef. 10-1-90; WCD 20-1990(Temp), f. & cert. ef. 11-20-90; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 6-1998, f. 5-13-98, cert. ef. 7-1-98; WCD 6-1999, f. & cert. ef. 4-26-99; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 2-2010, f. 5-5-10, cert. ef. 6-1-10; WCD 8-2012, f. 11-26-12, cert. ef. 1-1-13; WCD 1-2015, f. 1-29-15, cert. ef. 3-1-15

436-035-0008
Calculating Disability Benefits (Dates of Injury prior to 1/1/2005)

(1) Scheduled disability with a date of injury prior to January 1, 2005, is rated on the permanent loss of use or function of a body part caused by a compensable injury. To calculate the scheduled impairment benefit, use the following steps:

(a) Determine the percent of scheduled impairment using the impairment values found in OAR 436-035-0019 through 436-035-0260, and the applicable procedures within these rules.

(b) Multiply the result in (a) by the maximum degrees, under ORS 656.214, for the injured body part.

(c) Multiply the result from (b) by the statutory dollar rate under ORS 656.214 and illustrated in Bulletin 111.

(d) The result from (c) is the scheduled impairment benefit. If there are multiple extremities with impairment then each is determined and awarded separately, including hearing and vision loss.

Example: Scheduled impairment benefit
0.12 Scheduled impairment percent (12%)
x 192 Maximum degrees for the body part
= 23.04 Degrees of scheduled disability
x $559.00 Statutory dollar rate per degree
= $12,879.36 Scheduled impairment benefit

(2) Unscheduled disability with a date of injury prior to January 1, 2005, is rated on the permanent loss of use or function of a body part or system caused by a compensable injury, as modified by the factors of age, education, and adaptability.

(a) To calculate the unscheduled impairment benefit when the worker returns or is released to regular work according to OAR 436-035-0009(3), use the following steps.

(A) Determine the percent of unscheduled impairment using the impairment values found in OAR 436-035-0019 and OAR 436-035-0330 through 436-035-0450, and the applicable procedures within these rules.

(B) Multiply the result in (A) by the maximum degrees for unscheduled impairment.

(C) Multiply the result in (B) by the statutory dollar rate under ORS 656.214 and illustrated in Bulletin 111.

(D) The result in (C) is the unscheduled impairment benefit.

Example: Unscheduled impairment benefit (worker returns/is released to regular work)
0.12 Unscheduled impairment percent (12%)
x 320 Maximum degrees for unscheduled impairment
= 38.40 Degrees of unscheduled disability
x $184.00 Statutory dollar rate per degree
= $7,065.60 Unscheduled impairment benefit

(b) To calculate the unscheduled disability benefit when the worker does not return or is not released to regular work according to OAR 436-035-0009(3), use the following steps.

(A) Determine the percent of unscheduled impairment using the impairment values found in OAR 436-035-0019 and 436-035-0330 through 436-035-0450, and the applicable procedures within these rules.

(B) Determine the social-vocational factor, under OAR 436-035-0012, and add it to (A).

(C) Multiply the result from (B) by the maximum degrees for unscheduled impairment.

(D) Multiply the result from (C) by the statutory dollar rate for unscheduled impairment under ORS 656.214.

(E) The result from (D) is the unscheduled impairment benefit.

Example: Unscheduled impairment benefit (worker does not return/released to regular work)
0.12 Unscheduled impairment percentage (12%)
+ 6% Social-vocational factor
= 18% Unscheduled impairment
X 320 Maximum degrees for unscheduled impairment
= 57.6 Degrees of unscheduled disability
X $184.00 Statutory dollar rate per degree
= $10,598.40 Unscheduled impairment benefit
[ED. NOTE: Examples/Publications referenced are available from the agency.]
Stat. Auth.: ORS 656.726
Stats. Implemented.: ORS 656.005, 656.214, 656.268 & 656.726
Hist.: WCD 5-1975, f. 2-6-75, ef. 2-25-75; WCD 8-1978(Admin), f. 6-30-78, ef. 7-10-78; WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0005, 5-1-85; WCD 13-1987, f. 12-18-87, ef. 1-1-88; WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; Renumbered from 436-030-0120; WCD 5-1988, f. 9-2-88, cert. ef. 8-19-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; WCD 18-1990(Temp), f. 9-14-90, cert. ef. 10-1-90; WCD 20-1990(Temp), f. & cert. ef. 11-20-90; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92; WCD 3-1996, f. 1-29-96, cert. ef. 2-17-96; WCD 6-1998, f. 5-13-98, cert. ef. 7-1-98; WCD 6-1999, f. & cert. ef. 4-26-99; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 8-2012, f. 11-26-12, cert. ef. 1-1-13; WCD 1-2015, f. 1-29-15, cert. ef. 3-1-15

436-035-0012
Social-Vocational Factors (Age/Education/Adaptability) and the Calculation of Work Disability

(1) Social-vocational factors.

(a) If a worker is eligible for an award for work disability, the factors of age, education, and adaptability are determined under this rule and used to calculate the worker's social-vocational factor. The social-vocational factor is determined according to the steps described in section (15) of this rule and is used in the calculation of permanent disability benefits.

(b) When the date of injury is prior to Jan. 1, 2005, the worker must have ratable unscheduled impairment under OAR 436-035-0019 or 436-035-0330 through 436-035-0450.

(2) The age factor is based on the worker's age at the date of issuance and has a value of 0 or +1.

(a) Workers age 40 and above receive a value of + 1.

(b) Workers less than 40 years old receive a value of 0.

(3) The education factor is based on the worker's formal education and specific vocational preparation (SVP) time at the date of issuance. These two values are determined by sections (4) and (5) of this rule, and are added to give a value from 0 to +5.

(4) A value of a worker's formal education is given as follows:

(a) Workers who have earned or acquired a high school diploma or general equivalency diploma (GED) are given a neutral value of 0. For purposes of this section, a GED is a certificate issued by any certifying authority or its equivalent.

(b) Workers who have not earned or acquired a high school diploma or a GED certificate are given a value of +1. (5) A value for a worker's specific vocational preparation (SVP) time is given based on the jobs successfully performed by the worker in the five years prior to the date of issuance. The SVP value is determined by identifying these jobs and locating their SVP in the Dictionary of Occupational Titles (DOT) or a specific job analysis. The job with the highest SVP the worker has met is used to assign a value according to the following table: [Table not included. See ED. NOTE.]

(5) A copy of the Dictionary of Occupational Titles referenced in this rule is available for review during regular business hours at the Workers' Compensation Division, 350 Winter Street NE, Salem OR 97301, 503-947-7810.

(a) For the purposes of this rule, SVP is defined as the amount of time required by a typical worker to acquire the knowledge, skills, and abilities needed to perform a specific job.

(b) When a job is most accurately described by a combination of DOT codes, use all applicable DOT codes. If a preponderance of evidence establishes that the requirements of a specific job differ from the DOT descriptions, one of the following may be substituted for the DOT descriptions if it more accurately describes the job:

(A) A specific job analysis as described under OAR 436-120-0410, which includes the SVP time requirement; or

(B) A job description that the parties agree is an accurate representation of the physical requirements, as well as the tasks and duties, of the worker's regular job-at-injury.

(c) A worker is presumed to have met the SVP training time after completing employment with one or more employers in that job classification for the time period specified in the table.

(d) A worker meets the SVP for a job after successfully completing an authorized training program, on-the-job training, vocational training, or apprentice training for that job classification. College training organized around a specific vocational objective is considered specific vocational training.

(e) For those workers who have not met the specific vocational preparation training time for any job, a value of +4 is granted.

(6) The values obtained in sections (4) and (5) of this rule are added to arrive at a final value for the education factor.

(7) The adaptability factor is an evaluation of the extent to which the compensable injury has permanently restricted the worker's ability to perform work activities. The adaptability factor is determined by performing a comparison of the worker's base functional capacity to the worker's residual functional capacity, under sections (8) through (14) of this rule, and is given a value from +1 to +7.

(8) For purposes of determining adaptability, the following definitions apply:

(a) "Base functional capacity" (BFC) is established under section (9) of this rule and means an individual's demonstrated ability to perform work-related activities before the date of injury or disease.

(b) "Residual functional capacity" (RFC) is established under section (10) of this rule and means an individual's remaining ability to perform work-related activities at the time the worker is medically stationary.

(c) "Sedentary restricted" means the worker only has the ability to carry or lift dockets, ledgers, small tools, and other items weighing less than 10 pounds. A worker is also sedentary restricted if the worker can perform the full range of sedentary activities, but with restrictions.

(d) "Sedentary (S)" means the worker has the ability to occasionally lift or carry dockets, ledgers, small tools and other items weighing 10 pounds.

(e) "Sedentary/light (S/L)" means the worker has the ability to do more than sedentary activities, but less than the full range of light activities. A worker is also sedentary/light if the worker can perform the full range of light activities, but with restrictions.

(f) "Light (L)" means the worker has the ability to occasionally lift 20 pounds and can frequently lift or carry objects weighing up to 10 pounds.

(g) "Medium/light (M/L)" means the worker has the ability to do more than light activities, but less than the full range of medium activities. A worker is also medium/light if the worker can perform the full range of medium activities, but with restrictions.

(h) "Medium (M)" means the worker can occasionally lift 50 pounds and can lift or carry objects weighing up to 25 pounds frequently.

(i) "Medium/heavy (M/H)" means the worker has the ability to do more than medium activities, but less than the full range of heavy activities. A worker is also medium/heavy if the worker can perform the full range of heavy activities, but with restrictions.

(j) "Heavy (H)" means the worker has the ability to occasionally lift 100 pounds and the ability to frequently lift or carry objects weighing 50 pounds.

(k) "Very Heavy (V/H)" means the worker has the ability to occasionally lift in excess of 100 pounds and the ability to frequently lift or carry objects weighing more than 50 pounds.

(l) "Restrictions" means that, by a preponderance of medical opinion, the worker is permanently limited from:

(A) Sitting, standing, or walking less than two hours at a time; or

(B) Working the same number of hours as were worked at the time of injury, including any regularly worked overtime hours; or

(C) Frequently performing at least one of the following activities: stooping, bending, crouching, crawling, kneeling, twisting, climbing, balancing, reaching, pushing, or pulling; or

(D) Frequently performing at least one of the following activities involving the hand: fine manipulation, squeezing, or grasping.

(m) "Occasionally" means the activity or condition exists up to 1/3 of the time.

(n) "Frequently" means the activity or condition exists up to 2/3 of the time.

(o) "Constantly" means the activity or condition exists 2/3 or more of the time.

(9) Base Functional Capacity. Base functional capacity (BFC) is established by using the following classifications: sedentary (S), light (L), medium (M), heavy (H), and very heavy (VH) as defined in section (8) of this rule. The strength classifications are found in the Dictionary of Occupational Titles (DOT). Apply the subsection in this section that most accurately describes the worker's base functional capacity.

(a) The highest strength category of the jobs successfully performed by the worker in the five years prior to the date of injury.

(A) A combination of DOT codes when they describe the worker's job more accurately.

(B) A specific job analysis, which includes the strength requirements, may be substituted for the DOT descriptions if it most accurately describes the job. If a job analysis determines that the strength requirements are in between strength categories then use the higher strength category.

(C) A job description that the parties agree is an accurate representation of the physical requirements, as well as the tasks and duties, of the worker's regular job-at-injury. If the job description determines that the strength requirements are in between strength categories then use the higher strength category.

(b) A second-level physical capacity evaluation as defined in OAR 436-010-0005 and 436-009-0060(2) performed prior to the date of the work injury.

(c) For those workers who do not meet the requirements under section (5) of this rule, and who have not had a second-level physical capacity evaluation performed prior to the work injury or disease, their prior strength is based on the worker's job at the time of injury.

(d) When a worker's highest prior strength has been reduced as a result of an injury or condition which is not an accepted Oregon workers' compensation claim the base functional capacity is the highest of:

(A) The job at injury; or

(B) A second-level physical capacities evaluation as defined in OAR 436-010-0005 and 436-009-0060(2) performed after the injury or condition which was not an accepted Oregon workers' compensation claim but before the current work related injury.

(10) Residual Functional Capacity. Residual functional capacity (RFC) is established by using the following classifications: restricted sedentary (RS), sedentary (S), sedentary/light (S/L), light (L), medium/light (M/L), medium (M), medium/heavy (M/H), heavy (H), and very heavy (VH) and restrictions as defined in section (8) of this rule.

(a) Medical findings. Residual functional capacity is evidenced by the attending physician's release unless a preponderance of medical opinion describes a different RFC.

(b) Other medical opinions. For the purposes of subsection (a) of this section, the other medical opinion must include at least a second-level physical capacity evaluation (PCE) or work capacity evaluation (WCE) as defined in OAR 436-010-0005 and 436-009-0060(2) or a medical evaluation that addresses the worker's capability for lifting, carrying, pushing, pulling, standing, walking, sitting, climbing, balancing, stooping, bending, kneeling, crouching, crawling, and reaching. If multiple levels of lifting and carrying are measured, an overall analysis of the worker's lifting and carrying abilities should be provided in order to allow an accurate determination of these abilities. When the worker fails to cooperate or complete a residual functional capacity (RFC) evaluation, the evaluation must be rescheduled or the evaluator must estimate the worker's RFC as if the worker had cooperated and used maximal effort.

(c) Work capacity diminished by a superimposed, preexisting, or denied condition. Residual functional capacity is a measure of the extent to which the worker's capacity to perform work is diminished by the compensable injury. If the worker's capacity to perform work is diminished by a superimposed, preexisting, or denied condition, the worker's residual functional capacity must be adjusted based on an estimate of what the worker's capacity to perform work would be if it had not been diminished by the superimposed, preexisting, or denied condition.

(d) When the worker is not medically stationary. Except for a claim closed under ORS 656.268(1)(c), if a worker is not medically stationary, residual functional capacity is determined based on an estimate of what the worker's capacity to perform work would be if measured at the time the worker is likely to become medically stationary.

(e) When the worker is not medically stationary and work capacity is diminished by a superimposed, preexisting, or denied condition. Except for a claim closed under ORS 656.268(1)(c), if a worker is not medically stationary and the worker's capacity to perform work is diminished by a superimposed, preexisting, or denied condition, residual functional capacity is determined based on an estimate of what the worker's capacity to perform work would be if measured at the time the worker is likely to become medically stationary and if the worker's capacity to perform work had not been diminished by the superimposed, preexisting, or denied condition.

(f) Lifting capacity. For the purposes of the determination of residual functional capacity, the worker's lifting capacity is based on the whole person, not an individual body part.

(g) Injuries before Jan. 1, 2005. If the date of injury is before Jan. 1, 2005, residual functional capacity is determined under this section and is further adjusted based on an estimate of what the worker's capacity to perform work would be if it had only been diminished by a compensable injury to the hip, shoulder, head, neck, or torso.

(11) In comparing the worker's base functional capacity (BFC) to the residual functional capacity (RFC), the values for adaptability to perform a given job are as follows: [Table not included. See ED. NOTE.]

(12) For those workers who have an RFC between two categories and who also have restrictions, the next lower classification is used. (For example, if a worker's RFC is S/L and the worker has restrictions, use S).

(13) When the date of injury is on or after Jan. 1, 2005, determine adaptability by finding the adaptability value for the worker's extent of total impairment on the adaptability scale below; compare this value with the residual functional capacity scale in section (11) of this rule and use the higher of the two values for adaptability. Adaptability Scale: [Table not included. See ED. NOTE.]

(14) When the date of injury is before Jan. 1, 2005, for those workers who have ratable unscheduled impairment found in rules OAR 436-035-0019 or 436-035-0330 through 436-035-0450, determine adaptability by applying the extent of total unscheduled impairment to the adaptability scale in section (13) of this rule and the residual functional capacity scale in section (11) of this rule and use the higher of the two values for adaptability.

(15) To determine the social-vocational factor value, which represents the total calculation of age, education, and adaptability, complete the following steps.

(a) Determine the appropriate value for the age factor using section (2) of this rule.

(b) Determine the appropriate value for the education factor using sections (4) and (5) of this rule.

(c) Add age and education values together.

(d) Determine the appropriate value for the adaptability factor using sections (7) through (14) of this rule.

(e) Multiply the result from step (c) by the value from step (d) for the social-vocational factor value.

(16) Prorating or interpolating between social-vocational values is not allowed. All values must be expressed as whole numbers.

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

Stat. Auth.: ORS 656.726

Stats. Implemented.: ORS 656.005, 656.214, 656.268 & 656.726

Hist.: WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 2-2010, f. 5-5-10, cert. ef. 6-1-10; WCD 8-2012, f. 11-26-12, cert. ef. 1-1-13; WCD 1-2015, f. 1-29-15, cert. ef. 3-1-15

436-035-0013
Findings of Impairment

(1) Findings of impairment, generally. Findings of impairment are objective medical findings that measure the extent to which a worker has suffered permanent loss of use or function of a body part or system.

(2) Findings of impairment when the worker is medically stationary. If the worker is medically stationary, findings of impairment are determined by performing the following steps:

(a) In injury claims.

(A) Identify each body part or system in which use or function is permanently lost as a result of an accepted condition, a direct medical sequela of an accepted condition, or a condition directly resulting from the work injury.

(B) For each body part or system identified in paragraph (A) of this subsection, establish the extent to which use or function of the body part or system is permanently lost; and

(C) Establish the portion of the loss caused by:

(i) Any accepted condition;

(ii) Any direct medical sequela of an accepted condition;

(iii) Any condition directly resulting from the work injury;

(iv) Any condition that existed before the initial injury incident but does not qualify as a preexisting condition;

(v) Any preexisting condition that is not otherwise compensable;

(vi) Any denied condition; and

(vii) Any superimposed condition.

Example: Accepted condition: Low back strain
Superimposed condition: pregnancy (mid-term)
In the closing examination, the attending physician describes range of motion findings and states that 10% of the range of motion loss is due to the accepted condition, 50% of the loss is due to a lumbar disc herniation that the attending physician determines directly results from the work injury, and 40% of the loss is due to the pregnancy. The worker is eligible for an impairment award for the 60% of the range of motion loss that is due to the low back strain and disc herniation. Under these rules, the range of motion loss is valued at 10%. 10% x .60 equals 6% impairment.

(b) In new or omitted condition claims.

(A) Identify each body part or system in which use or function is permanently lost as a result of an accepted new or omitted condition or a direct medical sequela of an accepted new or omitted condition.

(B) For each body part or system identified in paragraph (A) of this subsection, establish the extent to which use or function of the body part or system is permanently lost; and

(C) Establish the portion of the loss caused by:

(i) Any accepted new or omitted condition;

(ii) Any direct medical sequela of an accepted new or omitted condition;

(iii) In a new condition claim, any condition that existed before the onset of the accepted new medical condition but does not qualify as a preexisting condition;

(iv) In an omitted condition claim, any condition that existed before the initial injury incident but does not qualify as a preexisting condition;

(v) Any preexisting condition that is not otherwise compensable;

(vi) Any denied condition; and

(vii) Any superimposed condition.

(c) In aggravation claims.

(A) Identify each body part or system in which use or function is permanently lost as a result of an accepted worsened condition or a direct medical sequela of an accepted worsened condition.

(B) For each body part or system identified in paragraph (A) of this subsection, establish the extent to which use or function of the body part or system is permanently lost; and

(C) Establish the portion of the loss caused by:

(i) Any accepted worsened condition;

(ii) Any direct medical sequela of an accepted worsened condition;

(iii) Any condition that existed before the onset of the accepted worsened condition but does not qualify as a preexisting condition;

(iv) Any preexisting condition that is not otherwise compensable;

(v) Any denied condition; and

(vi) Any superimposed condition.

(d) In occupational disease claims.

(A) Identify each body part or system in which use or function is permanently lost as a result of an accepted occupational disease or a direct medical sequela of an accepted occupational disease.

(B) For each body part or system identified in paragraph (A) of this subsection, establish the extent to which use or function of the body part or system is permanently lost; and

(C) Establish the portion of the loss caused by:

(i) Any accepted occupational disease;

(ii) Any direct medical sequela of an accepted occupational disease;

(iii) Any preexisting condition that is not otherwise compensable;

(iv) Any denied condition; and

(v) Any superimposed condition.

(3) Findings of impairment when the worker is not medically stationary. Except for a claim closed under ORS 656.268(1)(c), if the worker is not medically stationary, findings of impairment are determined by performing the following steps:

(a) In injury claims.

(A) Identify each body part or system in which use or function is likely to be permanently lost as a result of an accepted condition, a direct medical sequela of an accepted condition, or a condition directly resulting from the work injury at the time the worker is likely to become medically stationary;

(B) For each body part or system identified in paragraph (A) of this subsection, estimate the extent to which the use or function of the body part or system is likely to be permanently lost at the time the worker is likely to become medically stationary; and

(C) Estimate the portion of the loss that is likely to be caused by:

(i) Any accepted condition;

(ii) Any direct medical sequela of an accepted condition;

(iii) Any condition directly resulting from the work injury;

(iv) Any condition that existed before the initial injury incident but does not qualify as a preexisting condition;

(v) Any preexisting condition that is not otherwise compensable;

(vi) Any denied condition; and

(vii) Any superimposed condition.

(b) In new or omitted condition claims.

(A) Identify each body part or system in which use or function is likely to be permanently lost as a result of an accepted new or omitted condition or a direct medical sequela of an accepted new or omitted condition at the time the worker is likely to become medically stationary;

(B) For each body part or system identified in paragraph (A) of this subsection, estimate the extent to which the use or function of the body part or system is likely to be permanently lost at the time the worker is likely to become medically stationary; and

(C) Estimate the portion of the loss that is likely to be caused by:

(i) Any accepted new or omitted condition;

(ii) Any direct medical sequela of an accepted new or omitted condition;

(iii) In a new condition claim, any condition that existed before the onset of the accepted new medical condition but does not qualify as a preexisting condition;

(iv) In an omitted condition claim, any condition that existed before the initial injury incident but does not qualify as a preexisting condition;

(v) Any preexisting condition that is not otherwise compensable;

(vi) Any denied condition; and

(vii) Any superimposed condition.

(c) In aggravation claims.

(A) Identify each body part or system in which use or function is likely to be permanently lost as a result of an accepted worsened condition or a direct medical sequela of an accepted worsened condition at the time the worker is likely to become medically stationary;

(B) For each body part or system identified in paragraph (A) of this subsection, estimate the extent to which the use or function of the body part or system is likely to be permanently lost at the time the worker is likely to become medically stationary; and

(C) Estimate the portion of the loss that is likely to be caused by:

(i) Any accepted worsened condition;

(ii) Any direct medical sequela of an accepted worsened condition;

(iii) Any condition that existed before the onset of the accepted worsened condition but does not qualify as a preexisting condition;

(iv) Any preexisting condition that is not otherwise compensable;

(v) Any denied condition; and

(vi) Any superimposed condition.

(d) In occupational disease claims.

(A) Identify each body part or system in which use or function is likely to be permanently lost as a result of an accepted occupational disease or a direct medical sequela of an accepted occupational disease at the time the worker is likely to become medically stationary;

(B) For each body part or system identified in paragraph (A) of this subsection, estimate the extent to which the use or function of the body part or system is likely to be permanently lost at the time the worker is likely to become medically stationary; and

(C) Estimate the portion of the loss that is likely to be caused by:

(i) Any accepted occupational disease;

(ii) Any direct medical sequela of an accepted occupational disease;

(iii) Any preexisting condition that is not otherwise compensable;

(iv) Any denied condition; and

(v) Any superimposed condition.

(4) Age and education. The social-vocational factors of age and education (including SVP) are not apportioned, but are determined as of the date of issuance.

(5) Irreversible findings of impairment or surgical value. Workers with an irreversible finding of impairment or surgical value due to the compensable injury receive the full value awarded in these rules for the irreversible finding or surgical value.

Example: Compensable injury: Low back strain with herniated disk at L5-S1 and diskectomy.
Noncompensable condition: pregnancy (mid-term)
The worker is released to regular work. In the closing examination, the physician describes range of motion findings and states that 60% of the range of motion loss is due to the compensable injury. Under these rules, the range of motion loss is valued at 10%. 10% x .60 equals 6%.
Diskectomy at L5-S1 (irreversible finding) = 9% per these rules.
Combine 9% with 6% for a value of 14% impairment for the compensable injury.
[ED. NOTE: Examples referenced are available from the agency.]

Stat. Auth.: ORS 656.726
Stats. Implemented.: ORS 656.005, 656.214, 656.268, 656.726
Hist.: WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 2-2010, f. 5-5-10, cert. ef. 6-1-10; WCD 1-2015, f. 1-29-15, cert. ef. 3-1-15

436-035-0014
Preexisting Conditions and Combined Conditions

(1) Preexisting conditions, generally. A worker is not eligible for an award for permanent disability caused by a preexisting condition, unless the preexisting condition is otherwise compensable.

(2) Worsened preexisting conditions. If a worsened preexisting condition is compensable under ORS 656.225, a worker is eligible for an award for permanent disability caused by the worsened preexisting condition.

Example: (No apportionment):
Compensable injury (remains major contributing cause): Herniated disk L5-S1/diskectomy.
Preexisting condition: arthritis (spine).
Closing exam ROM = 10% (under these rules).
Surgery (lumbar diskectomy) = 9%
Combine: 10% and 9% which equals 18% low back impairment due to this compensable injury.
The worker is released to regular work. (Social-vocational factoring equals zero.)

(3) Combined conditions. If a worker's compensable injury combines with a preexisting condition, under ORS 656.005(7), to cause or prolong disability or a need for treatment, the worker has a combined condition. If a combined condition is compensable, a worker is eligible for an award for permanent disability caused by the combined condition.

(4) Permanent partial disability awarded after a major contributing cause denial. If a claim is closed under ORS 656.268(1)(b), because the compensable injury is no longer the major contributing cause of the disability of the combined condition or the major contributing cause of the need for treatment of the combined condition, the likely permanent disability that would have been due to the current accepted condition must be estimated. The current accepted condition is the component of the otherwise denied combined condition that remains related to the compensable injury.

Stat. Auth.: ORS 656.726
Stats. Implemented.: ORS 656.005, 656.214, 656.225 & 656.268, 656.726
Hist.: WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 2-2010, f. 5-5-10, cert. ef. 6-1-10; WCD 1-2015, f. 1-29-15, cert. ef. 3-1-15

436-035-0016
Reopened Claim for Aggravation/Worsening

(1) Worsened conditions. When an aggravation claim is closed, the extent of permanent disability caused by any worsened condition accepted under the aggravation claim is compared to the extent of disability that existed at the time of the last award or arrangement of compensation.

(2) Conditions not actually worsened. Permanent disability caused by conditions not actually worsened continues to be the same as that established at the last arrangement of compensation.

(3) Redetermination of permanent disability. Except as provided by ORS 656.325 and 656.268(10), where a redetermination of permanent disability under ORS 656.273 results in an award that is less than the total of the worker's prior arrangements of compensation in the claim, the award is not reduced.

Stat. Auth.: ORS 656.726 & 656.273
Stats. Implemented.: ORS 656.005, 656.214, 656.268 & 656.726
Hist.: WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 1-2015, f. 1-29-15, cert. ef. 3-1-15

436-035-0018
Death

(1) If a closing report has been completed. If the worker dies due to causes unrelated to the compensable injury and a closing report has been completed, the worker's permanent disability must be determined based on the closing report.

(2) If a closing report has not been completed. If the worker dies due to causes unrelated to the compensable injury and a closing report has not been completed, findings of impairment and permanent work restrictions must be estimated.

(a) The estimate must qualify as either a statement of no permanent disability under OAR 436-030-0020(2)(a) or a closing report under OAR 436-030-0020(2)(b).

(b) If the worker was medically stationary at the time of death, the following applies:

(A) Findings of impairment and permanent work restrictions are determined based on an estimate of the permanent disability that existed at the time the worker was medically stationary; and

(B) The worker's residual functional capacity is determined based on an estimate of the worker's ability to perform work-related activities at the time the worker was medically stationary.

(c) If the worker was not medically stationary at the time of death, the following applies:

(A) Findings of impairment and permanent work restrictions are determined based on an estimate of the permanent disability that would have existed at the time the worker would have likely become medically stationary; and

(B) The worker's residual functional capacity is determined based on an estimate of the worker's ability to perform work-related activities at the time the worker would have likely become medically stationary.

(3) In claims where, at the time of death, there is a compensable condition that is medically stationary and a compensable condition that is not medically stationary, the conditions are rated under sections (1) and (2) of this rule, respectively. The adaptability factor is determined by comparing the adaptability values from sections (1) and (2) of this rule, and using the higher of the values for adaptability.

(4) If the worker dies due to causes related to the compensable injury, death benefits are due under ORS 656.204 and 656.208.

Stat. Auth.: ORS 656.726
Stats. Implemented.: ORS 656.005, 656.214, 656.268 & 656.726
Hist.: WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2012, f. 11-26-12, cert. ef. 1-1-13; WCD 1-2015, f. 1-29-15, cert. ef. 3-1-15

436-035-0250
Hearing Loss

(1) The following information is provided by the attending physician or reviewed and commented on by the attending physician, under OAR 436-035-0007(5) and (6), to value work-related hearing loss:

(a) A written record, history, examination, diagnosis, opinion, interpretation and a statement noting if further material improvement would reasonably be expected from medical treatment or the passage of time by a medical provider with specialty training or experience in evaluating hearing loss.

(b) The complete audiometric testing.

(2) A worker is eligible for an award for impairment for any loss of normal hearing that results from the compensable injury. Any hearing loss that existed before the compensable injury and that does not result from a compensable preexisting condition must be offset against hearing loss in the claim if the hearing loss that existed before the compensable injury is adequately documented by a baseline audiogram that was obtained within 180 days of assignment to a high noise environment.

(a) The offset will be done at the monaural percentage of impairment level.

(b) Determine the monaural percentage of impairment for the baseline audiogram under section (4) of this rule.

(c) Subtract the baseline audiogram impairment from the current audiogram impairment to obtain the impairment value.

(3) Hearing loss is based on audiograms which must report on air conduction frequencies at 500, 1,000, 2,000, 3,000, 4,000 and 6,000 Hz.

(a) Audiograms should be based on American National Standards Institute S3.6 (1989) standards.

(b) Test results will be accepted only if they come from a test conducted at least 14 consecutive hours after the worker has been removed from significant exposure to noise.

(4) Impairment of hearing is calculated from the number of decibels by which the worker's hearing exceeds 150 decibels (hearing impairment threshold). Compensation for monaural hearing loss is calculated as follows:

(a) Add the audiogram findings at 500, 1,000, 2,000, 3,000, 4,000 and 6,000 Hz. Decibel readings in excess of 100 will be entered into the computations as 100 dB.

(b) Hearing loss caused by presbycusis is based on the worker's age at the time of the audiogram, except that, in an injury claim, an impairment award for hearing loss caused by presbycusis is reduced only if the presbycusis qualifies as a preexisting condition. To determine the reduction to be applied for hearing loss caused by presbycusis, consult the Presbycusis Correction Values Table below. (These values represent the total decibels of hearing loss in the six standard frequencies which normally results from aging.) Find the figure for presbycusis hearing loss. Take this presbycusis figure and subtract the hearing impairment threshold of 150 decibels. Subtract any positive value from the sum of the audiogram entries. This value represents the total decibels of hearing loss in the six standard frequencies which normally results from aging that exceed the hearing impairment threshold. (If there is no positive value there is no hearing impairment attributable to presbycusis above the hearing impairment threshold.) [Table not included. See ED. NOTE.]

(c) Consult the Monaural Hearing Loss Table below, using the figure found in subsection (b) of this section. This table will give you the percent of monaural hearing loss to be compensated. [Table not included. See ED. NOTE.]

(d) No value is allowed for db totals of 150 or less. The value for db totals of 550 or more is 100%.

(5) Binaural hearing loss is calculated as follows:

(a) Find the percent of monaural hearing loss for each ear by using the method listed in (4) (a) - (c) above.

(b) Multiply the percent of loss in the better ear by seven.

(c) Add to that result the percent of loss in the other ear.

(d) Divide this sum by eight. This is the percent of binaural hearing loss to be compensated.

(e) This method is expressed by the formula:

$$\frac{7(A) + B}{8}$$

"A" is the percent of hearing loss in the better ear.
"B" is the percent of hearing loss in the other ear.

(6) Use the method (monaural or binaural) which results in the greater impairment.

(7) Tinnitus and other auditory losses may be determined as losses under OAR 436-035-0390.

[ED. NOTE: Tables and Formulas referenced are available from the agency.]
[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 656.726
Stats.Implemented: ORS 656.005, 656.214, 656.268 & 656.726
Hist.: WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0536, 5-1-85; WCD 2-1988, f. 6-3-88, cert. ef. 7-1-88; WCD 7-1988, f. 12-21-88, cert. ef. 1-1-89; Renumbered from 436-030-0360; WCD 2-1991, f. 3-26-91, cert. ef. 4-1-91; WCD 6-1992, f. 2-14-92, cert. ef. 3-13-92; WCD 1-1997, f. & cert. ef. 2-15-97; WCD 6-1998, f. 5-13-98, cert. ef. 7-1-98; WCD 2-2003, f. 1-15-03 cert. ef. 2-1-03; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 1-2015, f. 1-29-15, cert. ef. 3-1-15

436-105-0500
Insurer Participation in the Employer-At-Injury Program

(1) An insurer must be an active participant in providing reemployment assistance with the employer's consent. Participation includes issuing notices of the available assistance and administering the Employer-at-Injury Program as specified in these rules.

(2) The insurer will notify the worker and employer-at-injury in writing of the assistance available from the Employer-at-Injury Program. A notice must be issued:

(a) Upon acceptance or reopening of a claim; and

(b) Within five days of a worker's first release for work after claim opening unless the release is for regular work.

(3) The notices of Employer-at-Injury Program assistance must contain the following language:

(a) The notice to the worker must appear in bold type as follows:

The Reemployment Assistance Program provides Oregon's qualified injured workers help with staying on the job or getting back to work. Because of your injury, your employer may be eligible for assistance to return you to transitional work through the Employer-at-Injury Program while your claim is open. Your employer may contact [insurer name and phone number].

(b) The notice to the employer-at-injury must appear in bold type as follows:

Because of your worker's injury, you may be eligible for assistance through the Employer-at-Injury Program to return the worker to transitional work while the worker's claim is open. To learn more about the assistance available from the program, please call [insurer name and phone number].

(4) The insurer will administer the Employer-at-Injury Program according to these rules. The insurer must assist an employer to:

(a) Obtain a qualifying medical release, pursuant to section (5) of this rule, from the medical service provider;

(b) Identify a transitional work position;

(c) Process employer wage subsidy requests as specified in OAR 436-105-0520(1);

(d) Make worksite modification purchases as specified in OAR 436-105-0520(2);

(e) Make Employer-at-Injury Program purchases as specified in OAR 436-105-0520(3); and

(f) Request Employer-at-Injury Program reimbursement from the division as specified in OAR 436-105-0540.

(5) For purposes of the Employer-at-Injury Program, medical releases must meet the following criteria:

(a) All medical releases must be dated and related to the compensable injury or occupational disease or, if the claim has not been accepted or denied, the claimed workers' compensation injury or occupational disease. The date the medical release is issued by the worker's medical service provider is considered the effective date if an effective date is not otherwise specified.

(b) Two types of medical release qualify under these rules:

(A) A medical release that states the worker's specific current or projected restrictions; or

(B) A statement by the medical service provider that indicates the worker is not released to regular employment accompanied by an approval of a job description which includes the job duties and physical demands required for the transitional work.

(c) A medical release must cover any period of time for which benefits are requested.

(6) For the purposes of the Employer-at-Injury Program, a medical release, and any restrictions it contains, remains in effect until another medical release is issued by the worker's medical service provider. An employer or insurer may get clarification about a medical release from the medical service provider who issued the release any time prior to submitting the reimbursement request.

(7) The insurer must maintain all records of the Employer-at-Injury Program for a period of three years from the date of the last Employer-at-Injury Program reimbursement request. The insurer will maintain the following information at the authorized claim processing location(s):

(a) The worker's claim file;

(b) Documentation from the worker's medical service provider that the worker is unable to perform regular employment due to the injury and dated copies of all work releases from the worker's medical service provider;

(c) A legible copy of the worker's payroll records for the wage subsidy period as follows:

(A) Payroll records must state the payroll period, wage rate(s), and the worker's gross wages for the wage subsidy period. The payroll record must also include the dates and hours worked each day if the worker has hourly restrictions;

(B) Insurers and employers may supplement payroll records with documentation of how the worker's earnings were calculated for the wage subsidy. Supplemental documentation may be used to determine a worker's work schedule, wages earned on a particular day, dates of paid leave, or to clarify any other necessary information not fully explained by the payroll record;

(C) If neither the payroll record(s) nor supplemental documentation show the amount of wages earned by the worker for reimbursable partial payroll periods, the allowable reimbursement amount may be calculated as follows:

(i) Divide the gross wages by the number of days in the payroll period for the daily rate; and

(ii) Multiply the daily rate by the number of eligible days; and

(D) If a partial day's reimbursement is requested after a worker is released for transitional work, or prior to returning from a medical appointment with a regular work release, documentation of the time of the medical appointment and hours and wages of transitional work must be provided for those days.

(d) A legible copy of proof of purchase, providing proof the item was ordered during the Employer-at-Injury Program period and proof of payment of the item(s) for worksite modification purchases and Employer-at-Injury Program purchases;

(e) Written documentation of the insurer's decision to approve worksite modifications;

(f) Documentation of the transitional work, which must include the start date, wage and hours, and a description of the job duties;

(g) Documentation that payments for a home care worker were made to the Oregon Department of Human Services/Oregon Health Authority, if applicable;

(h) The written acceptance by the worker when skills building is the transitional work; and

(i) Documentation, including course title and curriculum for a class or course of instruction when Employer-at Injury Program purchases are requested.

Stat. Auth.: ORS 656.340, 656.622 & 656.726(4)
Stats. Implemented: ORS 656.340 & 656.622
Hist.: WCD 1-1987(Admin), f. 2-20-87, ef. 3-16-87; WCD 12-1987, f. 12-17-87, ef. 1-1-88; WCD 13-1990(Temp), f. 6-21-90, cert. ef. 7-1-90; WCD 32-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 1-1993, f. 1-21-93, cert. ef. 3-1-93, Renumbered from 436-110-0090; WCD 20-1995(Temp), f. 12-8-95, cert. ef. 1-1-96; WCD 10-1996, f. 3-12-96, cert. ef. 4-5-96; WCD 11-1997, f. 8-28-97, cert. ef. 9-12-97, Renumbered from 436-110-0360; WCD 7-2001, f. 8-14-01, cert. ef. 10-1-0, Renumbered from 436-110-0540; WCD 12-2002(Temp), f. & cert. ef. 12-11-02 thru 6-8-03; WCD 5-2003, f. 5-16-03, cert. ef. 6-8-03; WCD 4-2004(Temp), f. 3-22-04, cert. ef. 4-1-04 thru 9-27-04; WCD 8-2004, f. 7-15-04, cert. ef. 8-1-04; WCD 4-2005, f. 5-26-05, cert. ef. 7-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 8-2007, f. 11-1-07, cert. ef. 12-1-07; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10; WCD 5-2012, f. 10-3-12, cert. ef. 11-1-12; WCD 1-2015, f. 1-29-15, cert. ef. 3-1-15

436-105-0520
Assistance Available from the Employer-at-Injury Program

The Employer-at-Injury Program may be used only once per worker per claim opening for a nondisabling claim or a disabling claim. If a nondisabling claim becomes a disabling claim after one year from the date of acceptance, the disabling claim is considered a new opening and the Employer-at-Injury Program may be used again. Assistance available includes:

(1) Wage subsidy, which provides 45 percent reimbursement of the worker's gross wages for the wage subsidy period. Wage subsidy benefits are subject to the following conditions:

(a) A wage subsidy may not exceed 66 workdays and must be completed within a 24 consecutive month period;

(b) A wage subsidy may not start or end with paid leave;

(c) If the worker has hourly restrictions, reimbursable paid leave must be limited up to the maximum number of hours of the worker's hourly restrictions. Paid leave exceeding the worker's hourly restrictions is not subject to reimbursement;

(d) Any day during which the worker exceeds his or her injury-caused limitations will not be reimbursed. If, however, an employer uses a time clock, a reasonable time not to exceed 30 minutes per day will be allowed for the worker to get to and from the time clock and the worksite without exceeding the worker's hourly restrictions.

(2) Worksite modification.

(a) Worksite modification means altering a worksite by renting, purchasing, modifying, or supplementing equipment to:

(A) Enable a worker to perform the transitional work within the worker's limitations that resulted in the worker's EAIP eligibility;

(B) Prevent a worsening of the worker's compensable injury or occupational disease; or

(C) If the claim has not been accepted or denied, to prevent a worsening of the claimed workers' compensation injury or occupational disease.

(b) Worksite modification assistance is subject to the following conditions:

(A) The insurer determines the appropriate worksite modifications for the worker;

(B) The insurer documents its reasons for approving the modifications;

(C) The worksite modifications must be ordered during the Employer-at-Injury Program; and

(D) Worksite modification items become the employer's property upon the end of the Employer-at-Injury Program.

(3) Employer-at-Injury Program purchases, which are limited to:

(a) Tuition, books, fees, and materials required for a class or course of instruction to enhance an existing skill or develop a new skill when skills building is used as transitional work or when required to meet the requirements of the transitional work position. Maximum expenditure is $1,000. Tuition, books, fees, and required materials will be provided under the following conditions:

(A) The insurer determines the instruction will help the worker enhance an existing skill or develop a new skill, and documents its decision; and

(B) The worker begins participation in the class or course while eligible for the Employer-at-Injury Program;

(b) Clothing required for the job, except clothing the employer normally provides. Clothing becomes the worker's property. Maximum expenditure is $400.

(4) Employer-at-Injury Program purchases of tools and equipment, including consumables, must be required for the worker to perform transitional work. These purchases will be the employer's property.

(5) Worksite modification and purchases of tools and equipment are limited to a combined maximum reimbursement of $5,000.

(6) All modifications and purchases made by the employer in good faith are reimbursable, even if the worker refuses to return to work, or if the worker agreed to take part in training and then later refused to attend training.

Stat. Auth.: ORS 656.622 & 656.726(4)
Stats. Implemented: ORS 656.622
Hist.: WCB 1-1973, f. 1-2-73, ef. 1-15-73; WCB 3-1973, f. 3-14-73, ef. 4-1-73; WCD 2-1977(Admin)(Temp), f. 9-29-77, ef. 10-4-77; WCD 2-1978(Admin), f. & ef. 2-1-78; WCD 7-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-063-0015, 5-1-85; WCD 1-1987(Admin), f. 2-20-87, ef. 3-16-87; WCD 12-1987, f. 12-17-87, ef. 1-1-88; WCD 13-1990(Temp), f. 6-21-90, cert. ef. 7-1-90; WCD 32-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 1-1993, f. 1-21-93, cert. ef. 3-1-93, Renumbered from 436-110-0010, 436-110-0020, 436-110-0025, 436-110-0041, 436-110-0042 & 436-110-0045; WCD 15-1995(Temp), f. 10-9-95, cert. ef. 10-11-95; WCD 20-1995(Temp), f. 12-8-95, cert. ef. 1-1-96; WCD 10-1996, f. 3-12-96, cert. ef. 4-5-96; WCD 4-1997(Temp), f. 3-13-97, cert. ef. 3-17-97; WCD 11-1997, f. 8-28-97, cert. ef. 9-12-97, Renumbered from 436-110-0200; WCD 7-2001, f. 8-14-01, cert.

ef. 10-1-0, Renumbered from 436-110-0510; WCD 5-2003, f. 5-16-03, cert. ef. 6-8-03; WCD 4-2005, f. 5-26-05, cert. ef. 7-1-05; WCD 8-2007, f. 11-1-07, cert. ef. 12-1-07; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10; WCD 5-2012, f. 10-3-12, cert. ef. 11-1-12; WCD 3-2013, f. 4-12-13, cert. ef. 7-1-13; WCD 1-2015, f. 1-29-15, cert. ef. 3-1-15

436-110-0350
Worksite Modification — General Provisions

(1) Worksite modification means altering a worksite in Oregon, or available for inspection and modification in Oregon, by purchasing, modifying, or supplementing equipment, or changing the work process, to enable a worker to work within the limitations imposed by compensable injuries or occupational diseases. Worksite modification may also include the means to protect modifications purchased by the preferred worker program in an amount not to exceed $2,500.

(2) Conditions for the use of worksite modification assistance are as follows:

(a) Modifications will be provided to allow the worker to perform the job duties within the worker's injury-caused permanent limitations. In order to determine appropriate worksite modifications, the reemployment assistance consultants have discretion to use reports by a medical service provider specific to the worker, specific documented "best practices" described by a medical service provider or authority, and their own professional judgment and experience;

(b) A job analysis that includes the duties and physical demands of the job before and after modification may be required to show how the modification will overcome the worker's limitations. The job analysis may be submitted to the attending physician for approval before the modification is performed;

(c) Modifications are limited to a maximum of $25,000 for one job. A modification over $25,000 may be provided if the worker has an exceptional disability as defined in OAR 436-110-0005;

(d) Modifications not to exceed $1,000 may be provided that would reasonably be expected to prevent further injury or exacerbation of the compensable injury or occupational disease, including any disability resulting from the compensable injury or occupational disease. A reemployment assistance consultant will determine the appropriateness of this type of modification based upon his or her professional judgment and experience, reports by a medical service provider specific to the worker, or specific documented "best practices" described by a medical service provider or authority. Costs of the modification(s) are included in the calculation of the total worksite modification costs;

(e) Modifications are limited to $2,500 for on-the-job training under OAR 436-120 or other similar on-the-job training programs when the trainer is not the employer at injury. A modification will not be approved for any other type of training;

(f) Modifications limited to $2,500 may be provided to protect the items approved in the Worksite Modification Agreement from theft, or damage from the weather. Insurance policy premiums will not be paid;

(g) When a vehicle is being modified, the vehicle owner must provide proof of ownership and insurance coverage. The worker must have a valid driver license;

(h) Rented or leased vehicles and other equipment will not be modified;

(i) Modifications must be reasonable, practical, and feasible, as determined by the division;

(j) When the division determines the appropriate form of modification and the worker or employer requests a form of modification equally appropriate but with a greater cost, upon division approval, funds equal to the cost of the form of modification identified by the division may be applied toward the cost of the modification desired by the worker or employer;

(k) A modification may include rental of tools, equipment, fixtures, or furnishings to determine the feasibility of a modification. It may also include consultative services necessary to determine the feasibility of a modification, or to recommend or design a worksite modification;

(l) Rental of worksite modification items and consultative services require division approval and are limited to a cost of up to $3,500 each. The cost for rental of worksite modification items and consultative services does not apply toward the total cost of a worksite modification;

(m) Modification equipment will become the property of the employer, worker, or worker leasing company's client on the "end date" of a Worksite Modification Agreement or when the worker's employment ends, whichever occurs first. The division will determine ownership of worksite modification equipment prior to approving an agreement and has the final authority to assign property;

(n) The division may request a physical capacities evaluation, work tolerance screening, or review of a job analysis to quantify the worker's injury-caused permanent limitations. The cost of temporary lodging, meals, public transportation, and use of a personal vehicle necessary for a worker to participate in one or more of these required activities will be reimbursed at the rate of reimbursement for State of Oregon classified employees as published in Bulletin 112. The cost of the services described in this subsection does not apply toward the total cost of a worksite modification;

(o) If the property provided for the modification is damaged, in need of repair, or lost, the division will not repair or replace the property;

(p) The employer must not dispose of the property provided for the modification or reassign it to another worker while the worker is employed in work for which the modification is necessary or prior to the end of the agreement without division and worker approval. Failure to repair or replace the property, or inappropriate disposal or reassignment of the property, may result in sanctions under OAR 436-110-0900; and

(q) The worker must not dispose of the property provided for the modification while employed in work for which the modification is necessary or prior to the end of the agreement without division approval. Failure to repair or replace the property, or inappropriate disposal of the property, may result in sanctions under OAR 436-110-0900.

(3) A worker, employer or their representative may request worksite modification assistance.

(4) The person or entity that purchased the item(s) may request reimbursement by submitting to the division proof of payment for the items purchased. Reimbursement will be made for only those items and costs approved and paid.

(5) Costs of approved worksite modifications are paid by reimbursement, an Authorization for Payment, or by other instrument of payment approved by the director.

(6) The division will not purchase directly or otherwise assume responsibility for worksite modifications.

(7) Reimbursed costs will not be charged by the insurer to the employer as claims costs or by any other means.

(8) A division worksite modification consultant will determine if competitive quotes are required.

(9) All requests for reimbursement must be made within one year of the Worksite Modification Agreement end date.

[Publications: Publications referenced are available from the agency]
Stat. Auth.: ORS 656.726(4) & 656.622
Stats. Implemented: ORS 656.622
Hist.: WCB 1-1973, f. 1-2-73, ef. 1-15-73; WCB 3-1973, f. 3-14-73, ef. 4-1-73; WCD 2-1977(Admin)(Temp), f. 9-29-77, ef. 10-4-77; WCD 2-1978 (Admin), f. & ef. 2-1-78; WCD 7-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-063-0015 & 436-063-0045, 5-1-85; WCD 1-1987(Admin), f. 2-20-87, ef. 3-16-87; WCD 12-1987, f. 12-17-87, ef. 1-1-88; WCD 13-1990(Temp), f. 6-21-90, cert. ef. 7-1-90; WCD 32-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 1-1993, f. 1-21-93, cert. ef. 3-1-93, Renumbered from 436-110-0010, 436-110-0020, 436-110-0025, 436-110-0031, 436-110-0032, 436-110-0035, 436-110-0037, 436-110-0041, 436-110-0042, 436-110-0045, 436-110-0047, 436-110-0051, 436-110-0052 & 436-110-0060; WCD 15-1995(Temp), f. 10-9-95, cert. ef. 10-11-95; WCD 20-1995(Temp), f. 12-8-95, cert. ef. 1-1-96; WCD 10-1996, f. 3-12-96, cert. ef. 4-5-96; WCD 4-1997(Temp), f. 3-13-97, cert. ef. 3-17-97; WCD 11-1997, f. 8-28-97, cert. ef. 9-12-97, Renumbered from 436-110-0200 & 436-110-0400; WCD 7-2001, f. 8-14-01, cert. ef. 10-1-01, Renumbered from 436-110-0300 & 436-110-0340; WCD 4-2005, f. 5-26-05, cert. ef. 7-1-05; WCD 8-2007, f. 11-1-07, cert. ef. 12-1-07; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10; WCD 4-2010, f. 9-15-10, cert. ef. 10-12-10; WCD 1-2015, f. 1-29-15, cert. ef. 3-1-15

436-120-0005
Definitions

Except where the context requires otherwise, the construction of these rules is governed by the definitions given in the workers' compensation law and as follows:

(1) "Administrative approval" means approval of the director.

(2) "Authorized return to work plan" means a completed return-to-work plan form (Form 1081 for training or Form 1083 for direct employment), signed by the worker, the insurer, and the vocational counselor who developed the plan.

(3) "Cost-of-living matrix" is a chart issued annually by the director in Bulletin 124 that publishes the conversion factors, effective July 1 of each year, used to adjust for changes in the cost-of-living rate from the date of injury to the date of calculation. The conversion factor is based on the annual percentage increase or decrease in the average weekly wage, as defined in ORS 656.211.

(4) "Delivered" means physical delivery to the Workers' Compensation Division during regular business hours.

(5) "Director" means the director of the Department of Consumer and Business Services, or the director's delegate for the matter.

(6) "Division" refers to the Workers' Compensation Division of the Department of Consumer and Business Services.

(7) "Employer at injury" means an employer in whose employ the worker sustained the compensable injury or occupational disease.

(8) "Filed" means mailed, faxed, e-mailed, delivered, or otherwise submitted to the division in a method allowable under these rules.

(9) "Insurer" means the State Accident Insurance Fund, an insurer authorized under ORS chapter 731 to transact workers' compensation insurance in Oregon, or a self-insured employer. A vocational assistance provider acting as the insurer's delegate may provide notices and warnings required by OAR 436-120.

(10) "Likely eligible" means the worker will be unable to return to regular or other suitable work with the employer-at-injury or aggravation or is unable to perform all of the duties of the regular or suitable work and it is reasonable to believe that the barriers are caused by the injury or aggravation.

(11) "Mailed" means postmarked to the last known address.

(12) "Permanent employment" is a job with no projected end date or a job that had no projected end date at time of hire. Permanent employment may be year-round or seasonal.

(13) "Physical demand characteristics of work" strength rating: The physical demands strength rating reflects the estimated overall strength requirements of the job, which are considered to be important for average, successful work performance. The following definitions are used: "occasionally" is an activity or condition that exists up to 1/3 of the time; "frequently" is an activity or condition that exists from 1/3 to 2/3 of the time; "constantly" is an activity or condition that exists 2/3 or more of the time.

(a) Sedentary work (S): Exerting up to 10 pounds of force occasionally or a negligible amount of force frequently to lift, carry, push, pull, or otherwise move objects, including the human body. Sedentary work involves sitting most of the time, but may involve walking or standing for brief periods of time. Jobs are sedentary if walking and standing are required only occasionally and all other sedentary criteria are met.

(b) Light work (L): Exerting up to 20 pounds of force occasionally, or up to 10 pounds of force frequently, or a negligible amount of force constantly to move objects. Physical demand requirements are in excess of those for sedentary work. Even though the weight lifted may be only a negligible amount, a job should be rated light work:

(A) When it requires walking or standing to a significant degree;

(B) When it requires sitting most of the time but entails pushing or pulling of arm or leg controls; or

(C) When the job requires working at a production rate pace entailing the constant pushing or pulling of materials even though the weight of those materials is negligible.

NOTE: The constant stress and strain of maintaining a production rate pace, especially in an industrial setting, can be and is physically demanding of a worker even though the amount of force exerted is negligible.

(c) Medium work (M): Exerting 20 to 50 pounds of force occasionally, or 10 to 25 pounds of force frequently, or greater than negligible up to 10 pounds of force constantly to move objects. Physical demand requirements are in excess of those for light work.

(d) Heavy work (H): Exerting 50 to 100 pounds of force occasionally, or 25 to 50 pounds of force frequently, or 10 to 20 pounds of force constantly to move objects. Physical demand requirements are in excess of those for medium work.

(e) Very heavy (VH): Exerting in excess of 100 pounds of force occasionally, or in excess of 50 pounds of force frequently, or in excess of 20 pounds of force constantly to move objects. Physical demand requirements are in excess of those for heavy work.

(14) "Reasonable cause" may include, but is not limited to, a medically documented limitation in a worker's activities due to illness or medical condition of the worker or the worker's family, financial hardship, incarceration for less than six months, or circumstances beyond the reasonable control of the worker. "Reasonable cause" for failure to provide information or participate in activities related to vocational assistance will be determined based upon individual circumstances of the case.

(15) "Reasonable labor market": An occupation can be said to have reasonable employment opportunities if competitively qualified workers can expect to find equivalent jobs in the occupation within a reasonable period of time. A reasonable period of time, for workers in the majority of occupations, would be the six months that they could collect regular unemployment insurance benefits, if they were entitled to them.

(16) "Regular employment" means the employment the worker held at the time of the injury or at the time of the claim for aggravation, whichever gave rise to the potential eligibility for vocational assistance; or, for a worker not employed at the time of aggravation, the employment the worker held on the last day of work prior to the aggravation claim. If the basis for potential eligibility is a reopening to process a newly accepted condition, "regular employment" is the employment the worker held at the time of the injury; when the condition arose after claim closure, "regular employment" is determined as if it were an aggravation claim.

(17) "Substantial handicap to employment," as determined under OAR 436-120-0340, means the worker, because of the injury or aggravation, lacks the necessary physical capacities, knowledge, skills and abilities to be employed in suitable employment. "Knowledge," "skills," and "abilities" have meanings as follows:

(a) "Knowledge" means an organized body of factual or procedural information derived from the worker's education, training, and experience.

(b) "Skills" means the demonstrated mental and physical proficiency to apply knowledge.

(c) "Abilities" means the cognitive, psychological, and physical capability to apply the worker's knowledge and skills.

(18) "Suitable employment" or "suitable job" means employment or a job:

(a) For which the worker has the necessary physical capacities, knowledge, skills and abilities;

(b) Located where the worker customarily worked, or within reasonable commuting distance of the worker's residence. A reasonable commuting distance is no more than 50 miles one-way modified by other factors including, but not limited to:

(A) Wage of the job. A low wage may justify a shorter commute;

(B) The pre-injury commute;

(C) The worker's physical capacities, if they restrict the worker's ability to sit or drive for 50 miles;

(D) Commuting practices of other workers who live in the same geographic area; and

(E) The distance from the worker's residence to the nearest cities or towns that offer employment opportunities;

(c) That pays or would average on a year-round basis a suitable wage as defined in section (19) of this rule;

(d) That is permanent. Temporary work is suitable if the worker's job at injury was temporary; and the worker has transferable skills to earn, on a year-round basis, a suitable wage as defined in section (19) of this rule;

(e) For which a reasonable labor market as described under OAR 436-120-0340 is documented to exist; and

(f) That is modified or new employment resulting from an employer at injury activated use of the Preferred Worker Program, under OAR 436-110:

(A) Nine months from the effective date of the premium exemption if there are no worksite modifications, or

(B) Twelve months from the date the department determines the worksite modification is complete, or

(C) If the worker is terminated for cause, or

(D) If the worker voluntarily resigns for a reason unrelated to the work injury.

(19) "Suitable wage" means:

(a) For the purpose of determining eligibility for vocational assistance, a wage at least 80 percent of the adjusted weekly wage as defined in OAR 436-120-0007.

(b) For the purpose of providing or ending vocational assistance, a wage as close as possible to 100 percent of the adjusted weekly wage. This wage may be considered suitable if less than 80 percent of the adjusted weekly wage, if the wage is as close as possible to the adjusted weekly wage.

(20) "Training" means a vocational rehabilitation service provided to a worker who is enrolled and actively engaged in an approved "Return-to-Work Plan; Training" as documented on Form 1081.

(21) "Transferable skills" means the knowledge and skills demonstrated in past training or employment that make a worker employable in suitable new employment. More general characteristics such as aptitudes or interests do not, by themselves, constitute transferable skills.

(22) "Vocational assistance" means any of the services, goods, allowances, and temporary disability compensation under these rules to assist an eligible worker return to work. This does not include activities for determining a worker's eligibility for vocational assistance.

(23) "Vocational assistance provider" means an insurer or other public or private organization, registered under these rules to provide vocational assistance to injured workers.

Stat. Auth.: ORS 656.340(9) & 656.726(4)

Stats. Implemented: ORS 656.340

Hist.: WCB 7-1966, f. & ef. 6-30-66;WCB 6-1973, f. 12-20-73, ef. 1-11-74; WCB 45-1974(Temp), f. & ef. 11-5-74; WCD 4-1975(Admin), f. 2-6-75, ef. 2-25-75; WCB 1-1976, f. 3-29-76, ef. 4-1-76; WCD 3-1977(Admin)(Temp), f. 9-29-77, ef. 10-4-77; WCD 1-1978(Admin), f. & ef. 2-1-78; WCD 6-1980(Admin), f. 5-22-80, ef. 6-1-80; WCD 4-1981(Admin), f. 12-4-81, ef. 1-1-82; WCD 11-1982(Admin)(Temp), f. 12-29-82, ef. 1-1-83; WCD 2-1983(Admin), f. & ef. 6-30-83; WCD 5-1983(Admin), f. 12-14-83, ef. 1-1-84; Renumbered from 436-061-0005, 5-1-85; WCD 7-1985(Admin), f. 12-12-85, ef. 1-1-86;

WCD 11-1987, f. 12-17-87, ef. 1-1-88; WCD 10-1994, f. 11-1-94, cert. ef. 1-1-95; WCD 6-1996, f. 2-6-96, cert. ef. 3-1-96; WCD 23-1996, f. 12-13-96, cert. ef. 2-1-97; WCD 6-2000, f. 4-27-00, cert. ef. 6-1-00; WCD 4-2001, f. 4-13-01, cert. ef. 5-15-01; WCD 14-2001(Temp), f. 12-17-01, cert. ef. 1-2-02 thru 6-30-02; WCD 7-2002, f. 5-30-02, cert. ef. 7-1-02; WCD 6-2005, f. 6-9-05, cert. ef. 7-1-05; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10; WCD 5-2010, f. 9-15-10, cert. ef. 11-15-10; WCD 5-2012, f. 10-3-12, cert. ef. 11-1-12; WCD 1-2015, f. 1-29-15, cert. ef. 3-1-15

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Rule Caption: Recognition of preexisting conditions; effects of compensable injury versus accepted conditions
Adm. Order No.: WCD 2-2015
Filed with Sec. of State: 2-12-2015
Certified to be Effective: 3-1-15
Notice Publication Date: 12-1-2014
Rules Amended: 436-030-0003
Subject: The agency has amended OAR 436-030, Claim Closure and Reconsideration, rule 0003, "Applicability of Rules." Except as provided in section (3) of this rule, OAR 436-030 applies to all claims closed on or after March 1, 2015.
Rules Coordinator: Fred Bruyns—(503) 947-7717

436-030-0003
Applicability of Rules

(1) Except as provided in section (3) of this rule, these rules apply to all accepted claims for workers' compensation benefits and all claims closed on or after the effective date of these rules.

(2) All orders the division issues to carry out the statute and these rules are considered an order of the director.

(3) These rules carry out ORS 656.005, 656.214, 656.262, 656.268, 656.273, 656.278, and 656.325.

(a) For claims in which the worker became medically stationary before July 2, 1990, OAR 436-030-0020, 436-030-0030, and 436-030-0050 as adopted by WCD Administrative Order 13-1987 effective January 1, 1988 will apply.

(b) OAR 436-030-0055(3)(b), (3)(d), and (4)(a) apply to all claims with dates of injury on or after January 1, 2002.

Stat. Auth.: ORS 656.268 & 656.726
Stats. Implemented: ORS 656.005, 656.206, 656.210, 656.212, 656.214, 656.262, 656.268, 656.273, 656.278, 656.325, 656.726
Hist.: WCD 8-1978(Admin), f. 6-30-78, ef. 7-10-78; WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0003, 5-1-85; WCD 13-1987, f. 12-18-87, ef. 1-1-88; WCD 5-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 31-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 5-1991(Temp), f. 8-20-91, cert. ef. 9-1-91; WCD 5-1992, f. 1-17-92, cert. ef. 2-20-92; WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95; WCD 8-1996, f. 2-14-96, cert. ef. 2-17-96; WCD 17-1997, f. 12-22-97, cert. ef. 1-15-98; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 12-2000(Temp), f. 12-22-00, cert. ef. 1-1-01 thru 6-29-01; Administrative correction 11-20-01; WCD 10-2001, f. 11-16-01, cert. ef. 1-1-02; WCD 1-2002(Temp), f. & cert. ef. 1-15-02 thru 7-13-02; WCD 4-2002, f. 4-5-02, cert ef. 4-8-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03; WCD 2-2004, f. 2-19-04 cert. ef. 2-29-04; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08; WCD 3-2009, f. 12-1-09, cert. ef. 1-1-10; WCD 5-2011, f. 11-18-11, cert. ef. 1-1-12; WCD 2-2015, f. 2-12-15

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Department of Environmental Quality
Chapter 340

Rule Caption: WQ Permit Fees — 2014 Increase
Adm. Order No.: DEQ 4-2015
Filed with Sec. of State: 2-3-2015
Certified to be Effective: 2-3-15
Notice Publication Date: 6-1-2014
Rules Amended: 340-071-0140
Subject: DEQ is re-filing this previously adopted and filed rule only to correct a clerical error in Table 9F that occurred in the filing process.

Short summary

Effective December 1, 2014, these DEQ rules increase water quality fees by 2.9 percent for individuals, businesses and government agencies that hold the following permits:

National Pollutant Discharge Elimination System permits.

Water Pollution Control Facility permits.

Water Pollution Control Facility permits specific to onsite septic systems.

The proposed fee increases would not affect fees for the following permits:

Suction dredge discharge.

- 700-PM permit fees are set in Oregon statute. DEQ rules cannot change this law.

Graywater:

- Water Pollution Control Facility permits 2401 and 2402 for graywater use.

Small off-stream mining operations:

- Water Pollution Control Facility permit 600. These permits do not have application fees or annual fees.

Background:

ORS 468B.051 allows water quality permit fee increases.

DEQ has taken these actions concerning fee increases:

In 2002 DEQ convened the Blue Ribbon Committee on Wastewater Permitting to recommend improvements to DEQ's water quality permit program. The committee included industry, environmental and local government representatives.

In 2004 the committee published a report containing recommendations. These included increasing fee revenue by no more than 3 percent each year to address increasing program costs.

In 2005 the Oregon Legislature adopted the committee's recommended annual fee increase into chapter 468B of Oregon Revised Statutes.

DEQ implemented fee increases each year between 2007 and 2013, excluding 2009.

The Water Quality Permitting program is responsible for:

Issuing Permits. These permits cover a wide range of activities such as:

- Municipal wastewater treatment.
- Industrial wastewater treatment.
- Stormwater treatment.
- Fish hatcheries.
- Suction dredge mining.
- Seafood processing.
- Onsite sewage treatment.

Compliance and inspection:

- DEQ conducts inspections and reviews discharge monitoring reports that permit holders submit.

Enforcement:

- DEQ may take enforcement action against permit holders that do not comply with their permits' terms.

Pretreatment:

- Those facilities that receive wastewater from "significant industrial users" must have pretreatment programs. The law requires DEQ to oversee these programs

Plan Review:

- Municipal wastewater treatment facilities that wish to upgrade their facilities must submit plans for review.

Regulated parties:

The proposed fee increases would affect:

Parties that currently hold a permit.

Parties that apply for modifications to or transfer of these permits.

Any party that applies for a new permit.

Any party that needs technical assistance related to these permits.

Request for other options:

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

Rules Coordinator: Meyer Goldstein—(503) 229-6478

340-071-0140
Onsite System Fees

(1) This rule establishes the fees for site evaluations, permits, reports, variances, licenses, and other services DEQ provides under this division.

(2) Table 9A lists the site evaluation and existing system evaluation fees. [Table not included. See ED. NOTE.]

(3) Tables 9B and 9C list the permitting fees for systems not subject to WPCF permits. Online submittals for annual report evaluation fees may apply upon DEQ implementation of online reporting. [Table not included. See ED. NOTE.]

(4) WPCF permit fees. Fees in this section apply to WPCF permits issued pursuant to OAR 340-071-0162. Table 9D lists the WPCF permit fees. [Table not included. See ED. NOTE.]

(5) Table 9F lists the innovative, Alternative Technology and Material Plan Review fees. [Table not included. See ED. NOTE.]

(6) Table 9E lists the Sewage Disposal Service License and Truck Inspection fees. [Table not included. See ED. NOTE.]

(7) Compliance Recovery Fee. When a violation results in an application in order to comply with the requirements in this division, the agent may require the applicant to pay a compliance recovery fee in addition to the application fee. The amount of the compliance recovery fee shall not exceed the application fee. Such violations include but are not limited to installing a system without a permit, performing sewage disposal services without a license, or failure to obtain an authorization notice when it is required.

(8) Land Use Review Fee. Land use review fees are listed in Table 9C and are assessed when an agent review is required in association with a land use action or building permit application and no approval is otherwise required in the division.

(9) Contract county fee schedules.

(a) Each county having an agreement with DEQ under ORS 454.725 must adopt a fee schedule for services rendered and permits issued. The county fee schedule may not include DEQ's surcharge established in section (10) of this rule unless identified as a DEQ surcharge.

(b) A copy of the fee schedule and any subsequent amendments to the schedule must be submitted to DEQ.

(c) Fees may not exceed actual costs for efficiently conducted services.

(10) DEQ surcharge.

(a) To offset a portion of the administrative and program oversight costs of the statewide onsite wastewater management program, DEQ and contract counties must levy a surcharge for each site evaluation, report permit, and other activity for which an application is required in this division. The surcharge fee is listed in Table 9F. This surcharge does not apply to pumper truck inspections, annual report evaluation fees, or certification of installers or maintenance providers. [Table not included. See ED. NOTE.]

(b) Proceeds from surcharges collected by DEQ and contract counties must be accounted for separately. Each contract county must forward the proceeds to DEQ in accordance with its agreement with the DEQ.

(11) Refunds. DEQ may refund all or a portion of a fee accompanying an application if the applicant withdraws the application before any field work or other substantial review of the application has been done.

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

Stat. Auth.: ORS 454.625, 468.020 & 468.065(2)

Stats. Implemented: ORS 454.745, 468.065 & 468B.050

Hist.: DEQ 10-1981, f. & ef. 3-20-81; DEQ 19-1981, f. 7-23-81, ef. 7-27-81; DEQ 5-1982, f. & ef. 3-9-82; DEQ 8-1983, f. & ef. 5-25-83; DEQ 9-1984, f. & ef. 5-29-84; DEQ 13-1986, f. & ef. 6-18-86; DEQ 15-1986, f. & ef. 8-6-86; DEQ 6-1988, f. & cert. ef. 3-17-88; DEQ 11-1991, f. & cert. ef. 7-3-91; DEQ 18-1994, f. 7-28-94, cert. ef. 8-1-94; DEQ 27-1994, f. & cert. ef. 11-15-94; DEQ 12-1997, f. & cert. ef. 6-19-97; Administrative correction 1-28-98; DEQ 8-1998, f. & cert. ef. 6-5-98; DEQ 16-1999, f. & cert. ef. 12-29-99; Administrative correction 2-16-00; DEQ 9-2001(Temp), f. & cert. ef. 7-16-01 thru 12-28-01; DEQ 14-2001, f. & cert. ef. 12-26-01; DEQ 2-2002, f. & cert. ef. 2-12-02; DEQ 11-2004, f. 12-22-04, cert. ef. 3-1-05; DEQ 7-2008, f. 6-27-08, cert. ef. 7-1-08; DEQ 10-2009, f. 12-28-09, cert. ef. 1-4-10; DEQ 7-2010, f. 8-27-10, cert. ef. 9-1-10; DEQ 9-2011, f. & cert. ef. 6-30-11; DEQ 6-2012, f. 10-31-12, cert. ef. 11-1-12; DEQ 8-2013, f. 10-23-13, cert. ef. 11-1-13; DEQ 14-2013, f. 12-20-13, cert. ef. 1-2-14; DEQ 11-2014, f. & cert. ef. 10-15-14; DEQ 13-2014, f. 11-14-14, cert. ef. 12-1-14; DEQ 4-2015, f. & cert. ef. 2-3-15

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Department of Fish and Wildlife
Chapter 635

Rule Caption: 2015 Harvest Quota for Commercial Roe Herring Fishery in Yaquina Bay Set.
Adm. Order No.: DFW 7-2015(Temp)
Filed with Sec. of State: 1-16-2015
Certified to be Effective: 1-16-15 thru 4-15-15
Notice Publication Date:
Rules Amended: 635-004-0505
Subject: This amended rule sets the 2015 harvest quota for the Yaquina Bay commercial roe herring fishery for the period from January 1 through April 15, 2015 at 8.8 tons. The yearly harvest quota for the Yaquina Bay commercial roe herring fishery shall not exceed 20% of the available spawning biomass as established in the Yaquina River Basin Fish Management Operating Principles and Objectives described in OAR 635-500-0665(2). Only fishers with a limited entry permit issued pursuant to ORS 508.765 may participate in this fishery.
Rules Coordinator: Michelle Tate—(503) 947-6044

635-004-0505
Roe-Herring Season and Harvest Limit

(1) The open season for the taking of herring for roe in Yaquina Bay is January 1 through April 15.

(2) The yearly commercial harvest cap for the Yaquina Bay commercial roe herring fishery shall not exceed 20% of the available spawning biomass as established in the Yaquina River Basin Fish Management Operating Principles and Objectives 635-500-0665(2). The available spawning biomass shall be determined by the ODFW Fish Division's Marine Resources Program. The harvest quota for the Yaquina Bay commercial roe herring fishery during the period January 1 through April 15, 2015 is 8.8 tons. Only fishers with a limited entry permit issued pursuant to ORS 508.765 may participate in this fishery.

(3) The factor used to convert an equivalent amount of "whole fish" resource in the Yaquina Bay commercial roe herring fishery during the period of January 1 through April 15 to the equivalent amount of herring eggs on kelp fishery is 0.2237.

(4) During the period January 1 through April 15 it is unlawful to:

(a) Fish commercially from midnight Friday through midnight Sunday with nets; and

(b) Use any fishing gear or method of harvest for the taking of herring other than: a purse seine with a maximum length of 50 fathoms (300 feet), defined as the maximum distance from the first to last pursing rings on the purse line; lampara net; hook and line; or eggs-on-kelp method.

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 134-2013(Temp), f. 12-11-13, cert. ef. 1-1-14 thru 4-15-14; Administrative correction, 5-21-14; DFW 7-2015(Temp), f. & cert. ef. 1-16-15 thru 4-15-15

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Rule Caption: 2015 Commercial Smelt Season Set for the Columbia River
Adm. Order No.: DFW 8-2015(Temp)
Filed with Sec. of State: 1-29-2015
Certified to be Effective: 2-2-15 thru 2-28-15
Notice Publication Date:
Rules Amended: 635-042-0130
Subject: The amended rule sets a commercial gill net fishing season for smelt in Zones 1-3 of the Columbia River. The fishery consists of 7-hour fishing periods beginning 7:00 a.m. through 2:00 p.m., Mondays and Thursdays of each week from February 2 through February 26, 2015. Revisions are consistent with the action taken January 28, 2015 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

635-042-0130
Smelt Season

(1) Smelt may be taken for commercial purposes from the Columbia River in Zones 1 through 3, Mondays and Thursdays from 7:00 a.m. to 2:00 p.m. (7 hrs.) during the period from February 2 through February 26, 2015.

(2) It is *unlawful* to use any gear other than gill nets for the taking of smelt in the Columbia River. Mesh size may not exceed two inches stretched. Nets may consist of, but are not limited to, monofilament webbing.

Stat. Auth.: ORS 183.325, 506.109 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 2-1985, f. & ef. 1-30-85; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 9-1994, f. 2-14-94, cert. ef. 2-15-94; FWC 15-1995, f. & cert. ef. 2-15-95; DFW 82-1998(Temp), f. 10-6-98, cert. ef. 10-7-98 thru 10-23-98; DFW 95-1999(Temp), f. 12-22-99, cert. ef. 12-26-99 thru 1-21-00; DFW 3-2000, f. & cert. ef. 1-24-00; DFW 8-2000(Temp), f. 2-18-00, cert. ef. 2-20-00 thru 2-29-00; Administrative correction 3-17-00; DFW 80-2000(Temp), f, 12-22-00, cert. ef. 1-1-01 thru 3-31-01; DFW 10-2001(Temp), f. & cert. ef. 3-6-01 thru 3-31-01; Administrative correction 6-21-01; DFW 115-2001(Temp), f. 12-13-01, cert. ef. 1-1-02 thru 3-31-02; DFW 9-2002, f. & cert. ef. 2-1-02; DFW 11-2002(Temp), f. & cert. ef. 2-8-02 thru 8-7-02; DFW 134-2002(Temp), f. & cert. ef. 12-19-02 thru 4-1-03; DFW 131-2003(Temp), f. 12-26-03, cert. ef. 1-1-04 thru 4-1-04; DFW 21-2004(Temp), f. & cert. ef. 3-18-04 thru 7-31-04; Administrative correction 8-19-04; DFW 130-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 4-1-05; DFW 8-2005(Temp), f. & cert. ef. 2-24-05 thru 4-1-05; Administrative correction 4-20-05; DFW 145-2005(Temp), f. 12-21-05, cert. ef. 1-1-06 thru 3-31-06; DFW 11-2006(Temp), f. & cert. ef. 3-9-06 thru 7-31-06; Administrative correction 8-22-06; DFW 131-2006(Temp), f. 12-20-06, cert. ef. 1-1-07 thru 6-29-07; DFW 13-2007(Temp), f. & cert. ef. 3-6-07 thru 9-1-07; Administrative correction 9-16-07; DFW 125-2007(Temp), f. 11-29-07, cert. ef. 12-1-07 thru 5-28-08; DFW 135-2007(Temp), f. 12-28-07, cert. ef. 1-1-08 thru 6-28-08; DFW 10-2008, f. & cert. ef. 2-11-08;

DFW 148-2008(Temp), f. 12-19-08, cert. ef. 1-1-09 thru 6-29-09; DFW 20-2009, f. & cert. ef. 2-26-09; DFW 151-2009(Temp), f. 12-22-09, cert. ef. 1-1-10 thru 3-31-10; DFW 10-2010(Temp), f. 2-4-10, cert. ef. 2-8-10 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 156-2010(Temp), f. 11-23-10, cert. ef. 12-1-10 thru 3-31-11; DFW 23-2011, f. & cert. ef. 3-21-11; DFW 7-2014(Temp), f. 2-5-14, cert. ef. 2-10-14 thru 3-31-14; Administrative correction, 4-24-14; DFW 8-2015(Temp), f. 1-29-15, cert. ef. 2-2-15 thru 2-28-15

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Rule Caption: 2015 Treaty Indian Winter Commercial Fisheries in Zone 6 of the Columbia River Set
Adm. Order No.: DFW 9-2015(Temp)
Filed with Sec. of State: 1-29-2015
Certified to be Effective: 2-2-15 thru 3-31-15
Notice Publication Date:
Rules Amended: 635-041-0065
Subject: This amended rule sets both the platform hook-and-line and gill net Treaty Indian winter commercial seasons for 2015. These modifications allow commercial sales, in Oregon, of fish caught in Bonneville, The Dalles, and John Day pools by tribal fishers beginning February 2, 2015. Modifications are consistent with action taken January 28, 2015 by the Oregon and Washington Departments of Fish and Wildlife, in cooperation with the Columbia River Treaty Tribes, in a meeting of the Columbia River Compact.
Rules Coordinator: Michelle Tate—(503) 947-6044

635-041-0065
Winter Salmon Season

(1) Salmon, steelhead, shad, walleye, catfish, bass, yellow perch, and carp may be taken for commercial purposes in the Columbia River Treaty Indian platform and hook-and-line fisheries from:

(a) The Dalles and John Day pools in the Columbia River Treaty Indian hook-and-line fisheries 6:00 a.m. Monday, February 2 through 6:00 p.m. Friday, February 20, 2015; and

(b) The Bonneville Pool, 6:00 a.m. Monday, February 2 through 5:59 a.m. Monday, February 23, 2015.

(c) Gear used in the fisheries described above is restricted to subsistence fishing gear which includes hoopnets, dipnets, and rod and reel with hook-and-line.

(d) Salmon, steelhead, shad, yellow perch, bass, walleye, catfish and carp landed during any open fishing period may be sold at any time or retained for subsistence purposes. White sturgeon between 43 and 54 inches in fork length taken from The Dalles and John Day pools may be sold or kept for subsistence purposes. White sturgeon between 38 and 54 inches in fork length taken from the Bonneville Pool may not be sold but msy be kept for subsistence purposes. Live release of all undersize or oversize white sturgeon is required.

(2) Salmon, steelhead, shad, walleye, catfish, bass, yellow perch, carp and white sturgeon may be taken for commercial purposes in the Columbia River Treaty Indian gill net fisheries from:

(a) The Dalles and John Day pools beginning 6:00 a.m. Monday, February 2 through 6:00 p.m. Friday, February 20, 2015; and

(b) The Bonneville Pool beginning 6:00 a.m. Monday, February 23 through 6:00 p.m. Saturday, March 21, 2015.

(c) Gear is restricted to gill nets. There are no mesh size restrictions.

(d) Salmon, steelhead, shad, yellow perch, bass, walleye, catfish and carp landed during any open fishing period may be sold at any time or retained for subsistence purposes. White sturgeon between 43 and 54 inches in fork length taken from The Dalles and John Day pools and white sturgeon between 38 and 54 inches in fork length taken from the Bonneville Pool may be sold or kept for subsistence purposes. Live release of all undersize or oversize white sturgeon is required.

(3) Closed areas as set forth in OAR 635-041-0045 are in effect.

Stat. Auth.: ORS 496.118 & 506.119
Stats. Implemented: ORS 506.109, 506.129 & 507.030
Hist.: FWC 89, f. & ef. 1-28-77; FWC 2-1978, f. & ef. 1-31-78; FWC 7-1978, f. & ef. 2-21-78; FWC 2-1979, f. & ef. 1-25-79; FWC 13-1979(Temp), f. & ef. 3-30-1979, Renumbered from 635-035-0065; FWC 6-1980, f. & ef. 1-28-80; FWC 1-1981, f. & ef. 1-19-81; FWC 6-1982, f. & ef. 1-28-82; FWC 2-1983, f. 1-21-83, ef. 2-1-83; FWC 4-1984, f. & ef. 1-31-84; FWC 2-1985, f. & ef. l-30-85; FWC 4-1986(Temp), f. & ef. 1-28-86; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 3-1988(Temp), f. & cert. ef. 1-29-88; FWC 10-1988, f. & cert. ef. 3-4-88; FWC 5-1989, f. 2-6-89, cert. ef. 2-7-89; FWC 13-1989(Temp), f. & cert. ef. 3-21-89; FWC 15-1990(Temp), f. 2-8-90, cert. ef. 2-9-90; FWC 20-1990, f. 3-6-90, cert. ef. 3-15-90; FWC 13-1992(Temp), f. & cert. ef. 3-5-92; FWC 7-1993, f. & cert. ef. 2-1-93; FWC 12-1993(Temp), f. & cert. ef. 2-22-93; FWC 18-1993(Temp), f. & cert. ef. 3-2-93; FWC 7-1994, f. & cert. ef. 2-1-94; FWC 11-1994(Temp), f. & cert. ef. 2-28-94; FWC 9-1995, f. & cert. ef. 2-1-95; FWC 19-1995(Temp), f. & cert. ef. 3-3-95; FWC 5-1996, f. & cert. ef. 2-7-96; FWC 4-1997, f. & cert. ef. 1-30-97; DFW 8-1998(Temp), f. & cert. ef. 2-5-98 thru 2-28-98; DFW 14-1998, f. & cert. ef. 3-3-98; DFW 20-1998(Temp), f. & cert. ef. 3-13-98 thru 3-20-98; DFW 23-1998(Temp), f. & cert. ef. 3-20-98 thru 6-30-98; DFW 2-1999(Temp), f. & cert. ef. 2-1-99 through 2-19-99; DFW 9-1999, f. & cert. ef. 2-26-99; DFW 14-1999(Temp), f. 3-5-99, cert. ef. 3-6-99 thru 3-20-99; Administrative correction 11-17-99; DFW 6-2000(Temp), f. & cert. ef. 2-1-00 thru 2-29-00; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 19-2000, f. 3-18-00, cert. ef. 3-18-00 thru 3-21-00; DFW 26-2000(Temp), f. 5-4-00, cert. ef. 5-6-00 thru 5-28-00; Administrative correction 5-22-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 14-2001(Temp), f. 3-12-01, cert. ef. 3-14-01 thru 3-21-01; Administrative correction 6-20-01; DFW 9-2002, f. & cert. ef. 2-1-02; DFW 11-2002(Temp), f. & cert. ef. 2-8-02 thru 8-7-02; DFW 17-2002(Temp), f. 3-7-02, cert. ef. 3-8-02 thru 9-1-02; DFW 18-2002(Temp), f. 3-13-02, cert. ef. 3-15-02 thru 9-11-02; DFW 134-2002(Temp), f. & cert. ef. 12-19-02 thru 4-1-03; DFW 20-2003(Temp), f. 3-12-03, cert. ef. 3-13-03 thru 4-1-03; DFW 131-2003(Temp), f. 12-26-03, cert. ef. 1-1-04 thru 4-1-04; DFW 5-2004(Temp), f. 1-26-04, cert. ef. 2-2-04 thru 4-1-04; DFW 15-2004(Temp), f. 3-8-04, cert. ef. 3-10-04 thru 4-1-04; DFW 130-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 4-1-05; DFW 4-2005(Temp), f. & cert. ef 1-31-05 thru 4-1-05; DFW 18-2005(Temp), f. & cert. ef. 3-15-05 thru 3-21-05; Administrative correction 4-20-05; DFW 3-2006(Temp), f. & cert. ef. 1-27-06 thru 3-31-06; Administrative correction 4-19-06; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 14-2007(Temp), f. & cert. ef. 3-9-07 thru 9-4-07; DFW 15-2007(Temp), f. & cert. ef. 3-14-07 thru 9-9-07; Administrative correction 9-16-07; DFW 6-2008(Temp), f. 1-29-08, cert. ef. 1-31-08 thru 7-28-08; DFW 20-2008(Temp), f. 2-28-08, cert. ef. 2-29-08 thru 7-28-08; DFW 21-2008(Temp), f. & cert. ef. 3-5-08 thru 7-28-08; DFW 22-2008(Temp), f. 3-7-08, cert. ef. 3-10-08 thru 7-28-08; Administrative correction 8-21-08; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 6-2009(Temp), f. 1-30-09, cert. ef. 2-2-09 thru 8-1-09; DFW 11-2009(Temp), f. 2-13-09, cert. ef. 2-16-09 thru 7-31-09; DFW 22-2009(Temp), f. 3-5-09, cert. ef. 3-6-09 thru 7-31-09; Administrative correction 8-21-09; DFW 9-2010(Temp), f. & cert. ef. 2-3-10 thru 8-1-10; DFW 12-2010(Temp), f. 2-10-10, cert. ef. 2-11-10 thru 8-1-10; DFW 18-2010(Temp), f. 2-24-10, cert. ef. 2-26-10 thru 4-1-10; DFW 24-2010(Temp), f. 3-2-10, cert. ef. 3-3-10 thru 4-1-10; Administrative correction 4-21-10; DFW 8-2011(Temp), f. 1-31-11, cert. ef. 2-1-11 thru 4-1-11; DFW 9-2011(Temp), f. 2-9-11, cert. ef. 2-10-11 thru 4-1-11; DFW 23-2011, f. & cert. ef. 3-21-11; DFW 5-2012(Temp), f. 1-30-12, cert. ef. 2-1-12 thru 3-31-12; DFW 18-2012(Temp), f. 2-28-12, cert. ef. 2-29-12 thru 6-15-12; DFW 19-2012(Temp), f. 3-2-12, cert. ef. 3-5-12 thru 6-15-12; DFW 20-2012(Temp), f. & cert. ef. 3-5-12 thru 6-15-12; DFW 46-2012(Temp), f. 5-14-12, cert. ef. 5-15-12 thru 6-30-12; Administrative correction, 8-1-12; DFW 9-2013(Temp), f. 1-31-13, cert. ef. 2-1-13 thru 3-31-13; DFW 15-2013(Temp), f. 2-22-13, cert. ef. 2-27-13 thru 6-15-13; DFW 18-2013(Temp), f. 3-5-13, cert. ef. 3-6-13 thru 6-15-13; DFW 35-2013(Temp), f. & cert. ef. 5-21-13 thru 6-30-13; DFW 48-2013(Temp), f. 6-7-13, cert. ef. 6-8-13 thru 7-31-13; Administrative correction, 8-21-13; DFW 6-2014(Temp), f. 1-30-14, cert. ef. 2-1-14 thru 7-30-14; DFW 15-2014(Temp), f. 2-25-14, cert. ef. 2-26-14 thru 7-30-14; DFW 17-2014(Temp), f. 2-28-14, cert. ef. 3-1-14 thru 7-30-14; DFW 23-2014(Temp), f. 3-11-14, cert. ef. 3-12-14 thru 7-31-14; DFW 37-2014(Temp), f. & cert. ef. 5-6-14 thru 7-31-14; DFW 46-2014(Temp), f. 5-19-14, cert. ef. 5-20-14 thru 7-31-14; DFW 48-2014(Temp), f. 5-27-14, cert. ef. 5-28-14 thru 7-31-13; DFW 54-2014(Temp), f. 6-2-14, cert. ef. 6-3-14 thru 7-31-14; DFW 59-2014(Temp), f. 6-9-14, cert. ef. 6-10-14 thru 7-31-14; Administrative correction, 8-28-14; DFW 9-2015(Temp), f. 1-29-15, cert. ef. 2-2-15 thru 3-31-15

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Rule Caption: 2015 Commercial Winter, Spring, and Summer Fisheries for Columbia River Select Areas
Adm. Order No.: DFW 10-2015(Temp)
Filed with Sec. of State: 2-3-2015
Certified to be Effective: 2-9-15 thru 7-30-15
Notice Publication Date:
Rules Amended: 635-042-0145, 635-042-0160, 635-042-0170, 635-042-0180
Subject: These amended rules set seasons, area boundaries, gear regulations and allowable sales for winter, spring and summer commercial fisheries in the Columbia River Select Areas. Rule revisions are consistent with action taken January 28, 2015 by the Oregon and Washington Departments of Fish and Wildlife at a meeting of the Columbia River Compact.
Rules Coordinator: Michelle Tate—(503) 947-6044

635-042-0145
Youngs Bay Salmon Season

(1) Salmon and shad may be taken for commercial purposes during open 2015 fishing periods in waters of Youngs Bay as described below. Retention and sale of white sturgeon is prohibited.

(a) The 2015 open fishing periods are established in three segments categorized as the winter fishery, subsection (1)(a)(A); the spring fishery, subsection (1)(a)(B); and summer fishery, subsection (1)(a)(C), as follows:

(A) Winter Season: Open Mondays, Wednesdays, and Thursdays from February 9 through March 5 (12 days) open hours are from 6:00 a.m. to midnight (18 hours) on Mondays and Thursdays, and 6:00 a.m. to 6:00 p.m. (12 hours) on Wednesdays. Beginning March 9 the following open periods apply:

Monday, March 9 — 9:00 a.m.–1:00 p.m. (4 hrs.); Wednesday, March 11 — 11:00 a.m. –3:00 p.m. (4 hrs.);
Thursday, March 12 — 12:00 p.m. –4:00 p.m. (4 hrs.); Monday, March 16 — 4:00 p.m. –8:00 p.m. (4 hrs.);
Wednesday, March 18 — 6:00 p.m. –10:00 p.m. (4 hrs.); Thursday, March 19 — 7:00 p.m. –11:00 p.m. (4 hrs.);
Monday, March 23 — 9:00 a.m. –1:00 p.m. (4 hrs.); Wednesday, March 25 — 11:00 a.m. –3:00 p.m. (4 hrs.);
Thursday, March 26 — 12:00 p.m. –4:00 p.m. (4 hrs.); Monday, March 30 — 10:00 a.m. –2:00 p.m. (4 hrs.);

(B) Spring Season: Open during the following periods:

Tuesday, April 21 — 8:00 p.m.-Midnight (4 hrs.);
Thursday, April 23 — 9:00 p.m. –3:00 a.m. Friday, April 24 (6 hrs.);
Tuesday, April 28 — 7:00 p.m. –7:00 a.m. Wednesday, April 29 (12 hrs.);
Thursday, April 30 — 7:00 p.m. –7:00 a.m. Friday, May 1 (12 hrs.);
Monday, May 4 — 9:00 a.m. –3:00 a.m. Tuesday, May 5 (18 hrs.);
Wednesday, May 6 — 9:00 a.m. –9:00 p.m. (12 hrs.);
Thursday, May 7 — 9:00 a.m. –3:00 a.m. Friday, May 8 (18 hrs.); and
Noon Monday through Noon Friday (4 days/week) from May 11 through June 12 (20 days).

(C) Summer Season: Beginning June 16 the following open periods apply:

Noon Tuesday, June 16 through Noon Friday, June 19 (3 days);
Noon Mondays through Noon Fridays, June 22–July 3 (8 days);
Noon Monday, July 6 through Noon Thursday, July 9 (3 days); and
Noon Tuesdays through Noon Thursdays, July 14 through July 30 (6 days).

(b) For the winter fisheries, the waters of Youngs Bay from the Highway 101 Bridge upstream to the upper boundary markers at the confluence of the Klaskanine and Youngs rivers including the lower Walluski River upstream to the Highway 202 Bridge are open. Those waters southerly of the alternate Highway 101 Bridge (Lewis and Clark River) are closed. For the spring and summer fisheries the fishing area is identified as the waters of Youngs Bay from the Highway 101 Bridge upstream to the upper boundary markers at the confluence of the Klaskanine and Youngs rivers and includes th lower Walluski River upstream to Highway 202 Bridge and the lower Lewis and Clark River upstream to the overhead power lines immediately upstream of Barrett Slough.

(2) Gill nets may not exceed 1,500 feet (250 fathoms) in length and weight may not exceed two pounds per any fathom except the use of additional weights and/or anchors attached directly to the leadline is allowed upstream of markers located approximately 200 yards upstream of the mouth of the Walluski River during all Youngs Bay commercial fisheries and upstream of the alternate Highway 101 Bridge in the Lewis and Clark River during the spring and summer seasons. A red cork must be placed on the corkline every 25 fathoms as measured from the first mesh of the net. Red corks at 25-fathom intervals must be in color contrast to the corks used in the remainder of the net.

(a) It is unlawful to use a gill net having a mesh size that is less than 7 inches during the winter season. It is unlawful to use a gill net having a mesh size that is more than 9.75 inches during the spring and summer seasons.

(b) Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

(3) Non-resident commercial fishing and boat licenses are not required for Washington fishers participating in Youngs Bay commercial fisheries. A valid fishing and boat license issued by the state of Washington is considered adequate for participation in this fishery. The open area for non-resident commercial fishers includes all areas open for commercial fishing.

Stat. Auth.: ORS 183.325, 506.109 & 506.119
Stats. Implemented: ORS 506.129 & 507.030
Hist.: FWC 32-1979, f. & ef. 8-22-79; FWC 28-1980, f. & ef. 6-23-80; FWC 42-1980(Temp), f. & ef. 8-22-80; FWC 30-1981, f. & ef. 8-14-81; FWC 42-1981(Temp), f. & ef. 11-5-81; FWC 54-1982, f. & ef. 8-17-82; FWC 37-1983, f. & ef. 8-18-83; FWC 61-1983(Temp), f. & ef. 10-19-83; FWC 42-1984, f. & ef. 8-20-84; FWC 39-1985, f. & ef. 8-15-85; FWC 37-1986, f. & ef. 8-11-86; FWC 72-1986(Temp), f. & ef. 10-31-86; FWC 64-1987, f. & ef. 8-7-87; FWC 73-1988, f. & cert. ef. 8-19-88; FWC 55-1989(Temp), f. 8-7-89, cert. ef. 8-20-89; FWC 82-1990(Temp), f. 8-14-90, cert. ef. 8-19-90; FWC 86-1991, f. 8-7-91, cert. ef. 8-18-91; FWC 123-1991(Temp), f. & cert. ef. 10-21-91; FWC 30-1992(Temp), f. & cert. ef. 4-27-92; FWC 35-1992(Temp), f. 5-22-92, cert. ef. 5-25-92; FWC 74-1992 (Temp), f. 8-10-92, cert. ef. 8-16-92; FWC 28-1993(Temp), f. & cert. ef. 4-26-93; FWC 48-1993, f. 8-6-93, cert. ef. 8-9-93; FWC 21-1994(Temp), f. 4-22-94, cert. ef. 4-25-94; FWC 51-1994, f. 8-19-94, cert. ef. 8-22-94; FWC 64-1994(Temp), f. 9-14-94, cert. ef. 9-15-94; FWC 66-1994(Temp), f. & cert. ef. 9-20-94; FWC 27-1995, f. 3-29-95, cert. ef. 4-1-95; FWC 48-1995(Temp), f. & cert. ef. 6-5-95; FWC 66-1995, f. 8-22-95, cert. ef. 8-27-95; FWC 69-1995, f. 8-25-95, cert. ef. 8-27-95; FWC 8-1995, f. 2-28-96, cert. ef. 3-1-96; FWC 37-1996(Temp), f. 6-11-96, cert. ef. 6-12-96; FWC 41-1996, f. & cert. ef. 8-12-96; FWC 45-1996(Temp), f. 8-16-96, cert. ef. 8-19-96; FWC 54-1996(Temp), f. & cert. ef. 9-23-96; FWC 4-1997, f. & cert. ef. 1-30-97; FWC 47-1997, f. & cert. ef. 8-15-97; DFW 8-1998(Temp), f. & cert. ef. 2-5-98 thru 2-28-98; DFW 14-1998, f. & cert. ef. 3-3-98; DFW 18-1998(Temp), f. 3-9-98, cert. ef. 3-11-98 thru 3-31-98; DFW 60-1998(Temp), f. & cert. ef. 8-7-98 thru 8-21-98; DFW 67-1998, f. & cert. ef. 8-24-98; DFW 10-1999, f. & cert. ef. 2-26-99; DFW 52-1999(Temp), f. & cert. ef. 8-2-99 thru 8-6-99; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 66-2001(Temp), f. 8-2-01, cert. ef. 8-6-01 thru 8-14-01; DFW 76-2001(Temp), f. & cert. ef. 8-20-01 thru 10-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 15-2002(Temp), f. & cert. ef. 2-20-02 thru 8-18-02; DFW 82-2002(Temp), f. 8-5-02, cert. ef. 8-7-02 thru 9-1-02; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 17-2003(Temp), f. 2-27-03, cert. ef. 3-1-03 thru 8-1-03; DFW 32-2003(Temp), f. & cert. ef. 4-23-03 thru 8-1-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 37-2003(Temp), f. & cert. ef. 5-7-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 19-2004(Temp), f. & cert. ef. 3-12-04 thru 3-31-04; DFW 22-2004(Temp), f. & cert. ef. 3-18-04 thru 3-31-04; DFW 28-2004(Temp), f. 4-8-04 cert. ef. 4-12-04 thru 4-15-04; 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 79-2004(Temp), f. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 15-2005(Temp), f. & cert. ef. 3-10-05 thru 7-31-05; DFW 18-2005(Temp), f. & cert. ef. 3-15-05 thru 3-21-05; Administrative correction 4-20-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 28-2005(Temp), f. & cert. ef. 4-28-05 thru 6-16-05; DFW 37-2005(Temp), f. & cert. ef. 5-5-05 thru 10-16-05; DFW 40-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 46-2005(Temp), f. 5-17-05, cert. ef. 5-18-05 thru 10-16-05; DFW 73-2005(Temp), f. 7-8-05, cert. ef. 7-11-05 thru 7-31-05; DFW 77-2005(Temp), f. 7-14-05, cert. ef. 7-18-05 thru 7-31-05; DFW 85-2005(Temp), f. 8-1-05, cert. ef. 8-3-05 thru 12-31-05; DFW 109-2005(Temp), f. & cert. ef. 9-19-05 thru 12-31-05; DFW 110-2005(Temp), f. & cert. ef. 9-26-05 thru 12-31-05; DFW 116-2005(Temp), f. 10-4-05, cert. ef. 10-5-05 thru 12-31-05; DFW 120-2005(Temp), f. & cert. ef. 10-11-05 thru 12-31-05; DFW 124-2005(Temp), f. & cert. ef. 10-18-05 thru 12-31-05; Administrative correction 1-20-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 14-2006(Temp), f. 3-15-06, cert. ef. 3-16-06 thru 7-27-06; DFW 15-2006(Temp), f. & cert. ef. 3-23-06 thru 7-27-06; DFW 17-2006(Temp), f. 3-29-06, cert. ef. 3-30-06 thru 7-27-06; DFW 29-2006(Temp), f. & cert. ef. 5-16-06 thru 7-31-06; DFW 32-2006(Temp), f. & cert. ef. 5-23-06 thru 7-31-06; DFW 35-2006(Temp), f. & cert. ef. 5-30-06 thru 7-31-06; DFW 52-2006(Temp), f. & cert. ef. 6-28-06 thru 7-27-06; DFW 73-2006(Temp), f. 8-1-06, cert. ef. 8-2-06 thru 12-31-06; DFW 103-2006(Temp), f. 9-15-06, cert. ef. 9-18-06 thru 12-31-06; DFW 119-2006(Temp), f. & cert. ef. 10-18-06 thru 12-31-06; Administrative correction 1-16-07; 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 13-2007(Temp), f. & cert. ef. 3-6-07 thru 9-1-07; DFW 16-2007(Temp), f. & cert. ef. 3-14-07 thru 9-9-07; DFW 25-2007(Temp), f. 4-17-07, cert. ef. 4-18-07 thru 7-26-07; DFW 45-2007(Temp), f. 6-15-07, cert. ef. 6-25-07 thru 7-31-07; DFW 50-2007(Temp), f. 6-29-07, cert. ef. 7-4-07 thru 7-31-07; DFW 61-2007(Temp), f. 7-30-07, cert. ef. 8-1-07 thru 10-31-07; DFW 108-2007(Temp), f. 10-12-07, cert. ef. 10-14-07 thru 12-31-07; Administrative correction 1-24-08; DFW 6-2008(Temp), f. 1-29-08, cert. ef. 1-31-08 thru 7-28-08; DFW 16-2008(Temp), f. 2-26-08, cert. ef. 3-2-08 thru 8-28-08; DFW 30-2008(Temp), f. 3-27-08, cert. ef. 3-30-08 thru 8-28-08; DFW 48-2008(Temp), f. & cert. ef. 5-12-08 thru 8-28-08; DFW 58-2008(Temp), f. & cert. ef. 6-4-08 thru 8-31-08; DFW 85-2008(Temp), f. 7-24-08, cert. ef. 8-1-08 thru 12-31-08; DFW 108-2008(Temp), f. 9-8-08, cert. ef. 9-9-08 thru 12-31-08; Administrative correction 1-23-09; DFW 12-2009(Temp), f. 2-13-09, cert. ef. 2-15-09 thru 7-31-09; DFW 24-2009(Temp), f. 3-10-09, cert. ef. 3-11-09 thru 7-31-09; DFW 49-2009(Temp), f. 5-14-09, cert. ef 5-17-09 thru 7-31-09; DFW 89-2009(Temp), f. 8-3-09, cert. ef. 8-4-09 thru 12-31-09; DFW 107-2009(Temp), f. 9-2-09, cert. ef. 9-5-09 thru 10-31-09; Administrative correction 11-19-09; DFW 17-2010(Temp), f. & cert. ef. 2-22-10 thru 7-31-10; DFW 20-2010(Temp), f. & cert. ef. 2-26-10 thru 7-31-10; DFW 30-2010(Temp), f. 3-11-10, cert. ef. 3-14-10 thru 7-31-10; DFW 35-2010(Temp), f. 3-23-10, cert. ef. 3-24-10 thru 7-31-10; DFW 40-2010(Temp), f. & cert. ef. 4-1-10 thru 7-31-10; DFW 46-2010(Temp), f. & cert. ef. 4-21-10 thru 7-31-10; DFW 53-2010(Temp), f. & cert. ef. 5-4-10 thru 7-31-10; DFW 57-2010(Temp), f. & cert. ef. 5-11-10 thru 7-31-10; DFW 69-2010(Temp), f. & cert. ef. 5-18-10 thru 7-31-10; DFW 113-2010(Temp), f. 8-2-10, cert. ef. 8-4-10 thru 10-31-10; DFW 129-2010(Temp), f. & cert. ef. 9-10-10 thru 10-31-10; Administrative correction 11-23-10; DFW 12-2011(Temp), f. 2-10-11, cert. ef. 2-13-11 thru 7-29-11; DFW 23-2011, f. & cert. ef. 3-21-11; DFW 32-2011(Temp), f. 4-20-11, cert. ef. 4-21-11 thru 7-29-11; DFW 35-2011(Temp), f. & cert. ef. 4-28-11 thru 7-29-11; DFW 46-2011(Temp), f. & cert. ef. 5-12-11 thru 7-29-11; DFW 52-2011(Temp), f. & cert. ef. 5-18-11 thru 7-29-11; DFW 76-2011(Temp), f. 6-24-11, cert. ef. 6-27-11 thru 7-29-11; DFW 106-2011(Temp), f. 8-2-11, cert. ef. 8-3-11 thru 10-31-11; DFW 121-2011(Temp), f. 8-29-11, cert. ef. 9-5-11 thru 10-31-11; Administrative correction, 11-18-11; DFW 12-2012(Temp), f. 2-8-12, cert. ef. 2-12-12 thru 7-31-12; DFW 24-2012(Temp), f. 3-15-12, cert. ef. 3-18-12 thru 7-31-12; DFW 26-2012(Temp), f. 3-20-12, cert. ef. 3-21-12 thru 7-31-12; DFW 27-2012(Temp), f. 3-27-12, cert. ef. 3-29-12 thru 7-31-12; DFW 28-2012(Temp), f. 3-30-12, cert. ef. 4-1-12 thru 7-31-12; DFW 30-2012(Temp), f. 4-4-12, cert. ef. 4-5-12 thru 7-31-12; DFW 36-2012(Temp), f. 4-16-12, cert. ef. 4-19-12 thru 7-31-12; DFW 82-2012(Temp), f. 6-29-12, cert. ef. 7-2-12 thru 7-31-12; DFW 96-2012(Temp), f. 7-30-12, cert. ef. 8-1-12 thru 10-31-12; Administrative correction 11-23-12; DFW 11-2013(Temp), f. 2-8-13, cert. ef. 2-11-13 thru 7-31-13; DFW 22-2013(Temp), f. 3-12-13, cert. ef. 3-13-13 thru 7-31-13; DFW 34-2013(Temp), f. 5-14-13, cert. ef. 5-15-13 thru 7-31-13; DFW 36-2013(Temp), f. & cert. ef. 5-22-13 thru 7-31-13; DFW 44-2013(Temp), f. & cert. ef. 5-29-13 thru 7-31-13; DFW 82-2013(Temp), f. 7-29-13, cert. ef. 7-31-13 thru 10-31-13; DFW 87-2013(Temp), f. & cert. ef. 8-9-13 thru 10-31-13; DFW 109-2013(Temp), f. 9-27-13, cert. ef. 9-30-13 thru 10-31-13; Administrative correction, 11-22-13; DFW 8-2014(Temp), f. & cert. ef. 2-10-14 thru 7-31-14; DFW 18-2014(Temp), f. 3-7-14, cert. ef. 3-10-14 thru 7-30-14; DFW 25-2014(Temp), f. 3-13-14, cert. ef. 3-17-14 thru 7-31-14; DFW 32-2014(Temp), f. 4-21-14, cert. ef. 4-22-14 thru 7-31-14; DFW 35-2014(Temp), f. & cert. ef. 4-24-14 thru 7-31-14; DFW 39-2014(Temp), f. 5-7-14, cert. ef. 5-8-14 thru 7-31-14; DFW 45-2014(Temp), f. 5-14-14, cert. ef. 5-20-14 thru 7-31-14; DFW 51-2014(Temp), f. & cert. ef. 5-28-14 thru 7-31-14; DFW 55-2014(Temp), f. 6-3-14, cert. ef. 6-4-14 thru 7-31-14; DFW 104-2014(Temp), f. 8-4-14, cert. ef. 8-5-14 thru 10-31-14; Administrative correction 11-24-14; DFW 10-2015(Temp), f. 2-3-15, cert. ef. 2-9-15 thru 7-30-15

635-042-0160
Blind Slough and Knappa Slough Select Area Salmon Season

(1) Salmon and shad may be taken for commercial purposes during open 2015 fishing periods described as the winter fishery and the spring fishery in subsections (1)(a)(A) and (1)(a)(B) respectively, of this rule in those waters of Blind Slough and Knappa Slough. Retention and sale of white sturgeon is prohibited. The following restrictions apply:

(a) The open fishing periods are established in segments categorized as the winter fishery in Blind Slough and Knappa Slough in subsection (1)(a)(A), the winter fishery in Blind Slough only in subsection (1)(a)(B), and the spring fishery in Blind Slough and Knappa Slough in subsections (1)(a)(C) and (1)(a)(D). The seasons are open nightly from 7:00 p.m. to 7:00 a.m. the following morning (12 hours), as follows:

(A) Blind Slough and Knappa Slough: Monday and Thursday nights beginning Monday, February 9 through Friday, March 20 (12 nights);

(B) Blind Slough Only: Monday and Thursday nights beginning Monday, March 23 through Tuesday, March 31 (3 nights);

(C) Blind Slough and Knappa Slough Tuesday and Thursday nights beginning Tuesday, April 22 through Friday, May 1 (4 nights); and

(D) Blind Slough and Knappa Slough Monday and Thursday nights beginning Monday, May 4 through Friday, June 12 (12 nights).

(b) The fishing areas for the winter and spring seasons are:

(A) Blind Slough are those waters from markers at the mouth of Blind Slough upstream to markers at the mouth of Gnat Creek which is located approximately 1/2 mile upstream of the county road bridge.

(B) Knappa Slough are all waters bounded by a line from the northerly most marker at the mouth of Blind Slough westerly to a marker on Karlson Island downstream to a north-south line defined by a marker on the eastern end of Minaker Island to markers on Karlson Island and the Oregon shore.

(C) During the period from May 4 through June 12, the Knappa Slough fishing area extends downstream to the boundary lines defined by markers on the west end of Minaker Island to markers on Karlson Island and the Oregon shore.

(c) Gear restrictions are as follows:

(A) During the winter and spring fisheries, outlined above in subsections (1)(a)(A), (1)(a)(B), (1)(a)(C) and (1)(a)(D), gill nets may not exceed 100 fathoms in length with no weight limit on the lead line. The attachment of additional weight and/or anchors directly to the lead line is permitted.

(B) It is unlawful to use a gill net having a mesh size that is less than 7-inches during the winter fishery or greater than 9.75-inches during the spring fishery.

(C) Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

(2) Oregon licenses are required in the open waters upstream from the railroad bridge.

Stat. Auth.: ORS 183.325, 506.109 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 46-1996, f. & cert. ef. 8-23-96; FWC 48-1997, f. & cert. ef. 8-25-97; DFW 15-1998, f. & cert. ef. 3-3-98; DFW 67-1998, f. & cert. ef. 8-24-98; DFW 86-1998(Temp), f. & cert. ef. 10-28-98 thru 10-30-98; DFW 10-1999, f. & cert. ef. 2-26-99; DFW 48-1999(Temp), f. & cert. ef. 6-24-99 thru 7-2-99; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 65-2000(Temp) f. 9-22-00, cert. ef. 9-25-00 thru 12-31-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 84-2001(Temp), f. & cert. ef. 8-29-01 thru 12-31-01; DFW 86-2001, f. & cert. ef. 9-4-01 thru 12-31-01; DFW 89-2001(Temp), f. & cert. ef. 9-14-01 thru 12-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 14-2002(Temp), f. 2-13-02, cert. ef. 2-18-02 thru 8-17-02; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 19-2004(Temp), f. & cert. ef. 3-12-04 thru 3-31-04; DFW 22-2004(Temp), f. & cert. ef. 3-18-04 thru 3-31-04; DFW 28-2004(Temp), f. 4-8-04 cert. ef. 4-12-04 thru 4-15-04; 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 79-2004(Temp), f. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 95-2004(Temp), f. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 16-2005(Temp), f. & cert. ef. 3-10-05 thru 7-31-05; DFW 18-2005(Temp), f. & cert. ef. 3-15-05 thru 3-21-05; Administrative correction 4-20-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 28-2005(Temp), f. & cert. ef. 4-28-05 thru 6-16-05; DFW 37-2005(Temp), f. & cert. ef. 5-5-05 thru 10-16-05; DFW 40-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 85-2005(Temp), f. 8-1-05, cert. ef. 8-3-05 thru 12-31-05; DFW 109-2005(Temp), f. & cert. ef. 9-19-05 thru 12-31-05; DFW 110-2005(Temp), f. & cert. ef. 9-26-05 thru 12-31-05; DFW 116-2005(Temp), f. 10-4-05, cert. ef. 10-5-05 thru 12-31-05; DFW 120-2005(Temp), f. & cert. ef. 10-11-05 thru 12-31-05; DFW 124-2005(Temp), f. & cert. ef. 10-18-05 thru 12-31-05; Administrative correction 1-20-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 14-2006(Temp), f. 3-15-06, cert. ef. 3-16-06 thru 7-27-06; DFW 16-2006(Temp), f. 3-23-06 & cert. ef. 3-26-06 thru 7-27-06; DFW 18-2006(Temp), f. 3-29-06, cert. ef. 4-2-06 thru 7-27-06; DFW 20-2006(Temp), f. 4-7-06, cert. ef. 4-9-06 thru 7-27-06; DFW 32-2006(Temp), f. & cert. ef. 5-23-06 thru 7-31-06; DFW 35-2006(Temp), f. & cert. ef. 5-30-06 thru 7-31-06; DFW 75-2006(Temp), f. 8-8-06, cert. ef. 9-5-06 thru 12-31-06; DFW 92-2006(Temp), f. 9-1-06, cert. ef. 9-5-06 thru 12-31-06; DFW 98-2006(Temp), f. & cert. ef. 9-12-06 thru 12-31-06; DFW 103-2006(Temp), f. 9-15-06, cert. ef. 9-18-06 thru 12-31-06; DFW 119-2006(Temp), f. & cert. ef. 10-18-06 thru 12-31-06; Administrative correction 1-16-07; 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 13-2007(Temp), f. & cert. ef. 3-6-07 thru 9-1-07; DFW 25-2007(Temp), f. 4-17-07, cert. ef. 4-18-07 thru 7-26-07; DFW 61-2007(Temp), f. 7-30-07, cert. ef. 8-1-07 thru 10-31-07; DFW 108-2007(Temp), f. 10-12-07, cert. ef. 10-14-07 thru 12-31-07; Administrative correction 1-24-08; DFW 6-2008(Temp), f. 1-29-08, cert. ef. 1-31-08 thru 7-28-08; DFW 16-2008(Temp), f. 2-26-08, cert. ef. 3-2-08 thru 8-28-08; DFW 48-2008(Temp), f. & cert. ef. 5-12-08 thru 8-28-08; DFW 58-2008(Temp), f. & cert. ef. 6-4-08 thru 8-31-08; DFW 85-2008(Temp), f. 7-24-08, cert . ef. 8-1-08 thru 12-31-08; DFW 103(Temp), f. 8-26-08, cert. ef. 9-2-08 thru 10-31-08; DFW 108-2008(Temp), f. 9-8-08, cert. ef. 9-9-08 thru 12-31-08; Administrative correction 1-23-09; DFW 12-2009(Temp), f. 2-13-09, cert. ef. 2-15-09 thru 7-31-09; DFW 49-2009(Temp), f. 5-14-09, cert. ef 5-17-09 thru 7-31-09; DFW 89-2009(Temp), f. 8-3-09, cert. ef. 8-4-09 thru 12-31-09; DFW 107-2009(Temp), f. 9-2-09, cert. ef. 9-5-09 thru 10-31-09; Administrative correction 11-19-09; DFW 15-2010(Temp), f. 2-19-10, cert. ef. 2-21-10 thru 6-11-10; DFW 46-2010(Temp), f. & cert. ef. 4-21-10 thru 7-31-10; DFW 53-2010(Temp), f. & cert. ef. 5-4-10 thru 7-31-10; DFW 57-2010(Temp), f. & cert. ef. 5-11-10 thru 7-31-10; DFW 69-2010(Temp), f. & cert. ef. 5-18-10 thru 7-31-10; DFW 113-2010(Temp), f. 8-2-10, cert. ef. 8-4-10 thru 10-31-10; DFW 129-2010(Temp), f. & cert. ef. 9-10-10 thru 10-31-10; Administrative correction 11-23-10; DFW 12-2011(Temp), f. 2-10-11, cert. ef. 2-13-11 thru 7-29-11; DFW 23-2011, f. & cert. ef. 3-21-11; DFW 32-2011(Temp), f. 4-20-11, cert. ef. 4-21-11 thru 7-29-11; DFW 44-2011(Temp), f. & cert. ef. 5-11-11 thru 6-10-11; Administrative correction 6-28-11; DFW 113-2011(Temp), f. 8-10-11, cert. ef. 8-15-11 thru 10-31-11; Administrative correction, 11-18-11; DFW 12-2012(Temp), f. 2-8-12, cert. ef. 2-12-12 thru 7-31-12; DFW 104-2012(Temp), f. 8-6-12, cert. ef. 8-13-12 thru 10-31-12; Administrative correction 11-23-12; DFW 11-2013(Temp), f. 2-8-13, cert. ef. 2-11-13 thru 7-31-13; DFW 24-2013(Temp), f. & cert. ef. 3-21-13 thru 7-31-13; Administrative correction, 8-21-13; DFW 91-2013(Temp), f. 8-22-13, cert. ef. 8-26-13 thru 10-31-13; DFW 110-2013(Temp), f. 9-27-13, cert. ef. 9-30-13 thru 10-31-13; Administrative correction, 11-22-13; DFW 8-2014(Temp), f. & cert. ef. 2-10-14 thru 7-31-14; DFW 35-2014(Temp), f. & cert. ef. 4-24-14 thru 7-31-14; DFW 39-2014(Temp), f. 5-7-14, cert. ef. 5-8-14 thru 7-31-14; DFW 115-2014(Temp), f. 8-5-14, cert. ef. 8-18-14 thru 10-31-14; DFW 135-2014(Temp), f & cert. ef. 9-19-14 thru 10-31-14; Administrative correction 11-24-14; DFW 10-2015(Temp), f. 2-3-15, cert. ef. 2-9-15 thru 7-30-15

635-042-0170

Tongue Point Basin and South Channel

(1) Tongue Point includes all waters bounded by a line extended from the upstream (southern most) pier (#1) at the Tongue Point Job Corps facility through navigation marker #6 to Mott Island, a line from a marker at the southeast end of Mott Island northeasterly to a marker on the northwest tip of Lois Island, and a line from a marker on the southwest end of Lois Island westerly to a marker on the Oregon shore.

(2) South Channel area includes all waters bounded by a line from a marker on John Day Point through the green USCG buoy "7" to a marker on the southwest end of Lois Island upstream to an upper boundary line from a marker on Settler Point northwesterly to the flashing red USCG marker #10, northwesterly to a marker on Burnside Island defining the upstream terminus of South Channel.

(3) Salmon and shad may be taken for commercial purposes in those waters of Tongue Point and South Channel as described in section (1) and section (2) of this rule. Retention and sale of white sturgeon is prohibited. The 2015 open fishing periods are:

(a) Winter Season:

Monday and Thursday nights from 7:00 p.m. to 7:00 a.m. the following morning (12 hours) beginning Monday, February 9 through Friday, March 13 (10 nights).

(b) Spring Season:

Tuesday, April 21 from 8:00 p.m. to midnight (4 hours);
Thursday, April 23 from 9:00 p.m. to 3:00 a.m. Friday, April 24 (6 hours);
Tuesday, April 28 from 7:00 p.m. to 7:00 a.m. Wednesday, April 29 (12 hours);
Thursday, April 30 from 7:00 p.m. to 7:00 a.m. Friday, May 1 (12 hours); and
Monday and Thursday nights from 7:00 p.m. to 7:00 a.m. the following morning beginning Monday, May 4 through Friday, June 12.

(4) Gear restrictions are as follows:

(a) In waters described in section (1) as Tongue Point basin, gill nets may not exceed 250 fathoms in length and weight limit on the lead line is not to exceed two pounds on any one fathom. It is unlawful to use a gill net having a mesh size that is less than 7 inches during the winter season or more than 9.75-inches during the spring season.

(b) In waters described in section (2) as South Channel, nets are restricted to 250 fathoms in length with no weight restrictions on the lead line. The attachment of additional weight and/or anchors directly to the lead line is permitted. It is unlawful to use a gill net having a mesh size that is less than 7 inches during the winter season or more than 9.75 inches during the spring season.

(c) Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

Stat. Auth.: ORS 183.325, 506.109 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 46-1996, f. & cert. ef. 8-23-96; FWC 48-1997, f. & cert. ef. 8-25-97; FWC 61-1997(Temp), f. 9-23-97, cert. ef. 9-24-97; DFW 15-1998, f. & cert. ef. 3-3-98; DFW 41-1998(Temp), f. 5-28-98, cert. ef. 5-29-98; DFW 42-1998(Temp), f. 5-29-98, cert. ef. 5-31-98 thru 6-6-98; DFW 45-1998(Temp), f. 6-5-98, cert. ef. 6-6-98 thru 6-10-98; DFW 67-1998, f. & cert. ef. 8-24-98; DFW 86-1998, f. & cert. ef. 10-28-98 thru 10-30-98; DFW 10-1999, f. & cert. ef. 2-26-99; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 84-2001(Temp), f. & cert. ef. 8-29-01 thru 12-31-01; DFW 89-2001(Temp), f. & cert. ef. 9-14-01 thru 12-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 15-2002(Temp), f. & cert. ef. 2-20-02 thru 8-18-02; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; Administrative correction 7-30-04; DFW 79-2004(Temp), f. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 95-2004(Temp), f. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 85-2005(Temp), f. 8-1-05, cert. ef. 8-3-05 thru 12-31-05; DFW 109-2005(Temp), f. & cert. ef. 9-19-05 thru 12-31-05; DFW 110-2005(Temp), f. & cert. ef. 9-26-05 thru 12-31-05; DFW 116-2005(Temp), f. 10-4-05, cert. ef. 10-5-05 thru 12-31-05; DFW 120-2005(Temp), f. & cert. ef. 10-11-05 thru 12-31-05; DFW 124-2005(Temp), f. & cert. ef. 10-18-05 thru 12-31-05; Administrative correction 1-20-06; DFW 76-2006(Temp), f. 8-8-06, cert. ef. 9-5-06 thru 12-31-06; DFW 103-2006(Temp), f. 9-15-06, cert. ef. 9-18-06 thru 12-31-06; DFW 119-2006(Temp), f. & cert. ef. 10-18-06 thru 12-31-06; Administrative correc-

tion 1-16-07; DFW 61-2007(Temp), f. 7-30-07, cert. ef. 8-1-07 thru 10-31-07; DFW 108-2007(Temp), f. 10-12-07, cert. ef. 10-14-07 thru 12-31-07; Administrative Correction 1-24-08; DFW 44-2008(Temp), f. 4-25-08, cert. ef. 4-28-08 thru 10-24-08; DFW 48-2008(Temp), f. & cert. ef. 5-12-08 thru 8-28-08; DFW 58-2008(Temp), f. & cert. ef. 6-4-08 thru 8-31-08; DFW 85-2008(Temp), f. 7-24-08, cert. ef. 8-1-08 thru 12-31-08; DFW 108-2008(Temp), f. 9-8-08, cert. ef. 9-9-08 thru 12-31-08; Administrative correction 1-23-09; DFW 12-2009(Temp), f. 2-13-09, cert. ef. 2-15-09 thru 7-31-09; DFW 89-2009(Temp), f. 8-3-09, cert. ef. 8-4-09 thru 12-31-09; DFW 107-2009(Temp), f. 9-2-09, cert. ef. 9-5-09 thru 10-31-09; Administrative correction 11-19-09; DFW 29-2010(Temp), f. 3-9-10, cert. ef. 4-19-10 thru 6-12-10; DFW 46-2010(Temp), f. & cert. ef. 4-21-10 thru 7-31-10; DFW 53-2010(Temp), f. & cert. ef. 5-4-10 thru 7-31-10; DFW 57-2010(Temp), f. & cert. ef. 5-11-10 thru 7-31-10; DFW 69-2010(Temp), f. & cert. ef. 5-18-10 thru 7-31-10; DFW 113-2010(Temp), f. 8-2-10, cert. ef. 8-4-10 thru 10-31-10; DFW 129-2010(Temp), f. & cert. ef. 9-10-10 thru 10-31-10; Administrative correction 11-23-10; DFW 12-2011(Temp), f. 2-10-11, cert. ef. 2-13-11 thru 7-29-11; DFW 23-2011, f. & cert. ef. 3-21-11; DFW 32-2011(Temp), f. 4-20-11, cert. ef. 4-21-11 thru 7-29-11; DFW 44-2011(Temp), f. & cert. ef. 5-11-11 thru 6-10-11; Administrative correction 6-28-11; DFW 113-2011(Temp), f. 8-10-11, cert. ef. 8-15-11 thru 10-31-11; DFW 122-2011(Temp), f. 8-29-11, cert. ef. 9-19-11 thru 10-31-11; Administrative correction, 11-18-11; DFW 41-2012(Temp), f. 4-24-12, cert. ef. 4-26-12 thru 6-30-12; Administrative correction, 8-1-12; DFW 104-2012(Temp), f. 8-6-12, cert. ef. 8-13-12 thru 10-31-12; Administrative correction 11-23-12; DFW 11-2013(Temp), f. 2-8-13, cert. ef. 2-11-13 thru 7-31-13; DFW 34-2013(Temp), f. 5-14-13, cert. ef. 5-15-13 thru 7-31-13; Administrative correction, 8-21-13; DFW 91-2013(Temp), f. 8-22-13, cert. ef. 8-26-13 thru 10-31-13; DFW 110-2013(Temp), f. 9-27-13, cert. ef. 9-30-13 thru 10-31-13; Administrative correction, 11-22-13; DFW 8-2014(Temp), f. & cert. ef. 2-10-14 thru 7-31-14; DFW 35-2014(Temp), f. & cert. ef. 4-24-14 thru 7-31-14; DFW 39-2014(Temp), f. 5-7-14, cert. ef. 5-8-14 thru 7-31-14; DFW 115-2014(Temp), f. 8-5-14, cert. ef. 8-18-14 thru 10-31-14; DFW 135-2014(Temp), f & cert. ef. 9-19-14 thru 10-31-14; Administrative correction 11-24-14; DFW 10-2015(Temp), f. 2-3-15, cert. ef. 2-9-15 thru 7-30-15

635-042-0180
Deep River Select Area Salmon Season

(1) Salmon and shad may be taken for commercial purposes from the US Coast Guard navigation marker #16 upstream to the Highway 4 Bridge. Retention and sale of white sturgeon is prohibited.

(2) The 2015 open fishing seasons are:

(a) Winter season: Monday and Thursday nights from 7:00 p.m. to 7:00 a.m. the following morning (12 hours) beginning Monday, February 9 through Tuesday, March 31, 2015 (15 nights).

(b) Spring season: Tuesday and Thursday nights from 7:00 p.m. to 7:00 a.m. the following morning (12 hours) beginning Thursday, April 16 through Friday, May 1, 2015 (5 nights); and Monday and Thursday nights from 7:00 p.m. to 7:00 a.m. the following morning (12 hours) beginning Monday, May 4 through Friday, June 12, 2015 (11 nights).

(3) Gear restrictions are as follows:

(a) Gill nets may not exceed 100 fathoms in length and there is no weight restriction on the lead line. The attachment of additional weight and/or anchors directly to the lead line is permitted. Nets may not be tied off to stationary structures and may not fully cross navigation channel.

(b) It is unlawful to operate in any river, stream or channel any gill net longer than three-fourths the width of the stream. It is unlawful in any area to use, operate, or carry aboard a commercial fishing vessel a licensed net or combination of such nets, whether fished singly or separately, in excess of the maximum lawful size or length prescribed for a single net in that area. Nets not specifically authorized for use in these areas may be onboard a vessel if properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope with a diameter of 3/8 (0.375) inches or greater.

(c) Nets that are fished at any time between official sunset and official sunrise must have lighted buoys on both ends of the net unless the net is attached to the boat. If the net is attached to the boat, then one lighted buoy on the opposite end of the net from the boat is required.

(d) During the winter season, outlined above in subsection (2)(a), it is unlawful to use a gill net having a mesh size that is less than 7-inches.

(e) During the spring season, outlined above in subsection (2)(b) it is unlawful to use a gill net having a mesh size that is more than 9.75-inches.

(4) Transportation or possession of fish outside the fishing area (except to the sampling station) is unlawful until WDFW staff has biologically sampled individual catches. After sampling, fishers will be issued a transportation permit by WDFW staff. During the winter season, described in subsection (2)(a) above, fishers are required to call (360) 795-0319 to confirm the location and time of sampling. During the spring season, described in subsection (2)(b) above, a sampling station will be established at WDFW's Oneida Road boat ramp, about 0.5 miles upstream of the lower Deep River area boundary (USCG navigation marker #16).

Stat. Auth.: ORS 183.325, 506.109 & 506.119
Stats. Implemented: ORS 506.129 & 507.030
Hist.: FWC 46-1996, f. & cert. ef. 8-23-96; FWC 48-1997, f. & cert. ef. 8-25-97; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 84-2001(Temp), f. & cert. ef. 8-29-01 thru 12-31-01; DFW 89-2001(Temp), f. & cert. ef. 9-14-01 thru 12-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 19-2003(Temp), f. 3-12-03, cert. ef. 4-17-03 thru 6-13-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. ef. 2-13-04; 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 79-2004(Temp), f. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 95-2004(Temp), f. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 28-2005(Temp), f. & cert. ef. 4-28-05 thru 6-16-05; DFW 37-2005(Temp), f. & cert. ef. 5-5-05 thru 10-16-05; DFW 40-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 85-2005(Temp), f. 8-1-05, cert. ef. 8-3-05 thru 12-31-05; DFW 109-2005(Temp), f. & cert. ef. 9-19-05 thru 12-31-05; DFW 110-2005(Temp), f. & cert. ef. 9-26-05 thru 12-31-05; DFW 116-2005(Temp), f. 10-4-05, cert. ef. 10-5-05 thru 12-31-05; DFW 120-2005(Temp), f. & cert. ef. 10-11-05 thru 12-31-05; DFW 124-2005(Temp), f. & cert. ef. 10-18-05 thru 12-31-05; Administrative correction 1-20-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 32-2006(Temp), f. & cert. ef. 5-23-06 thru 7-31-06; DFW 35-2006(Temp), f. & cert. ef. 5-30-06 thru 7-31-06; DFW 77-2006(Temp), f. 8-8-06, cert. ef. 9-4-06 thru 12-31-06; DFW 103-2006(Temp), f. 9-15-06, cert. ef. 9-18-06 thru 12-31-06; DFW 119-2006(Temp), f. & cert. ef. 10-18-06; Administrative correction 1-16-07; 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 13-2007(Temp), f. & cert. ef. 3-6-07 thru 9-1-07; DFW 25-2007(Temp), f. 4-17-07, cert. ef. 4-18-07 thru 7-26-07; DFW 28-2007(Temp), f. & cert. ef. 4-26-07 thru 7-26-07; DFW 61-2007(Temp), f. 7-30-07, cert. ef. 8-1-07 thru 10-31-07; DFW 108-2007(Temp), f. 10-12-07, cert. ef. 10-14-07 thru 12-31-07; Administrative Correction 1-24-08; DFW 6-2008(Temp), f. 1-29-08, cert. ef. 1-31-08 thru 7-28-08; DFW 16-2008(Temp), f. 2-26-08, cert. ef. 3-2-08 thru 8-28-08; DFW 48-2008(Temp), f. & cert. ef. 5-12-08 thru 8-28-08; DFW 58-2008(Temp), f. & cert. ef. 6-4-08 thru 8-31-08; DFW 85-2008(Temp), f. 7-24-08, cert. ef. 8-1-08 thru 12-31-08; DFW 108-2008(Temp), f. 9-8-08, cert. ef. 9-9-08 thru 12-31-08; Administrative correction 1-23-09; DFW 12-2009(Temp), f. 2-13-09, cert. ef. 2-15-09 thru 7-31-09; DFW 23-2009(Temp), f. 3-5-09, cert. ef. 3-6-09 thru 4-30-09; DFW 35-2009(Temp), f. 4-7-09, cert. ef. 4-8-09 thru 4-30-09; DFW 49-2009(Temp), f. 5-14-09, cert. ef 5-17-09 thru 7-31-09; DFW 89-2009(Temp), f. 8-3-09, cert. ef. 8-4-09 thru 12-31-09; DFW 107-2009(Temp), f. 9-2-09, cert. ef. 9-5-09 thru 10-31-09; DFW 112-2009(Temp), f. 9-11-09, cert. ef. 9-13-09 thru 10-30-09; DFW 121-2009(Temp), f. & cert. ef. 9-30-09 thru 10-31-09; Administrative correction 11-19-09; DFW 16-2010(Temp), f. 2-19-10, cert. ef. 2-22-10 thru 6-10-10; DFW 40-2010(Temp), f. & cert. ef. 4-1-10 thru 7-31-10; DFW 46-2010(Temp), f. & cert. ef. 4-21-10 thru 7-31-10; DFW 53-2010(Temp), f. & cert. ef. 5-4-10 thru 7-31-10; DFW 57-2010(Temp), f. & cert. ef. 5-11-10 thru 7-31-10; DFW 69-2010(Temp), f. & cert. ef. 5-18-10 thru 7-31-10; DFW 113-2010(Temp), f. 8-2-10, cert. ef. 8-4-10 thru 10-31-10; DFW 129-2010(Temp), f. & cert. ef. 9-10-10 thru 10-31-10; Administrative correction 11-23-10; DFW 12-2011(Temp), f. 2-10-11, cert. ef. 2-13-11 thru 7-29-11; DFW 23-2011, f. & cert. ef. 3-21-11; DFW 32-2011(Temp), f. 4-20-11, cert. ef. 4-21-11 thru 7-29-11; DFW 53-2011(Temp), f. & cert. ef. 5-18-11 thru 6-10-11; Administrative correction 6-28-11; DFW 113-2011(Temp), f. 8-10-11, cert. ef. 8-15-11 thru 10-31-11; Administrative correction, 11-18-11; DFW 12-2012(Temp), f. 2-8-12, cert. ef. 2-12-12 thru 7-31-12; DFW 104-2012(Temp), f. 8-6-12, cert. ef. 8-13-12 thru 10-31-12; Administrative correction 11-23-12; DFW 11-2013(Temp), f. 2-8-13, cert. ef. 2-11-13 thru 7-31-13; DFW 24-2013(Temp), f. & cert. ef. 3-21-13 thru 7-31-13; Administrative correction, 8-21-13; DFW 91-2013(Temp), f. 8-22-13, cert. ef. 8-26-13 thru 10-31-13; DFW 110-2013(Temp), f. 9-27-13, cert. ef. 9-30-13 thru 10-31-13; Administrative correction, 11-22-13; DFW 8-2014(Temp), f. & cert. ef. 2-10-14 thru 7-31-14; DFW 115-2014(Temp), f. 8-5-14, cert. ef. 8-18-14 thru 10-31-14; DFW 135-2014(Temp), f & cert. ef. 9-19-14 thru 10-31-14; Administrative correction 11-24-14; DFW 10-2015(Temp), f. 2-3-15, cert. ef. 2-9-15 thru 7-30-15

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Rule Caption: Tillamook Bay Commercial Cockle Clam Dive Fishery Closes.
Adm. Order No.: DFW 11-2015(Temp)
Filed with Sec. of State: 2-3-2015
Certified to be Effective: 2-6-15 thru 7-31-15
Notice Publication Date:
Rules Amended: 635-005-0355
Subject: Amended rule closes the Tillamook Bay commercial cockle clam dive fishery at 12:01 a.m. February 6, 2015 due to a projected attainment of the 90,000 pound annual harvest quota allowed under bay clam dive permits. Modifications are consistent with requirements described in OAR 635-005-0355 sections (2) and (3).
Rules Coordinator: Michelle Tate—(503) 947-6044

635-005-0355
Catch Limits

(1) In Netarts Bay, the commercial landing cap for cockle clams harvested by the bay clam dive fishery is 8,000 pounds.

(2) In Tillamook Bay, the commercial landing cap for cockle clams harvested by the bay clam dive fishery is 90,000 pounds.

(3) When the commercial cockle clam landing caps specified in sections (1) and (2) of this rule are reached, the commercial cockle clam fishery in that estuary will close for the remainder of that calendar year.

(4) The Tillamook Bay clam dive fishery is closed effective 12:01 a.m. Friday, February 6, 2015 due to the anticipated attainment of the 90,000 pound landing cap.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 137-2005, f. 12-7-05, cert. ef. 1-1-06, Renumbered from 635-005-0032, DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12; DFW 80-2012(Temp), f. 6-28-12, cert. ef. 7-4-12 thru 12-30-12; Administrative correction, 2-1-13; DFW 54-2013(Temp), f. 6-12-13, cert. ef. 6-15-13 thru 12-11-13; Administrative correction, 12-19-13; DFW 69-2014(Temp), f. 6-12-14,

cert. ef. 6-13-14 thru 12-10-14; Administrative correction, 12-18-14; DFW 11-2015(Temp), f. 2-3-15, cert. ef. 2-6-15 thru 7-31-15

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Rule Caption: Columbia River Recreational Seasons for Salmon, Steelhead, Shad and Smelt Set
Adm. Order No.: DFW 12-2015(Temp)
Filed with Sec. of State: 2-3-2015
Certified to be Effective: 3-1-15 thru 6-15-15
Notice Publication Date:
Rules Amended: 635-023-0125
Subject: This amended rule sets regulations for Columbia River recreational spring Chinook, steelhead, shad and smelt seasons with descriptions of areas, dates, and bag limits for harvest of adipose fin-clipped Chinook salmon, adipose fin-clipped steelhead, shad and smelt. Revisions are consistent with action taken January 28, 2015 by the Oregon and Washington Departments of Fish and Wildlife in a meeting of the Columbia River Compact.
Rules Coordinator: Michelle Tate—(503) 947-6044

635-023-0125
Spring Sport Fishery

(1) The **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) The Columbia River recreational salmon and steelhead fishery downstream of Bonneville Dam is open from the mouth at Buoy 10 upstream to Beacon Rock (boat and bank) plus bank angling only from Beacon Rock upstream to the Bonneville Dam deadline from Sunday, March 1 through Friday, April 10, 2015, except closed Tuesday, March 24, Tuesday, March 31, and Tuesday, April 7, 2015 (38 retention days) with the following restrictions:

(a) No more than two adult adipose fin-clipped salmonids, of which only one may be a Chinook, may be retained per day. All non-adipose fin-clipped salmon and non-adipose fin-clipped steelhead must be released immediately unharmed.

(b) All other permanent **2015 Oregon Sport Fishing Regulations** apply.

(c) The upstream boat boundary at Beacon Rock is defined as: "a deadline marker on the Oregon bank (approximately four miles downstream from Bonneville Dam Powerhouse One) in a straight line through the western tip of Pierce Island to a deadline marker on the Washington bank at Beacon Rock."

(3) The Columbia River recreational salmon and steelhead fishery upstream of the Tower Island power lines (approximately 6 miles below The Dalles Dam) to the Oregon/Washington border, plus the Oregon and Washington banks between Bonneville Dam and the Tower Island power lines is open from Monday, March 16 through Wednesday, May 6, 2015 (52 retention days) with the following restrictions:

(a) No more than two adult adipose fin-clipped salmonids, of which only one may be a Chinook, may be retained per day. All non-adipose fin-clipped salmon and non-adipose fin-clipped steelhead must be released immediately unharmed.

(b) All other permanent 2015 Oregon Sport Fishing Regulations apply.

(4) The Columbia River Select Area recreational salmon and steelhead fisheries are open from March 1 through June 15 with the following restrictions:

(a) On days when the recreational fishery below Bonneville Dam is open to retention of Chinook, the salmonid daily bag limit in Select Areas will be the same as mainstem Columbia River bag limits; and

(b) On days when the mainstem Columbia River fishery is closed to Chinook retention, the permanent salmonid bag limit regulations for Select Areas apply.

(5) The mainstem Columbia River will be open March 1 through May 15, 2015 for retention of adipose fin-clipped steelhead and shad only during days and in areas open for retention of adipose fin-clipped spring Chinook.

(6) Oregon tributary recreational smelt fishery in the Sandy River (bank only) is open from 6:00 a.m. to noon Saturday, March 7 and 6:00 a.m. to noon Sunday, March 15, 2015 with the following restrictions:

(a) Only dip net gear may be used.

(b) The daily limit is 10 pounds per person.

[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; DFW 12-2015(Temp), f. 2-3-15, cert. ef. 3-1-15 thru 6-15-15

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Department of Human Services, Administrative Services Division and Director's Office
Chapter 407

Rule Caption: Correction on Potentially Disqualifying Abuse for Children in Program Background Check
Adm. Order No.: DHSD 1-2015(Temp)
Filed with Sec. of State: 2-3-2015
Certified to be Effective: 2-3-15 thru 8-1-15
Notice Publication Date:
Rules Amended: 407-007-0290
Subject: The current language in the rule is incorrect. Only abuse cases with an outcome of substantiated or founded are potentially disqualifying. This temporary rule fixes this error immediately.

Proposed rules are available at: http://www.oregon.gov/DHS/admin/Pages/dwssrules/index.aspx. For hard copy requests, call: (503) 947-5250.

Rules Coordinator: Jennifer Bittel—(503) 947-5250

407-007-0290
Other Potentially Disqualifying Conditions

The following are potentially disqualifying conditions, if they exist on the date the Department receives the background check request:

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

(2) The SI is a registered sex offender in any jurisdiction. There is a rebuttable presumption that an SI is likely to engage in conduct that would

pose a significant risk to vulnerable individuals if the SI has been designated a predatory sex offender in any jurisdiction under ORS 181.585 or found to be a sexually violent dangerous offender under 144.635 (or similar statutes in other jurisdictions).

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

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

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

(6) The SI has been found in violation of post-prison supervision, parole, or probation for any crime in any jurisdiction, regardless of the original conviction date (or date of guilty or no contest plea if there is no conviction date) within five years from the date the background check request was electronically submitted to BCU through CRIMS or the date BCU conducted a criminal records check due to imminent danger.

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

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

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

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

(11) Potentially disqualifying abuse as determined from abuse investigation reports which have an outcome of founded, substantiated, or valid and in which the SI is determined to have been responsible for the abuse.

(a) For SIs associated with child foster homes licensed by the Department's DD programs, child foster homes licensed through the Department's Child Welfare Division, child foster homes licensed through a private licensed child caring agency, adoptive families through a private licensed child caring agency, or adoptive families through the Department's Child Welfare Division, potentially disqualifying abuse includes:

(A) Child protective services history held by the Department or OAAPI regardless of the date of initial report;

(B) Child protective services history reviewed pursuant to the federal Adam Walsh Act requirements, determined by BCU ADs to be potentially disqualifying; and

(C) Adult protective services investigations of physical abuse, sexual abuse, or financial exploitation initiated on or after January 1, 2010, as provided to BCU by OAAPI and APD programs based on severity.

(b) For staff, volunteers, or contractors of a private licensed child caring agency, an ISRS program, a SPRF provider, or a System of Care contractor providing child welfare services pursuant to ORS Chapter 418 potentially disqualifying abuse includes:

(A) Child protective services history held by the Department or OAAPI regardless of the date of initial report; and

(B) Adult protective services investigations of physical abuse, sexual abuse, or financial exploitation initiated on or after January 1, 2010, as provided to BCU by OAPPI and APD based on severity.

(c) For child care providers and associated subject individuals defined in OAR 407-007-0210(30)(a)(I):

(A) Child protective services history held by the Department or OAAPI regardless of the date of initial report, date of outcome, and considered potentially disqualifying pursuant to OAR 461-165-0420; and

(B) Adult protective services investigations of physical abuse, sexual abuse, or financial exploitation initiated on or after January 1, 2010, as provided to BCU by the OAAPI and APD programs based on severity.

(d) For all other SIs, potentially disqualifying abuse includes founded or substantiated adult protective services investigations of physical abuse, sexual abuse, or financial exploitation initiated on or after January 1, 2010, as provided to the BCU by OAAPI and APD programs based on severity.

(12) Child protective services investigations open or pending through the Department or OAAPI as of the date the background check request was electronically submitted to BCU through CRIMS or the date BCU conducted a criminal records check due to imminent danger. This potentially disqualifying condition only applies to:

(a) SIs associated with child foster homes licensed by the Department's DD programs, child foster homes licensed through the Department's Child Welfare Division, child foster homes licensed through a private licensed child caring agency, adoptive families through a private licensed child caring agency, or adoptive families through the Department's Child Welfare Division;

(b) Staff, volunteers or contractors of a private licensed child caring agency, an ISRS program, a SPRF provider, or a System of Care contractor, providing child welfare services pursuant to ORS chapter 418; or

(c) Child care providers and associated subject individuals defined in OAR 407-007-0210(30)(a)(I).

Stat. Auth.: ORS 181.537, 409.027 & 409.050

Stats. Implemented: ORS 181.534, 181.537, 409.010, 409.027 & 443.004

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0290, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09; DHSD 10-2009, f. 12-31-09, cert. ef. 1-1-10; DHSD 10-2010, f. 10-29-10, cert. ef. 10-31-10; DHSD 1-2011(Temp) f. & cert. ef. 4-15-11 thru 10-11-11; DHSD 7-2011(Temp), f. & cert. ef. 10-12-11 thru 11-1-11; DHSD 8-2011, f. 10-28-11, cert. ef. 11-1-11; DHSD 2-2012(Temp), f. & cert. ef. 2-27-12 thru 8-24-12; DHSD 4-2012, f. & cert. ef. 8-1-12; DHSD 1-2013(Temp), f. & cert. ef. 2-5-13 thru 8-2-13; DHSD 3-2013, f. & cert. ef. 8-1-13; DHSD 2-2014, f. & cert. ef. 12-1-14; DHSD 1-2015(Temp), f. & cert. ef. 2-3-15 thru 8-1-15

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Rule Caption: Amendments to Integrated Employment Services to Individuals with Intellectual and Developmental Disabilities Rules
Adm. Order No.: DHSD 2-2015(Temp)
Filed with Sec. of State: 2-11-2015
Certified to be Effective: 2-11-15 thru 8-9-15
Notice Publication Date:
Rules Amended: 407-025-0000, 407-025-0010, 407-025-0020, 407-025-0030, 407-025-0040, 407-025-0050, 407-025-0060, 407-025-0070, 407-025-0080, 407-025-0090, 407-025-0100, 407-025-0110
Subject: OAR 407-025-0000 through 407-025-0110 is being temporary amended to revise definitions and directions to align with new federal regulations, recently adopted administrative rules in chapter 411, division 345, Employment Services for Individuals with Intellectual or Developmental Disabilities, and with practices that have emerged from implementation of Executive Order 13-04.

Governor Kitzhaber signed Executive Order 15-01 on February 2, 2015, which supersedes Executive Order 13-04. To ensure compliance with the new Executive Order, align these rules and Executive Order definitions and directions, and mitigate any confusion with regard to policies and authority, it is necessary to file a temporary rule while the permanent rulemaking process is completed.

The temporary rules are available at: http://www.oregon.gov/DHS/admin/Pages/dwssrules/index.aspx. For hardcopy requests, call: (503) 947-5250.

Rules Coordinator: Jennifer Bittel—(503) 947-5250

407-025-0000
Purpose and Scope

(1) The purpose of these rules (OAR 407-025-0000 through 407-025-0120) is to effectuate:

(a) Executive Order 15-01 which supersedes Executive Order 13-04 and outlines detailed strategies and requires the Oregon Department of Human Services (Department) to work with the Oregon Department of Education (ODE) to further improve Oregon's systems of designing and delivering employment systems to those with intellectual and developmental disabilities toward fulfillment of Oregon's Employment First Policy, including a significant reduction over time of state support of sheltered work and an increased investment in employment services.

(b) ORS 427.007(1)(a), as added by 2013 Senate Bill 22 Enrolled, Chapter 36, 2013 Laws, which provides that individuals with intellectual and other developmental disabilities and society as a whole benefit when the individuals exercise choice and self-determination, living and working in the most integrated community settings appropriate to their needs, with supportive services that are designed and implemented consistent with the choice of the individuals regarding services, providers, goals and activities.

(c) ORS 427.007(1)(b), as added by 2013 Senate Bill 22 Enrolled, Chapter 36, 2013 Laws, which provides that the employment of individuals with developmental disabilities in fully integrated work settings is the

highest priority over unemployment, segregated employment, facility-based employment or day habilitation.

(2) Consistent with Executive Order 15-01, the Department finds that:

(a) Individuals with disabilities persistently face higher rates of unemployment than their non-disabled fellow citizens.

(b) Oregon is a leader in providing supported employment services to individuals with intellectual and developmental disabilities. In 2008, Oregon adopted an Employment First Policy, which makes competitive integrated employment the goal for all Oregonians with intellectual and developmental disabilities.

(c) While the state cannot guarantee a job to any Oregonian, the state can and should consistently work to continue to improve its provision of employment services to provide the best possible opportunities for success and choice for individuals receiving those services. This requires new approaches and partnerships with government, the non-profit services sector, and potential employers in the business community.

(d) Improving Oregon's delivery of employment services, with the goal of achieving competitive integrated employment for individuals with intellectual and developmental disabilities, consistent with their abilities and choices, will benefit individuals with disabilities, their families, our communities, the economy, and the state.

(3) The Department is not directed by the Department's integrated employment rules to act in a way that would jeopardize the Department's federal funding, such as funding from United States Department of Education, Centers for Medicare and Medicaid Services, or Rehabilitation Services Administration, or that would violate federal law or regulations. Wherever possible, the Department's integrated employment rules shall be read as consistent with federal law.

(4) The State of Oregon's obligations under the Department's integrated employment rules are conditioned upon Department's receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow Department, in the exercise of its reasonable administrative discretion, to meet its payment obligations under the Department's integrated employment rules. The Department's integrated employment rules do not obligate any part of Oregon state government other than the Department. Nothing in the Department's integrated employment rules is to be construed as permitting any violation of Article XI, section 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations of the State of Oregon. The Department shall employ good-faith efforts to request and seek funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow Department to perform its payment obligations throughout the term of the Department's integrated employment rules.

(5) The Department's integrated employment rules do not provide a right to any person to claim that he or she has not received services required under any other state or federal statute or regulation.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.050
Hist.: DHSD 4-2013, f. & cert. ef. 10-1-13; DHSD 2-2015(Temp), f. & cert. ef. 2-11-15 thru 8-9-15

407-025-0010
Definitions

As used in OAR 407-025-0000 through 407-025-0120, the following definitions apply:

(1) "Annual plan" means the written summary a service coordinator completes for an individual who is not enrolled in the waiver or community first choice services. An annual plan is not an individual support plan ("ISP") and is not a plan of care for Medicaid purposes.

(2) "Career development plan" means part of an ISP or annual plan regarding Office of Developmental Disability Services' (ODDS) services. A career development plan identifies the individual's employment goals and objectives, the persons, agencies, and providers assigned to assist the individual to attain those goals, the obstacles to the individual working in competitive integrated employment in an integrated employment setting, and the services and supports necessary to overcome those obstacles. Career development plans shall be based on person-centered planning principles.

(3) "Competitive integrated employment," consistent with the federal Workforce Innovation and Opportunity Act (WIOA), means work that is performed on a full-time or part-time basis (including self-employment) for which an individual:

(a) Is compensated at a rate that:

(A) Meets or exceeds state or local minimum wage requirements, whichever is higher;

(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

(b) Is eligible for the level of benefits provided to other employees;

(c) Is at a location where the employee interacts with other persons who are not individuals with disabilities (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that individuals who are not individuals with disabilities and who are in comparable positions interact with other persons; and

(d) 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.

(4) "Comprehensive vocational assessment" means an assessment administered for individuals eligible for employment services from vocational rehabilitation or transition services from local educational agencies under the Individuals with Disabilities Education Act (IDEA) to provide employment-related information for the development of, or revision of, an individual's employment-related planning document, such as the individual plan for employment (IPE), or individual education plan (IEP).

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

(6) "Department integrated employment rules" means this rule and any ODDS rule or Vocational Rehabilitation Services (VR) rule that expressly describes itself as falling under this definition.

(7) "Discovery" means a comprehensive and person-centered employment planning support service to better inform an individual seeking competitive integrated employment in an integrated employment setting, and to create a discovery profile for the individual. Discovery includes a series of work or volunteer-related activities to inform the individual and the job developer about the individual's strengths, interests, abilities, skills, experiences, and support needs, as well as to identify the conditions or employment settings in which the individual will be successful.

(8) "Employment services" means services provided or funded by ODDS or VR that are intended to assist an individual with an intellectual or developmental disability (I/DD) to choose, get, learn, and keep work in an integrated employment setting. Employment services shall be "individualized," meaning that services shall be individually planned, based on person-centered planning principles and evidence-based practices, where applicable. Employment services may include post-secondary education and training to the extent they are reinforced in an individual's ISP or individual plan for employment services.

(9) "Evidence-based practices" means well-defined best practices, which have been demonstrated to be effective with the I/DD population or the relevant subset of that population, such as youth 16 or older, by multiple peer-reviewed research studies that are specific to the I/DD population or subset of that population.

(10) "Individuals with I/DD" are persons who have an intellectual disability as defined in OAR chapter 411, division 320, or a developmental disability" as defined in OAR chapter 411, division 320.

(11) "Integrated employment setting" means:

(a) An employment setting that satisfies the requirements for competitive integrated employment, or

(b) An employment setting that provides opportunities for individual to have interaction with non-disabled persons. The setting must allow an individual to interact with non-disabled persons in a manner typical to the employment setting. Such settings may include small group employment. Employment in an integrated employment setting does not mean facility-based work in a sheltered workshop, and cannot be non-work activities such as day support activities.

(12) "ODDS" means the Department's Office of Developmental Disability Services.

(13) "ODDS/VR target population" means sheltered workshop workers and transition-age individuals as defined in this rule.

(14) "Person-centered planning" for employment services means:

(a) A timely and formal or informal process that is driven by the individual with an intellectual or developmental disability that gathers and organizes information that helps an individual:

(A) Determine and describe choices about personal employment goals, activities, services, provides, 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.

(b) The methods for gathering information vary, but all are consistent with the individual's cultural considerations, needs, and preferences.

(15) "Policy group" means a group consisting of representatives of the Oregon Department of Education (ODE) and the Department, legislators, and stakeholders formed to make recommendations to the Department's Director and the Deputy Superintendent of Public Instruction regarding design and implementation on issues including but not limited to education, outreach, development of provider capacity, training, and processes for assessment and discovery.

(16) "Qualified employment services provider" means a provider of employment services that meets the qualification requirements to deliver employment services consistent with OAR chapter 411, division 323; OAR chapter 411, division 340; and OAR chapter 411, division 345.

(17) "Related employment services" are services which are provided by ODDS or VR in conjunction with or after the completion of needed employment services in order to enable an individual maintain or advance in competitive integrated employment. Services may include but are not limited to benefits counseling, transportation support, personal care supports (such as activities of daily living), environmental accessibility adaptations, behavioral supports, assistive technology, and social skills training as they relate to continued participation in competitive integrated employment.

(18) "Self-employment" means an option for achieving competitive integrated employment and is recognized as a viable means of promoting independence and economic self-sufficiency. Self-employment generally refers to one person owning and controlling the operations and management of an enterprise that reflects the owner's skills, interests, and preferred work environment. An individual in self-employment may or may not receive ongoing supports. Self-employment yields an income that is comparable to the income received by other individuals who are not individuals with disabilities, who are self-employed in similar occupations or on similar tasks, and who have similar training, experience, and skills.

(19) "Sheltered workshop workers" means working-age individuals with I/DD found eligible for ODDS employment services and who worked in sheltered workshops on or after the effective date of Executive Order 13-04.

(20) "Sheltered workshop" means a facility in which individuals with I/DD are congregated for the purpose of receiving employment services and performing work tasks for pay at the facility. A sheltered workshop primarily employs individuals with I/DD and other disabilities, with the exception of service support staff. A sheltered workshop is a fixed site that is owned, operated, or controlled by a provider, where an individual has few or no opportunities to interact with non-disabled individuals, except paid support staff. A sheltered workshop is not small group employment in an integrated employment setting, and is not otherwise an integrated employment setting as defined in this rule.

(21) "Small group employment" means work performed in regular business, industry, and community settings by groups of two to eight individuals with I/DD. It is not competitive integrated employment, which is the much-preferred and optimal form of employment for Oregonians with I/DD, but it can have value as a way to offer additional opportunities for integration and employment. Small group employment support is provided in an integrated employment setting and in a manner that promotes integration into the workplace and interaction between participants and people without disabilities. Small group employment must allow an individual to interact with non-disabled persons in a manner typical to the employment setting. The wage paid to the supported individual must meet or exceed State and local minimum wage requirements as specified in competitive integrated employment, and the individual must maintain goals to pursue competitive integrated employment opportunities.

(22) "Supported employment" means services provided to support competitive integrated employment, self-employment, and small group employment.

(23) "Transition age" means individuals:

(a) Not older than 24 years of age,

(b) Not younger than 14 years of age. With respect to VR, individuals who are under 16 years of age may receive employment services with Department approval. With respect to ODDS, individuals who are under 18 years of age may receive employment services with Department approval.

(24) "Transition-age individuals" means individuals with I/DD who at any time from the effective date of Executive Order 13-04 until July 1, 2022 meet the definition of transition-age, and who are found eligible for ODDS employment services as described in OAR chapter 411, division 345, or who are found eligible for ODDS and VR services.

(25) "Transition age target population" means transition age individuals with I/DD who receive employment services on or after July 1, 2013 through July 1, 2022.

(26) "Target population" means the transition age target population and the working age target population.

(27) "VR" means the Department's Vocational Rehabilitation Services.

(28) "Working age individuals" means adults with I/DD who are 21 or older and who are no longer receive public school services, and those with I/DD over 60 or older who choose to continue employment.

(29) "Working age target population" means working age individuals with I/DD who receive sheltered workshop services on or after July 1, 2013.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.050
Hist.: DHSD 4-2013, f. & cert. ef. 10-1-13; DHSD 1-2014, f. & cert. ef. 2-14-14; DHSD 2-2015(Temp), f. & cert. ef. 2-11-15 thru 8-9-15

407-025-0020
Sheltered Workshops

(1) Effective July 1, 2014, ODDS and VR shall no longer purchase or fund vocational assessments for individuals with I/DD that occur in sheltered workshop settings.

(2) Effective July 1, 2015, ODDS and VR shall no longer purchase or fund sheltered workshop placements for:

(a) Transition-age individual with I/DD;

(b) Any working age individual with I/DD newly eligible for ODDS or VR services; and

(c) Any working age individual with I/DD already utilizing ODDS or VR services who is not already working in a sheltered workshop.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.050
Hist.: DHSD 4-2013, f. & cert. ef. 10-1-13; DHSD 2-2015(Temp), f. & cert. ef. 2-11-15 thru 8-9-15

407-025-0030
Employment Services Provided through ODDS and OVRS

(1) ODDS and VR will provide employment services as described in section (5) of this rule to at least 7000 unique individuals in the ODDS/VR target population, including sheltered workshop workers who wish to receive those employment services, between July 1, 2013 and July 1, 2022, in accordance with the following schedule:

(a) By July 1, 2014, to at least 600 individuals.

(b) By July 1, 2015, to at least an additional 1,350 individuals.

(c) By July 1, 2016, to at least an additional 2,200 individuals.

(d) By July 1, 2017, to at least an additional 3,000 individuals.

(e) By July 1, 2018, to at least an additional 3,800 individuals.

(f) By July 1, 2019, to at least an additional 4,600 individuals.

(g) By July 1, 2020, to at least an additional 5,400 individuals.

(h) By July 1, 2021, to at least an additional 6,200 individuals.

(i) By July 1, 2022, to at least an additional 7,000 individuals.

(2) The requirement in this section that additional individuals receive employment services by a given date refers to a cumulative number of additional individuals.

(3) Any sheltered workshop worker who, in his or her career development plan as described in OAR 407-025-0050 indicates a desire to work in an integrated employment setting and to receive employment services as described in section (5) of this rule, shall receive these employment services. The policy group as defined in OAR 407-025-0020 shall be responsible for recommending metrics aimed at assessing the delivery of employment services described in this rule to sheltered workshop workers who desire to receive these employment services, as well as reviewing the State's performance under those metrics.

(4) Both ODDS/VR target populations described in section (1) of this rule will receive employment services. The delivery proportions of employment services to different target populations will be reviewed by the policy group to assure delivery is consistent with the expected outcomes of outlined in this rule. As necessary, the State may revise the above schedule for the provision of employment services to both ODDS/VR target populations to further this purpose.

(5) For an individual to be counted as being provided an employment service under this rule, that individual must have received one or more of the following:

(a) Discovery services though ODDS;

(b) Comprehensive vocational assessments through VR;

(c) An approved individual plan for employment with VR;

(d) Job development services through ODDS; or

(e) Supported employment services through ODDS.

(6) None of the services listed in section (5) of this rule shall be counted in a way that creates a duplicate count of individuals that were provided employment services. Any additions to the list of employment services to be counted will be subject to review and approval by the policy group.

(7) The policy group shall be responsible for recommending outcome metrics aimed at assessing the effectiveness of the employment services described in this rule as well as reviewing the Department's performance under those metrics.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.050
Hist.: DHSD 4-2013, f. & cert. ef. 10-1-13; DHSD 2-2015(Temp), f. & cert. ef. 2-11-15 thru 8-9-15

407-025-0040
General Policies

ODDS and VR shall establish and implement a policy that employment services shall be evidence-based and individualized. Employment services shall be individualized and services shall be individually planned, based on person-centered planning principles and evidence-based practices, where applicable. Employment services shall be based on an individual's capabilities, choices, and strengths and shall be individually tailored.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.050
Hist.: DHSD 4-2013, f. & cert. ef. 10-1-13; DHSD 2-2015(Temp), f. & cert. ef. 2-11-15 thru 8-9-15

407-025-0050
Career Development Planning

(1) No later than January 1, 2014, ODDS shall adopt and implement policies and procedures for developing career development plans. The policies must include a presumption that all individuals in the ODDS/VR target population are capable of working in an integrated employment setting.

(2) Career development plans shall be based on person-centered planning principles.

(3) The career development plan shall prioritize competitive integrated employment, and then other employment in integrated employment settings. The career development process shall focus on the strengths of the individual and shall be conducted with the goal of maximizing the number of hours spent working, consistent with an individual's abilities and choices.

(4) By July 1, 2015 sheltered workshop workers who desire to receive employment services described in OAR 407-025-0030 shall receive a career development plan as part of the employment services they receive under OAR 407-025-0030. Transition-age individuals should have a career development plan no later than the date of their anticipated departure from the Oregon public schools, but no later than one year after their departure. The provision of employment services by ODDS may not be delayed or denied due to the lack of a career development plan.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.050
Hist.: DHSD 4-2013, f. & cert. ef. 10-1-13; DHSD 1-2014, f. & cert. ef. 2-14-14; DHSD 2-2015(Temp), f. & cert. ef. 2-11-15 thru 8-9-15

407-025-0060
Training

(1) Effective January 1, 2014, ODDS and VR shall establish and update when appropriate competencies for providing employment services, and shall adopt and implement competency-based training standards for career development plans, job creation, job development, job coaching, and coordination of those services.

(2) Effective July 1, 2016, ODDS and VR shall purchase employment services for individuals with I/DD only from agencies or individual providers licensed, certified, credentialed or otherwise qualified as required by Department rules. The requirements for providing employment services shall be competency-based and may include such national credentialing programs as the APSE Certified Employment Support Professional exam or a substantial equivalent.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.050
Hist.: DHSD 4-2013, f. & cert. ef. 10-1-13; DHSD 2-2015(Temp), f. & cert. ef. 2-11-15 thru 8-9-15

407-025-0070
Outreach and Awareness

Effective January 1, 2014, ODDS and VR shall develop and update when appropriate an outreach and informational education program for all individuals in the target population that explains the benefits of employment, addresses concerns of families and perceived obstacles to participating in employment services, and is designed to encourage individuals with I/DD and their families to seek employment services.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.050
Hist.: DHSD 4-2013, f. & cert. ef. 10-1-13; DHSD 2-2015(Temp), f. & cert. ef. 2-11-15 thru 8-9-15

407-025-0080
Provider Capacity

The Department shall make good faith efforts, within available budgetary resources, to ensure that there are a sufficient number of qualified employment providers to deliver the services and supports necessary for individuals in the ODDS/VR target population to receive employment services consistent with the terms of the Department's integrated employment rules.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.050
Hist.: DHSD 4-2013, f. & cert. ef. 10-1-13; DHSD 2-2015(Temp), f. & cert. ef. 2-11-15 thru 8-9-15

407-025-0090
Director Actions

(1) Effective January 1, 2014, the Department shall designate a statewide employment coordinator to oversee and coordinate its employment services program and all activities required by the Department, ODDS, or VR under the Department's integrated employment rules.

(2) Effective January 1, 2014, the Department shall support new or existing technical assistance provider(s) or use other available training resources to provide leadership, training and technical assistance to employment providers and to provider, county, support services brokerage, and vocational rehabilitation staff to support the performance of the Department's integrated employment rules.

(3) Effective November 1, 2013, the Department shall adopt an integrated employment plan to further carry out the goals of the Department's integrated employment rules.

(4) ODDS shall include specific provisions in its contracts with each support services brokerage and each community developmental disability program (CDDP) to accomplish the full implementation of the Department's integrated employment rules.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.050
Hist.: DHSD 4-2013, f. & cert. ef. 10-1-13; DHSD 2-2015(Temp), f. & cert. ef. 2-11-15 thru 8-9-15

407-025-0100
Quality Assessment and Improvement

Effective July 1, 2014, the Department shall develop, implement and update as appropriate a quality improvement initiative that is designed to promote employment services developed in accordance with the Department's integrated employment rules and to evaluate the quality of employment services provided to persons with I/DD under the Department's integrated employment rules statewide.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.050
Hist.: DHSD 4-2013, f. & cert. ef. 10-1-13; DHSD 2-2015(Temp), f. & cert. ef. 2-11-15 thru 8-9-15

407-025-0110
Data Collection and Reporting

(1) Effective January 1, 2014, and semi-annually thereafter, the employment coordinator shall monitor the progress of implementation of the Department's integrated employment rules through data collection, data analysis, and quality improvement activities.

(2) Effective January 1, 2014, and semi-annually thereafter, ODDS and VR shall collect data and report to the employment coordinator and the policy group the following data for working age individuals in the ODDS/VR target populations:

(a) The number of individuals receiving employment services;

(b) The number of persons working in the following settings: competitive integrated employment, self-employment, sheltered employment, and small group employment (8 or fewer);

(c) The number of individuals in supported employment;

(d) The number of hours worked per week and hourly wages paid to those persons;

(e) The outcomes of employment services selected by individuals through the career development planning process, including the selection of non-employment services;

(f) Complaints and grievances; and

(g) The number of individuals receiving related employment services.

(3) Effective January 1, 2014, and semi-annually thereafter, VR and ODDS shall report to the employment coordinator on the progress made on the terms of the Department's integrated employment rules and the results of the data collected under this rule.

(4) ODDS and VR shall begin a program of regularly collecting and analyzing data described in this rule, and shall identify problems or barriers to placement in or retaining jobs in an integrated employment setting, as well as service gaps, and shall recommend to the Department's Director's actions to improve services. The Department shall review this information on a semi-annual basis and develop and implement measures to improve services with respect to the problems and barriers identified.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.050
Hist.: DHSD 4-2013, f. & cert. ef. 10-1-13; DHSD 2-2015(Temp), f. & cert. ef. 2-11-15 thru 8-9-15

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

Rule Caption: ODDS — In-Home Support for Children with Intellectual or Developmental Disabilities
Adm. Order No.: APD 2-2015
Filed with Sec. of State: 1-29-2015
Certified to be Effective: 1-29-15
Notice Publication Date: 11-1-2014
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, 411-308-0135
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 proposed rules:

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; APD 2-2015, f. & cert. ef. 1-29-15

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 as described in OAR 411-308-0130 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 primary caregiver or provider to follow in order to reduce the frequency and intensity of the challenging behaviors of a child and to modify the behavior of the primary caregiver or 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 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.

(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" is the process by which a registered nurse authorizes an unlicensed person to perform nursing tasks and confirms that authorization in writing. Delegation may occur only after a registered nurse follows all steps of the delegation process as outlined in OAR chapter 851, division 047.

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

(24) "Designated Representative" means any adult, such as a family member, guardian, advocate, or other person, who is chosen by the parent or guardian, not a paid provider of ODDS funded services, and authorized by the parent or guardian to serve as the representative of the parent or guardian in connection with the provision of ODDS funded supports. A parent or guardian 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) "Employer" means, for the purposes of obtaining in-home support through a personal support worker as described in these rules, the parent or guardian or a person selected by the parent or guardian to act on the behalf of the parent or guardian to conduct the employer responsibilities described in OAR 411-308-0135. An employer may also be a designated representative.

(28) "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.

(29) "Employment Path Services" means "employment path services" as defined in OAR 411-345-0020.

(30) "Employment Services" means "employment services" as defined in OAR 411-345-0020.

(31) "Employment Specialist" means "employment specialist" as defined in OAR 411-345-0020.

(32) "Entry" means admission to a Department-funded developmental disability service.

(33) "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.

(34) "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.

(35) "Exit" means termination or discontinuance of in-home support.

(36) "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.

(37) "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.

(38) "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.

(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 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 a child is known as the Child Needs Assessment (CNA). Effective December 31, 2014, the Department incorporates Version C of the CNA into these rules by this reference. The CNA is maintained by the Department at: http://www.dhs.state.or.us/spd/tools/dd/CNAchildInhome.xls. Printed copies of a blank CNA 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.

(41) "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.

(42) "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.

(43) "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.

(44) "ICF/ID" means an intermediate care facility for individuals with intellectual disabilities.

(45) "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.

(46) "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. 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.

(47) "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.

(48) "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.

(49) "Independent Provider" means a person selected by a parent or guardian and paid with IHS funds to directly provide services to a child.

(50) "Individual" means a child or an adult with an intellectual or developmental disability applying for, or determined eligible for, Department-funded services.

(51) "Intellectual Disability" means "intellectual disability" as defined in OAR 411-320-0020 and described in OAR 411-320-0080.

(52) "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. The ISP reflects 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.

(53) "Job Development" means "job development" as defined in OAR 411-345-0020.

(54) "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.

(55) "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.

(56) "ODDS" means the Department of Human Services, Office of Developmental Disability Services.

(57) "OHP" means the Oregon Health Plan.

(58) "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.

(59) "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.

(60) "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.

(61) "Parent" means the biological parent, adoptive parent, or stepparent of a child. Unless otherwise specified, references to parent also include a person chosen by the parent or guardian to serve as the designated representative of the parent or guardian in connection with the provision of ODDS funded supports.

(62) "Person-Centered Planning":

(a) Means a timely and formal or informal process driven by a child, includes people chosen by the child, ensures the child directs the process to the maximum extent possible, and 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.

(63) "Personal Support Worker" means "personal support worker" as defined in OAR 411-375-0010.

(64) "Plan Year" means 12 consecutive months from the start date specified on an authorized ISP or Annual Plan.

(65) "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.

(66) "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. In this context, the term parent or guardian may include a designated representative.

(67) "Protective Physical Intervention" means any manual physical holding of, or contact with, a child that restricts freedom of movement.

(68) "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.

(69) "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.

(70) "Quality Assurance" means a systematic procedure for assessing the effectiveness, efficiency, and appropriateness of services.

(71) "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.

(72) "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.

(73) "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 or guardian, services coordinator, and ISP team.

(74) "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 a child is unable to provide for the their own safety and the child 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.

(75) "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.

(76) "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.

(77) "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 preauthorized 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.

(78) "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 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.

(79) "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.

(80) "Supplant" means take the place of.

(81) "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.

(82) "Supported Employment - Individual Employment Support" means "supported employment - individual employment support" as defined in OAR 411-345-0020.

(83) "Supported Employment - Small Group Employment Support" means "supported employment - small group employment support" as defined in OAR 411-345-0020.

(84) "Support Services Brokerage" means "Brokerage" as defined in OAR 411-340-0020.

(85) "These Rules" mean the rules in OAR chapter 411, division 308.

(86) "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.

(87) "Unacceptable Background Check" means an administrative process that produces information related to the background of a person that precludes the person from being an independent provider for one or more of the following reasons:

(a) Under OAR 407-007-0275, the person applying to be an independent provider has been found ineligible due to ORS 443.004;

(b) Under OAR 407-007-0275, the person was enrolled as an independent provider for the first time, or after any break in enrollment, after July 28, 2009 and has been found ineligible due to ORS 443.004; or

(c) A background check and fitness determination has been conducted resulting in a "denied" status as defined in OAR 407-007-0210.

(88) "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.

(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 411-308-0150.

(90) "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; APD 2-2015, f. & cert. ef. 1-29-15

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; APD 2-2015, f. & cert. ef. 1-29-15

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 2-2015, f. & cert. ef. 1-29-15

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 needed to meet the identified needs of the child. 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 034.

(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.

(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 & 430.620
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-670
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; APD 2-2015, f. & cert. ef. 1-29-15

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 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 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 child 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 a child 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 a child is considered ineligible due to a disqualifying transfer of assets, the parent or guardian 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; APD 2-2015, f. & cert. ef. 1-29-15

411-308-0070

In-Home Support Entry, Duration, and Exit

(1) ENTRY.

(a) 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.

(b) 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 when the child:

(A) Is no longer receiving Medicaid Title XIX;

(B) The parent or guardian submits a written request to end in-home supports;

(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 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, 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 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 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; APD 2-2015, f. & cert. ef. 1-29-15

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;

(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) 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; APD 2-2015, f. & cert. ef. 1-29-15

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; APD 2-2015, f. & cert. ef. 1-29-15

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, service 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; APD 2-2015, f. & cert. ef. 1-29-15

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 or guardian, 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. Examples include, but are not limited to, 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; APD 2-2015, f. & cert. ef. 1-29-15

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 the child meets the eligibility criteria 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 enable 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 or guardian;

(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.

(i) When interventions in behavior are necessary, the interventions must be performed in accordance with positive behavioral theory and practice as defined in OAR 411-308-0020.

(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, 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 or guardian, 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 a primary caregiver 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 child and identified in the ISP for 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 goals, preferences, and 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 provider, 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) Meal preparation and special diets;

(D) 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;

(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; and

(F) 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.

(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 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 prior 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 guardian or other family members;

(E) Supports and services that are funded by Child Welfare in the family home;

(F) 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;

(G) Services provided by the family; and

(H) 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, chosen by the parent or guardian, 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 provided by any other funding source 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 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 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, or supplies furnished under OHP, private insurance, or alternative resources;

(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, private insurance, or alternative resources;

(C) Items that are considered unsafe for a child;

(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.

(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 a child 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 alternative 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) Transition costs for basic household furnishings and other items are limited to one time per year.

(f) Transition costs may not supplant the legal responsibility of the parent or guardian. In this context, the term parent or guardian does not include a designated representative.

(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 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 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; APD 2-2015, f. & cert. ef. 1-29-15

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 or guardian; 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 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.

(c) Subsection (b)(C) of this section does not apply to employees of a parent or guardian, 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 OAR 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 chapter 411, division 375.

(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) The provider has not provided any paid in-home services to an individual within the last previous 12 months;

(ii) The 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 the provider results in a closed case pursuant to OAR 407-007-0325;

(iv) Services provided by the provider are being investigated by adult or child protective services for suspected abuse that poses imminent danger to current or future children; or

(v) Provider payments, all or in part, for the 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 after enrollment that the independent 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 adult 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 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.

(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 employees of the state, CDDP, or Support Services Brokerage.

(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) The following provider organizations may not require additional certification as an organization to provide relief care, attendant care, skills training, community transportation, or behavior support services:

(A) 24-hour residential settings certified, endorsed, and licensed under OAR chapter 411, division 325;

(B) Foster homes for children certified under OAR chapter 411, division 346;

(C) Foster homes for adults licensed under OAR chapter 411, division 360;

(D) Employment settings certified and endorsed under OAR chapter 411, division 345; and

(E) Supported living settings certified and endorsed under OAR chapter 411, division 328.

(b) 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.

(c) 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 operators 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; APD 2-2015, f. & cert. ef. 1-29-15

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 or guardian 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 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 timesheets, 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. 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 or guardian 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 or guardian 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 or guardian 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 or guardian 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 or guardian 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 or guardian may designate an employer representative to act on behalf of the parent or guardian to meet the employer responsibilities described in section (5)(a) of this rule.

(b) If a personal support worker is selected by the parent or guardian to act as the employer, the parent or guardian 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 adult 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 or guardian may select another employer representative.

(8) NOTICE.

(a) The Department shall mail a notice to the parent or guardian 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 or guardian does not agree with the action taken by the Department, the parent or guardian 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; APD 2-2015, f. & cert. ef. 1-29-15

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; APD 2-2015, f. & cert. ef. 1-29-15

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 OAR 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; APD 2-2015, f. & cert. ef. 1-29-15

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Rule Caption: Residential Care and Assisted Living Facility Abuse Investigations
Adm. Order No.: APD 3-2015(Temp)
Filed with Sec. of State: 1-29-2015
Certified to be Effective: 1-29-15 thru 7-27-15
Notice Publication Date:
Rules Amended: 411-054-0120
Subject: The Department is amending 411-054-0120 to change the definition of sexual abuse to comply with H.B. 4151.

Minor wording, formatting, punctuation, and grammar adjustments were made to the rules as well.
Rules Coordinator: Kimberly Colkitt-Hallman—(503) 945-6398

411-054-0120
Civil Penalties

(1) For purposes of imposing civil penalties, facilities licensed under ORS 443.400 to 443.455 and subsection (2) of 443.991 are considered to be long-term care facilities subject to 441.705 to 441.745.

(2) For purposes of this rule, "person" means a licensee under ORS 443.420 or a person who the Assistant Director of the Department finds shall be so licensed but is not, but does not include any employee of such licensee or person.

(3) For purposes of this rule, "resident rights" means that each resident must be assured the same civil and human rights accorded to other citizens as described in OAR 411 054 0027.

(4) The Department shall exercise the powers under ORS 441.705 to 441.745 and thereby issues the following schedule of penalties applicable to residential care and assisted living facilities:

(a) A Class I violation exists when there is non-compliance involving direct resident care or feeding, adequate staff, or sanitation involving direct resident care or resident rights.

(b) 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 that:

(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 abuse as defined under ORS 443.455.

(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.

(c) A Class II violation exists when there is non-compliance with the license requirements relating to a license required, the license requirements relating to administrative management, or personal care services and activities. Class II violations may result in imposition of a fine for violations found on two consecutive monitorings of the facility.

(d) A Class III violation exists when there is non-compliance with the license requirements relating to building requirements and resident furnishings. Class III violations may result in imposition of a fine for violations found on two consecutive monitorings of the facility.

(5) For purposes of this rule, a monitoring occurs when a residential care or assisted living facility is surveyed, inspected, or investigated by an employee or designee of the Department or an employee or designee of the State Fire Marshal.

(6) In imposing a penalty pursuant to section (4) of this rule, the Assistant Director of the Department shall consider the following factors:

(a) The past history of the person 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 residential care or assisted living facilities;

(c) The economic and financial conditions of the person incurring the penalty; and

(d) The immediacy and extent the violation threatens the health, safety, and well being of residents.

(7) Any civil penalty imposed under ORS 443.455 and 441.710 shall become due and payable when the person incurring the penalty receives a notice in writing from the Assistant Director of the Department. The notice shall be sent by registered or certified mail and shall include:

(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 party's right to request a hearing.

(8) The person to whom the notice is addressed shall have 10 days from the date of postmark to make written application for a hearing before the Department.

(9) All hearings shall be conducted pursuant to the applicable provisions of ORS Chapter 183.

(10) If the person notified fails to request a hearing within 10 days, an order may be entered by the Department assessing a civil penalty.

(11) If, after a hearing, the person 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.

(12) A civil penalty imposed under ORS 443.455 or 441.710 may be remitted or reduced upon such terms and conditions as the Assistant Director of the Department considers proper and consistent with the public health and safety.

(13) 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, shall constitute a judgment and may be filed in accordance with the provisions of ORS 18.005 to 18.428. Execution may be issued upon the order in the same manner as execution upon a judgment of a court of record.

(14) A violation of any general order or final order pertaining to a residential care or assisted living facility issued by the Assistant Director of 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.

(15) Judicial review of civil penalties imposed under ORS 441.710 shall be as provided under 183.480, except that the court may, in its discretion, reduce the amount of the penalty.

(16) All penalties recovered under ORS 443.455 and 441.710 to 441.740 shall be paid to the Quality Care Fund.

Stat. Auth.: ORS 410.070 & 443.450
Stats. Implemented: ORS 441.705 - 441.745, 443.400 - 443.455 & 443.991
Hist.: SPD 14-2007, f. 8-31-07, cert. ef. 11-1-07; 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; APD 3-2015(Temp), f. & cert. ef. 1-29-15 thru 7-27-15

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Rule Caption: ODDS — Children's Intensive In-Home Services (Behavior Program and Medically Fragile Children's Services)
Adm. Order No.: APD 4-2015
Filed with Sec. of State: 2-13-2015
Certified to be Effective: 2-16-15
Notice Publication Date: 1-1-2015
Rules Adopted: 411-300-0165, 411-300-0175, 411-350-0075, 411-350-0085
Rules Amended: 411-300-0100, 411-300-0110, 411-300-0120, 411-300-0130, 411-300-0150, 411-300-0155, 411-300-0170, 411-300-

0190, 411-300-0200, 411-300-0205, 411-350-0010, 411-350-0020, 411-350-0030, 411-350-0040, 411-350-0050, 411-350-0080, 411-350-0100, 411-350-0110, 411-350-0115

Rules Repealed: 411-300-0140, 411-300-0210, 411-300-0220, 411-350-0118, 411-350-0120, 411-300-0110(T), 411-300-0120(T), 411-300-0130(T), 411-300-0150(T), 411-300-0165(T), 411-300-0170(T), 411-300-0190(T), 411-300-0200(T), 411-300-0205(T), 411-350-0020(T), 411-350-0030(T), 411-350-0040(T), 411-350-0050(T), 411-350-0075(T), 411-350-0080(T), 411-350-0100(T), 411-350-0110(T), 411-350-0115(T)

Subject: The Department of Human Services, Office of Developmental Disability Services (Department) is permanently updating the children's intensive in-home services (CIIS) rules in OAR chapter 411, division 300 for the CIIS Behavior Program and OAR chapter 411, division 350 for medically fragile children's services.

The permanent rules:

- Make permanent temporary rule language that became effective on August 20, 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;
- Incorporate expenditure guidelines;
- Account for changes in service eligibility related to the types of Medicaid eligibility a child may have and incorporate service eligibility requirements related to the transfer of assets in accordance with OAR 461-140-0210 to 461-140-0300;
- Clarify when a child may be exited from CIIS and reiterate the requirement for a Notification of Planned Action in the instance services are terminated;
- Include a time-frame for when a functional needs assessment and Individual Support Plan (ISP) must be completed and clarify service planning;
- Reflect the completion of the transition period for implementation of the Community First Choice state plan amendment and update the available supports to reflect changes to the proposed Behavioral and Hospital Model Waivers;
- 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 misuse;
- Expand provider types and specify qualifications for personal support workers, independent providers, provider organizations, and general business providers;
- Implement Senate Bill 22 by incorporating the rules for individual rights, complaints, Notification of Planned Action, and hearings adopted in OAR chapter 411, division 318;
- Remove sanctions for providers and include inactivation of provider enrollment for personal support workers and independent providers;
- Reflect new Department terminology and current practice; and
- Correct formatting and punctuation.

Rules Coordinator: Kimberly Colkitt-Hallman—(503) 945-6398

411-300-0100
Statement of Purpose

(1) The rules in OAR chapter 411, division 300 establish the policy of, and prescribe the standards and procedures for, the provision of children's intensive in-home services (CIIS) for children in the ICF/ID Behavioral Model Waiver. These rules are established to ensure that CIIS augment and support independence, empowerment, dignity, and development of children with intellectual or developmental disabilities and intense behaviors.

(2) CIIS are exclusively intended to enable a child with an intellectual or developmental disability and intense behaviors to have a permanent and stable familial relationship. CIIS are intended to support, not supplant, the natural supports and services provided by the family of a child and provide the support necessary to enable the family to meet the needs of caring for the child who meets the eligibility criteria for CIIS.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 427.005, 427.007 & 430.215
Hist.: SDSD 12-2002, f. 12-26-02, cert. ef. 12-28-02; SPD 13-2004, f. & cert. ef. 6-1-04; SPD 11-2009, f. 7-31-09, cert. ef. 8-1-09; SPD 53-2013, f. 12-27-13. cert. ef. 12-28-13; APD 4-2015, f. 2-13-15, cert. ef. 2-16-15

411-300-0110
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 300:

(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) "Assistive Devices" mean the devices, aids, controls, supplies, or appliances described in OAR 411-300-0150 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.

(6) "Assistive Technology" means the devices, aids, controls, supplies, or appliances described in OAR 411-300-0150 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.

(7) "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 411-300-0150.

(8) "Background Check" means a criminal records check and abuse check as defined in OAR 407-007-0210.

(9) "Behavior Consultant" means a contractor with specialized skills as described in OAR 411-300-0170 who conducts functional assessments and develops a Behavior Support Plan.

(10) "Behavior Criteria" means the criteria used by the Department to evaluate the intensity of the challenges and service needs of a child and to determine eligibility for the ICF/ID Behavioral Model Waiver.

(11) "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 a child and to modify the behavior of the primary caregiver or 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) "Case Management" means the functions performed by a services coordinator. 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.

(14) "CDDP" means "Community Developmental Disability Program" as defined in OAR 411-320-0020.

(15) "Child" means an individual who is less than 18 years of age, eligible for developmental disability services, and applying for, or accepted for, CIIS under the ICF/ID Behavioral Model Waiver.

(16) "Chore Services" mean the services described in OAR 411-300-0150 that are needed to restore a hazardous or unsanitary situation in the family home to a clean, sanitary, and safe environment.

(17) "CIIS" means "children's intensive in-home services". CIIS include the services described in these rules.

(18) "Community Nursing Services" mean the nursing services described in OAR 411-300-0150 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.

(19) "Community Transportation" means the services described in OAR 411-300-0150 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.

(20) "Cost Effective" means being responsible and accountable with Department resources by offering less costly alternatives when providing choices that adequately meet the support needs of a child. Less costly alternatives include other programs available from the Department and the utilization of assistive devices, natural supports, environmental modifications, and alternative resources. Less costly alternatives may include resources not paid for by the Department.

(21) "Daily Activity Log" means the record of services provided to a child. The content and form of a daily activity log is agreed upon by both the parent or guardian and the services coordinator and documented in the ISP for the child.

(22) "Delegation" is the process by which a registered nurse authorizes an unlicensed person to perform nursing tasks and confirms that authorization in writing. Delegation may occur only after a registered nurse follows all steps of the delegation process as outlined in OAR chapter 851, division 047.

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

(24) "Designated Representative" means any adult who is not a paid provider of ODDS funded services, such as a family member or advocate, who is chosen by a parent or guardian and authorized by the parent or guardian to serve as the representative of the parent or guardian in connection with the provision of ODDS funded supports. A parent or guardian is not required to appoint a designated representative.

(25) "Developmental Disability" means "developmental disability" as defined in OAR 411-320-0020 and described in 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) "Employer" means, for the purposes of obtaining CIIS through a personal support worker as described in these rules, the parent or guardian or a person selected by the parent or guardian to act on the behalf of the parent or guardian to conduct the employer responsibilities described in OAR 411-300-0165. An employer may also be a designated representative.

(28) "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.

(29) "Entry" means admission to a Department-funded developmental disability service.

(30) "Environmental Modifications" mean the physical adaptations described in OAR 411-300-0150 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.

(31) "Environmental Safety Modifications" mean the physical adaptations described in OAR 411-300-0150 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.

(32) "Exit" means termination or discontinuance of CIIS.

(33) "Expenditure Guidelines" mean the guidelines published by the Department that describe allowable uses for CIIS funds. The Department incorporates the Expenditure Guidelines into these rules by this reference. The Expenditure Guidelines are maintained by the Department at: http://www.oregon.gov/dhs/dd/. Printed copies 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.

(34) "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 CIIS 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.

(35) "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 certified foster home funded by Child Welfare.

(36) "Family Training" means the training services described in OAR 411-300-0150 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.

(37) "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 a child enrolled in CIIS is known as the Child Needs Assessment (CNA). Effective December 31, 2014, the Department incorporates Version C of the CNA into these rules by this reference. The CNA is maintained by the Department at: http://www.dhs.state.or.us/spd/tools/dd/CNAchildInhome.xls. A printed copy of a blank CNA 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.

(38) "General Business Provider" means an organization or entity selected by a parent or guardian and paid with CIIS 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.

(39) "Guardian" means the parent of a minor child or the person or agency appointed and authorized by a court to make decisions about services for a child.

(40) "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.

(41) "ICF/ID Behavioral Model Waiver" means the waiver granted by the federal Centers for Medicare and Medicaid Services that allows Medicaid funds to be spent on a child living in the family home who otherwise would have to be served in an intermediate care facility for individuals with intellectual or developmental disabilities if the waiver was not available.

(42) "Independent Provider" means a person selected by a parent or guardian and paid with CIIS funds to directly provide services to a child.

(43) "Individual-Directed Goods and Services" mean the services, equipment, or supplies described in OAR 411-300-0150, not otherwise provided through other waiver or state plan services, that address an identified need in an ISP. Individual-directed goods and services may include services, equipment, or supplies that improve and maintain the full membership of a child in the community.

(44) "Intellectual Disability" means "intellectual disability" as defined in OAR 411-320-0020 and described in OAR 411-320-0080.

(45) "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. The ISP reflects 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.

(46) "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.

(47) "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.

(48) "ODDS" means the Department of Human Services, Office of Developmental Disability Services.

(49) "OHP" means the Oregon Health Plan.

(50) "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.

(51) "OIS" means the "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.

(52) "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.

(53) "Parent" means the biological parent, adoptive parent, or stepparent of a child. Unless otherwise specified, references to parent also include a person chosen by the parent or guardian to serve as the designated representative of the parent or guardian in connection with the provision of ODDS funded supports.

(54) "Person-Centered Planning":

(a) Means a timely and formal or informal process driven by a child, includes people chosen by the child, ensures the child directs the process to the maximum extent possible, and 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.

(55) "Personal Support Worker" means "personal support worker" as defined in OAR 411-375-0010.

(56) "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.

(57) "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. In this context, the term parent or guardian may include a designated representative.

(58) "Protective Physical Intervention" means any manual physical holding of, or contact with, a child that restricts freedom of movement.

(59) "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. A provider is not a primary caregiver.

(60) "Provider Organization" means an entity licensed or certified by the Department that is selected by a parent or guardian and paid with CIIS 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.

(61) "Relief Care" means the intermittent services described in OAR 411-300-0150 that are provided on a periodic basis for the relief of, or due to the temporary absence of, a primary caregiver.

(62) "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 or guardian, services coordinator, and ISP team.

(63) "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 a child is unable to provide for their own safety and the child 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.

(64) "Service Level" means the amount of attendant care, hourly relief care, or skills training services determined necessary by a functional needs assessment and behavior criteria and made available to meet the identified support needs of a child.

(65) "Services Coordinator" means an employee of a CDDP, the Department, 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 who ensures the eligibility of a child for services. The services coordinator acts as the proponent for children with intellectual or developmental disabilities and their families and is the person-centered plan coordinator for the child as defined in the Community First Choice state plan amendment.

(66) "Skills Training" means the activities described in OAR 411-300-0150 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.

(67) "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 preauthorized 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 a 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.

(68) "Special Diet" means the specially prepared food or particular types of food described in OAR 411-300-0150 that are specific to the medical condition or diagnosis of a child and in support of an evidence-based treatment regimen.

(69) "Specialized Medical Supplies" mean the medical and ancillary supplies described in OAR 411-300-0150, 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.

(70) "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.

(71) "Supplant" means take the place of.

(72) "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.

(73) "These Rules" mean the rules in OAR chapter 411, division 300.

(74) "Transition Costs" mean the expenses described in OAR 411-300-0150 required for a child to make the transition to the family home from a nursing facility or intermediate care facility for individuals with intellectual or developmental disabilities.

(75) "Unacceptable Background Check" means an administrative process that produces information related to the background of a person that precludes the person from being an independent provider for one or more of the following reasons:

(a) Under OAR 407-007-0275, the person applying to be an independent provider has been found ineligible due to ORS 443.004;

(b) Under OAR 407-007-0275, the person was enrolled as an independent provider for the first time, or after any break in enrollment, after July 28, 2009 and has been found ineligible due to ORS 443.004; or

(c) A background check and fitness determination has been conducted resulting in a "denied" status as defined in OAR 407-007-0210.

(76) "Vehicle Modifications" mean the adaptations or alterations described in OAR 411-300-0150 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.

(77) "Waiver Services" mean the menu of disability related services and supplies that are specifically identified by the ICF/ID Behavioral Model Waiver.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 427.005, 427.007, 430.215

Hist.: SDSD 12-2002, f. 12-26-02, cert. ef. 12-28-02; SPD 19-2003(Temp), f. & cert. ef. 12-11-03 thru 6-7-04; SPD 13-2004, f. & cert. ef. 6-1-04; SPD 11-2009, f. 7-31-09, cert. ef. 8-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 20-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 53-2013, f. 12-27-13. cert. ef. 12-28-13; APD 31-2014(Temp), f. & cert. ef. 8-20-14 thru 2-16-15; APD 4-2015, f. 2-13-15, cert. ef. 2-16-15

411-300-0120
Eligibility for CIIS

(1) ELIGIBILITY. In order to be eligible for CIIS, a child must:

(a) Be under the age of 18;

(b) Be an Oregon resident who meets the citizenship and alien status requirements of OAR 461-120-0110;

(c) Be receiving Medicaid Title XIX benefits under OSIPM or OHP Plus. This does not include CHIP Title XXI benefits;

(d) For a child with excess income, contribute to the cost of services pursuant to OAR 461-160-0610 and 461-160-0620;

(e) Be determined eligible for developmental disability services by the CDDP of the county of origin as described in OAR 411-320-0080;

(f) Meet the level of care as defined in OAR 411-320-0020;

(g) Be accepted by the Department by scoring greater than 200 on the behavior criteria within two months prior to starting services and maintain a score above 150 as determined by reassessment every six months;

(h) Reside in the family home; and

(i) Be safely served in the family home. This includes, but is not limited to, a qualified primary caregiver demonstrating the willingness, skills, and ability to provide direct care as outlined in an ISP in a cost effective manner, as determined by a services coordinator within the limitations of OAR 411-300-0150, and participate in planning, monitoring, and evaluation of the CIIS provided.

(2) 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 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 child was requesting these services under OSIPM. 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 a child 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 a child is considered ineligible for CIIS due to a disqualifying transfer of assets, the parent or guardian 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.

(3) INELIGIBILITY. A child is not eligible for CIIS if the child:

(a) Resides in a medical hospital, psychiatric hospital, school, sub-acute facility, nursing facility, intermediate care facility for individuals with intellectual or developmental disabilities, foster home, or other 24-hour residential setting;

(b) Does not require waiver services or Community First Choice state plan services as evidenced by a functional needs assessment;

(c) Has sufficient family, government, or community resources available to provide for his or her care; or

(d) Is not safely served in the family home as described in section (1)(i) of this rule.

(4) TRANSITION. A child whose reassessment score on the behavior criteria is less than 150 is transitioned out of CIIS within 90 days. The child must exit from CIIS at the end of the 90 day transition period.

(a) When possible and agreed upon by the parent or guardian and the services coordinator, CIIS may be incrementally reduced during the 90 day transition period.

(b) The services coordinator must coordinate and attend a transition planning meeting at least 30 days prior to the end of the transition period. The transition planning meeting must include a CDDP representative, the parent or guardian, and any other person at the request of the parent or guardian.

(5) EXIT.

(a) CIIS may be terminated:

(A) At the oral or written request of a parent or guardian to end the service relationship; or

(B) In any of the following circumstances:

(i) The child no longer meets the eligibility criteria in section (1) of this rule;

(ii) The child does not require waiver services or Community First Choice state plan services;

(iii) There are sufficient family, government, community, or alternative resources available to provide for the care of the child;

(iv) The child may not be safely served in the family home as described in section (1)(i) of this rule;

(v) The parent or guardian either cannot be located or has not responded after 30 days of repeated attempts by a services coordinator to complete ISP development and monitoring activities and does not respond to a notice of intent to terminate;

(vi) The services coordinator has sufficient evidence that the parent or guardian has engaged in fraud or misrepresentation, failed to use resources as agreed upon in the ISP, refused to cooperate with documenting expenses of CIIS funds, or otherwise knowingly misused public funds associated with CIIS.

(vii) The child is incarcerated or admitted to a medical hospital, psychiatric hospital, sub-acute facility, nursing facility, intermediate care facility for individuals with intellectual or developmental disabilities, foster home, or other 24-hour residential setting and it is determined that the child is not returning to the family home or is not returning to the family home after 90 consecutive days; or

(viii) The child does not reside in Oregon.

(b) In the event CIIS are terminated, a written Notification of Planned Action must be provided as described in OAR chapter 411, division 318.

(6) WAIT LIST. If the maximum number of children allowed on the ICF/ID Behavioral Model Waiver are enrolled and being served, the Department may place a child eligible for CIIS on a wait list. A child on the

wait list may access other Medicaid-funded services or General Fund services for which the child is determined eligible through the CDDP.

(a) The date of the initial completed application for CIIS determines the order on the wait list. A child, who previously received CIIS that currently meets the criteria for eligibility as described in section (1) of this rule, is put on the wait list as of the date the original application for CIIS was complete.

(b) The date the application for CIIS is complete is the date that the Department has the required demographic data for the child and a statement of eligibility for developmental disability services.

(c) Children on the wait list are served on a first come, first served basis as space on the ICF/ID Behavioral Model Waiver allows. A re-evaluation is completed prior to entry to determine current eligibility.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 427.005, 427.007 & 430.215
Hist.: SDSD 12-2002, f. 12-26-02, cert. ef. 12-28-02; SPD 11-2009, f. 7-31-09, cert. ef. 8-1-09; SPD 20-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 53-2013, f. 12-27-13. cert. ef. 12-28-13; APD 31-2014(Temp), f. & cert. ef. 8-20-14 thru 2-16-15; APD 4-2015, f. 2-13-15, cert. ef. 2-16-15

411-300-0130
Service Planning

(1) FUNCTIONAL NEEDS ASSESSMENT. A services coordinator must complete a functional needs assessment using a person-centered planning approach initially and at least annually for each child to assess the service needs of the child.

(a) The functional needs assessment must be conducted face-to-face with the child and the services coordinator must interview the parent or guardian, other caregivers, and when appropriate, any other person at the request of the parent or guardian.

(b) The functional needs assessment must be completed:

(A) Within 30 days of entry into the CIIS program;

(B) Within 60 days prior to the annual renewal of an ISP; and

(C) Within 45 days from the date the parent or guardian requests a functional needs reassessment.

(c) The parent or guardian must participate in the 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 411-318-0020.

(B) The Department may allow additional time if circumstances beyond the control of the parent or guardian 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 services coordinator must mail a notice of the assessment process to the parent or guardian. 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.

(2) INDIVIDUAL SUPPORT PLAN.

(a) A child 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 services coordinator.

(B) The initial ISP must be authorized;

(i) No more than 90 days from the date of eligibility determination made by 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.

(b) The services coordinator must develop, with the input of the child (as appropriate), parent or guardian, and any other person at the request of the parent or guardian, a written ISP prior to purchasing supports with CIIS funds and annually thereafter that identifies:

(A) The service needs of the child;

(B) The most cost effective services for safely and appropriately meeting the service needs of the child; and

(C) The methods, resources, and strategies that address the service needs of the child;

(c) The ISP must include, but not be limited to:

(A) The legal name of the child and the name of the parent or guardian of the child;

(B) A description of the supports required that is consistent with the support needs identified in the assessment of the child;

(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 manner in which services are delivered and the frequency of services;

(F) The maximum hours or units of provider services determined necessary by a functional needs assessment and behavior criteria;

(G) Provider type;

(H) Additional services authorized by the Department for the child:

(I) Projected costs with sufficient detail to support estimates;

(J) The strengths and preferences of the child;

(K) Individually identified goals and desired outcomes of the child;

(L) 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;

(M) The risk factors and the measures in place to minimize the risk factors, including back-up plans for assistance with support and service needs;

(N) The identity of the person responsible for case management and monitoring the ISP;

(O) The date of the next ISP review that, at least, must be completed within 12 months of the previous ISP;

(P) A provision to prevent unnecessary or inappropriate services; and

(Q) Any changes in support needs identified through a functional needs assessment and behavior criteria.

(d) An ISP must be reviewed with the parent or guardian prior to implementation. The parent or guardian and the services coordinator must sign the ISP. A copy of the ISP must be provided to the parent or guardian.

(e) The ISP must be understandable to the family and the people important in supporting the child. An ISP is translated, as necessary, upon request.

(f) Changes in services authorized in the ISP must be consistent with needs identified in a functional needs assessment and behavior criteria and documented in an amendment to the ISP that is signed by the parent or guardian and the services coordinator.

(g) An ISP must be renewed at least every 12 months. Each new plan year begins on the anniversary date of the initial or previous ISP.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 427.005, 427.007 & 430.215
Hist.: SDSD 12-2002, f. 12-26-02, cert. ef. 12-28-02; SPD 11-2009, f. 7-31-09, cert. ef. 8-1-09; SPD 20-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 53-2013, f. 12-27-13. cert. ef. 12-28-13; APD 31-2014(Temp), f. & cert. ef. 8-20-14 thru 2-16-15; APD 4-2015, f. 2-13-15, cert. ef. 2-16-15

411-300-0150
Scope of CIIS and Limitations

(1) CIIS are intended to support, not supplant, the naturally occurring services provided by a legally responsible primary caregiver and enable the primary caregiver to meet the needs of caring for a child on the ICF/ID Behavioral Model Waiver. CIIS services are not meant to replace other available governmental or community services and supports. All services funded by the Department must be provided in accordance with the Expenditure Guidelines and based on the actual and customary costs related to best practice standards of care for children with similar disabilities.

(2) The use of CIIS funds to purchase supports is limited to:

(a) The service level for a child as determined by a functional needs assessment and behavior criteria. The functional needs assessment determines the total number of hours needed to meet the identified needs of the child. 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 attendant care, skills training, hourly relief care, and state plan personal care service hours as described in OAR chapter 411, division 034; and

(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 Expenditure Guidelines.

(3) To be authorized and eligible for payment by the Department, all CIIS services and supports must be:

(a) Directly related to the disability of a child;

(b) Required to maintain the health and safety of a child;

(c) Cost effective;

(d) Considered not typical for a parent or guardian to provide to a child of the same age;

(e) Required to help the parent or guardian to continue to meet the needs of caring for the child;

(f) Included in an approved ISP;

(g) Provided in accordance with the Expenditure Guidelines; and

(h) Based on the actual and customary costs related to best practice standards of care for children with similar disabilities.

(4) When conditions of purchase are met and provided purchases are not prohibited under OAR 411-300-0155, CIIS 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 the OSIPM or OHP Plus benefits the child qualifies for:

(a) Community First Choice state plan services:

(A) Behavior support services as described in section (5) of this rule;

(B) Community nursing services as described in section (6) of this rule;

(C) Environmental modifications as described in section (7) of this rule;

(D) Attendant care as described in section (8) of this rule;

(E) Skills training as described in section (9) of this rule;

(F) Relief care as described in section (10) of this rule;

(G) Assistive devices as described in section (11) of this rule;

(H) Assistive technology as described in section (12) of this rule;

(I) Chore services as described in section (13) of this rule;

(J) Community transportation as described in section (14) of this rule; and

(K) Transition costs as described in section (15).

(b) Home and community-based waiver services:

(A) Case management as defined in OAR 411-300-0110;

(B) Family training as described in section (16) of this rule;

(C) Environmental safety modifications as described in section (17) of this rule;

(D) Vehicle modifications as described in section (18) of this rule;

(E) Specialized medical supplies as described in section (19) of this rule;

(F) Special diet as described in section (20) of this rule; and

(G) Individual-directed goods and services as described in section (21) of this rule.

(c) State Plan personal care services.

(5) 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 enable 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 or guardian;

(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.

(i) When interventions in behavior are necessary, the interventions must be performed in accordance with positive behavioral theory and practice as defined in OAR 411-300-0110.

(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, 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 a primary caregiver or provider of a child;

(B) Developing a visual communication system as a strategy for behavior support; and

(C) Communicating, as authorized by a parent or guardian through a release of information, with other professionals about the strategies and outcomes of the Behavior Support Plan as written in the Behavior Support Plan within authorized consultation hours only.

(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;

(G) Relief care; or

(H) Communication or activities not directly related to the development, implementation, or revision of the Behavior Support Plan.

(6) 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 a primary caregiver 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 CIIS 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 a medical condition requires an update to the Nursing Service Plan.

(7) 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 child and identified in the ISP for 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 family 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 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 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 411-300-0020 must be completed for each identified environmental modification project. All contractors submitting bids must be given the same scope of work.

(i) A services coordinators must follow the processes outlined in the 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.

(8) 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 goals, preferences, and 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, 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 provider, 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 the 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) Meal preparation and special diets;

(D) 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;

(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; and

(F) 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.

(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 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 prior 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 and behavior criteria;

(D) Support generally provided for a child of similar age without disabilities by the parent or guardian or other family members;

(E) Supports and services in the family home that are funded by Child Welfare;

(F) 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;

(G) Services provided by the family; and

(H) Home schooling.

(f) Attendant care services may not be provided on a 24-hour shift-staffing basis.

(9) 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.

(10) 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 family home;

(B) A licensed or certified setting;

(C) The home of a qualified provider, chosen by the parent or guardian as 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 for the child.

(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 seven 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.

(11) 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 be purchased with CIIS 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.

(b) Assistive devices that may be purchased for the purpose described in subsection (b) 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 provided by any other funding source to assist and enhance the independence of a child in performing ADLs or IADLs, such as durable medical equipment, mechanical apparatus, or electronic devices.

(c) 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 child and a determination by the Department of appropriateness and cost-effectiveness.

(d) Devices must be limited to the least costly option necessary to meet the assessed need of a child.

(e) Assistive devices must meet applicable standards of manufacture, design, and installation.

(f) To be authorized by a services coordinator, assistive devices must be:

(A) In addition to any assistive devices, medical equipment, or supplies furnished under OHP, private insurance, or alternative resources;

(B) Determined necessary to the daily functions of a child; and

(C) Directly related to the disability of a child.

(g) 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, private insurance, or alternative resources;

(C) Items that are considered unsafe for a child;

(D) Toys or outdoor play equipment; and

(E) Equipment and furnishings of general household use.

(12) 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.

(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.

(13) 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.

(14) COMMUNITY TRANSPORTATION.

(a) Community transportation includes, but is not limited to:

(A) Community transportation provided by a common carrier or bus in accordance with standards established for these entities;

(B) Reimbursement on a per-mile basis for transporting a child; 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 vehicle 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 used for behavioral intervention or calming;

(L) Transportation normally provided by a primary caregiver for a child of similar age without disabilities;

(M) Reimbursement for out-of-state travel expenses; and

(N) Transportation services that may be obtained through other means, such as OHP or other alternative resources available to the child.

(15) TRANSITION COSTS.

(a) Transition costs are limited to a child transitioning to the family home from a nursing facility, intermediate care facility for individuals with intellectual or developmental disabilities, 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) Transition costs for basic household furnishings and other items are limited to one time per year.

(f) Transition costs may not supplant the legal responsibility of a parent or guardian. In this context, the term parent or guardian does not include a designated representative.

(16) 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.

(17) 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.

(f) 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.

(g) Environmental safety modifications must be completed by a state licensed contractor with a minimum of $1,000,000 liability insurance. Any modification requiring a permit must be inspected by a local inspector and certified as in compliance with local codes. Certification of compliance must be filed in the file for the contractor prior to payment.

(h) Environmental safety modifications must be made within the existing square footage of the family home and may not add to the square footage of the family home.

(i) Payment to the contractor is to be withheld until the work meets specifications.

(j) A scope of work as defined in OAR 411-308-0020 must be completed for each identified environmental modification project. All contractors submitting bids must be given the same scope of work.

(k) A services coordinator must follow the processes outlined in the Expenditure Guidelines for contractor bids and the awarding of work.

(l) All dwellings must be in good repair and have the appearance of sound structure.

(m) The identified home may not be in foreclosure or the subject of legal proceedings regarding ownership.

(n) Environmental modifications must only be completed to the family home.

(o) Upgrades in materials that are not directly related to the health and safety needs of the child are not paid for or permitted.

(p) Environmental modifications are subject to Department requirements regarding material and construction practices based on industry standards for safety, liability, and durability, as referenced in building codes, materials manuals, and industry and risk management publications.

(q) RENTAL PROPERTY.

(A) Environmental modifications to rental property may not substitute or duplicate services otherwise the responsibility of the landlord under the landlord tenant laws, the Americans with Disabilities Act, or the Fair Housing Act.

(B) Environmental modifications made to a rental structure must have written authorization from the owner of the rental property prior to the start of the work.

(C) The Department does not fund work to restore the rental structure to the former condition of the rental structure.

(18) 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.

(19) SPECIALIZED MEDICAL SUPPLIES. Specialized medical supplies do not cover services which are otherwise available to a child 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.

(20) SPECIAL DIET.

(a) A special diet is a supplement and is not intended to meet the complete, daily nutritional requirements for a child.

(b) A special diet must be ordered at least annually by a physician licensed by the Oregon Board of Medical Examiners and periodically monitored by a dietician or physician.

(c) The maximum monthly purchase for special diet supplies may not exceed $100 per month.

(d) Special diet supplies must be in support of an evidence-based treatment regimen.

(e) A special diet excludes restaurant and prepared foods, vitamins, and supplements.

(21) INDIVIDUAL-DIRECTED GOODS AND SERVICES.

(a) Individual-directed goods and services provide equipment and supplies that are not otherwise available through another source, such as waiver services or state plan services.

(b) Individual-directed goods and services are therapeutic in nature and must be recommended in writing by at least one licensed health professional or by a behavior consultant.

(c) Individual-directed goods and services must directly address an identified disability related need of a child in the ISP.

(d) Individual-directed goods and services must:

(A) Decrease the need for other Medicaid services;

(B) Promote inclusion of a child in the community; or

(C) Increase the safety of a child in the family home.

(e) Individual-directed goods and services may not be:

(A) Otherwise available through another source, such as waiver services or state plan services;

(B) Experimental or prohibited treatment; or

(C) Goods or services that are normally purchased by a family for a typically developing child of the same age.

(f) Individual-directed goods and services purchased must be the most cost effective option available to meet the needs of the child.

(22) All CIIS authorized by the Department must be included in a written ISP in order to be eligible for payment. The ISP must use the most cost effective services for safely and appropriately meeting the service needs of a child as determined by a services coordinator. Any goods purchased with CIIS funds that are not used according to an ISP may be immediately recovered by the Department.

(23) All requests for General Fund expenditures and expenditures exceeding limitations in the Expenditure Guidelines must be authorized by the Department. The approval of the Department is limited to 90 days unless re-authorized. A request for a General Fund expenditure or an expenditure exceeding limitations in the Expenditure Guidelines is only authorized in the following circumstances:

(a) The child is not safely served in the family home without the expenditure;

(b) The expenditure provides supports for the emerging or changing service needs or behaviors of the child;

(c) A significant medical condition or event, as documented by a primary care provider, prevents or seriously impedes the primary caregiver from providing services; or

(d) The services coordinator determines, with a behavior consultant, that the child needs two staff present at one time to ensure the safety of the child and others. Prior to approval, the services coordinator must determine that a caregiver, including the parent or guardian, has been trained in behavior management and that all other feasible recommendations from the behavior consultant and the services coordinator have been implemented.

(24) Payment for CIIS is made in accordance with the Expenditure Guidelines.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 427.005, 427.007 & 430.215

Hist.: SDSD 12-2002, f. 12-26-02, cert. ef. 12-28-02; SPD 11-2009, f. 7-31-09, cert. ef. 8-1-09; SPD 20-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 53-2013, f. 12-27-13. cert. ef. 12-28-13; APD 31-2014(Temp), f. & cert. ef. 8-20-14 thru 2-16-15; APD 4-2015, f. 2-13-15, cert. ef. 2-16-15

411-300-0155

Using CIIS Funds for Certain Purchases is Prohibited

(1) Effective July 28, 2009, CIIS 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) CIIS 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" charge, or contractor travel and preparation hours;

(n) Services, activities, materials, or equipment that are not necessary, not in accordance with the Expenditure Guidelines, not cost effective, or do not meet the definition of support or social benefit as defined in OAR 411-300-0110;

(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 Department 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, refused to accept or delegate record keeping required to document use of CIIS funds, or otherwise knowingly misused public funds associated with CIIS; 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. Examples include, but are not limited to, 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

Stats. Implemented: ORS 427.005, 427.007, 430.215

Hist.: SPD 11-2009, f. 7-31-09, cert. ef. 8-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 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 53-2013, f. 12-27-13. cert. ef. 12-28-13; Suspended by APD 31-2014(Temp), f. & cert. ef. 8-20-14 thru 2-16-15; APD 4-2015, f. 2-13-15, cert. ef. 2-16-15

411-300-0165

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 a parent or guardian 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 CIIS 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 any performance deficiencies with the personal support worker 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 timesheets, 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 CIIS 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. The child may receive CIIS provided by a provider organization or general business provider, when available.

(6) DESIGNATION OF EMPLOYER RESPONSIBLITIES.

(a) A parent or guardian 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 CIIS provided by a personal support worker; or

(B) Select a provider organization or general business provider to provide CIIS.

(b) A parent or guardian 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 or guardian is not able to meet in order for the child to receive or continue to receive CIIS provided by a personal support worker; and

(B) On a Department approved form, document the specific employer responsibilities to be performed by the parent or guardian 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 or guardian must:

(A) Designate a different employer representative in order for the child to receive or continue to receive CIIS provided by a personal support worker; or

(B) Select a provider organization or general business provider to provide CIIS.

(7) EMPLOYER REPRESENTATIVE.

(a) A parent or guardian may designate an employer representative to act on behalf of the parent or guardian to meet the employer responsibilities described in section (5)(a) of this rule.

(b) If a personal support worker is selected by the parent or guardian to act as the employer, the parent or guardian 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 adult 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 or guardian may select another employer representative.

(8) NOTICE.

(a) The Department shall mail a notice to the parent or guardian 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 or guardian does not agree with the action taken by the Department, the parent or guardian 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 CIIS, the hearing rights in OAR chapter 411, division 318 apply.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 427.005, 427.007, 430.215

Hist.: APD 31-2014(Temp), f. & cert. ef. 8-20-14 thru 2-16-15; APD 4-2015, f. 2-13-15, cert. ef. 2-16-15

411-300-0170

Standards for Providers Paid with CIIS Funds

(1) PERSONAL SUPPORT WORKERS. A personal support worker must meet the qualifications described in OAR chapter 411, division 375.

(2) INDEPENDENT PROVIDERS WHO ARE NOT PERSONAL SUPPORT WORKERS.

(a) 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 CIIS 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, spouse, or other person legally responsible for the child receiving CIIS;

(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 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 or guardian; 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 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; and

(K) Sign a Medicaid provider agreement and be enrolled as a Medicaid provider prior to delivery of any services.

(b) Subsection (a)(C) of this section does not apply to employees of a parent or guardian, 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.

(c) If a provider is an independent contractor during the terms of a contract, the provider must maintain in force, at the expense of the provider, professional liability insurance with a combined single limit of not less than $1,000,000 for each claim, incident, or occurrence. Professional liability insurance is to cover damages caused by error, omission, or negligent acts related to professional services.

(A) The provider must provide written evidence of insurance coverage to the Department prior to beginning work and at any time upon the request of the Department.

(B) There must be no cancellation of insurance coverage without 30 days prior written notice to the Department.

(3) 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.

(4) A provider must immediately notify the parent or guardian and the services coordinator of injury, illness, accident, or any unusual circumstance that may have a serious effect on the health, safety, physical, emotional well-being, or level of service required by the child for whom CIIS are being provided.

(5) All providers are mandatory reporters and are required to report suspected child abuse to the local Department office or to the police in the manner described in ORS 419B.010.

(6) Independent providers, including personal support workers, are not employees of the state, CDDP, or Support Services Brokerage.

(7) 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 411-300-0150;

(b) Have current certification demonstrating completion of OIS training; and

(c) Submit a resume or the equivalent to the Department 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 or related 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 411-300-0150.

(d) Additional education or experience may be required to safely and adequately provide the services described in OAR 411-300-0150.

(8) COMMUNITY NURSE. A nurse providing community nursing services must be an enrolled Medicaid provider and meet the qualifications in OAR 411-048-0210.

(9) DIETICIANS. Dieticians providing special diets must be licensed according to ORS 691.415 through 691.465.

(10) PROVIDER ORGANIZATIONS WITH CURRENT LICENSE OR CERTIFICATION.

(a) The following provider organizations may not require additional certification as an organization to provide relief care, attendant care, skills training, community transportation, or behavior support services:

(A) 24-hour residential settings certified, endorsed, and licensed under OAR chapter 411, division 325;

(B) Foster homes for children certified under OAR chapter 411, division 346; and

(C) Foster homes for adults licensed under OAR chapter 411, division 360.

(b) 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.

(c) Provider organizations must assure that all people directed by the provider organization as employees, contractors, or volunteers to provide services paid for with CIIS funds meet the standards for independent providers described in this rule.

(11) GENERAL BUSINESS PROVIDERS. General business providers providing services to children paid with CIIS funds must hold any current license appropriate to operate required by the state of Oregon or federal law or regulation. Services purchased with CIIS 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 Contractors 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 transportation providers, a business license, vehicle insurance in compliance with the laws of the Department of Motor Vehicles, and operators 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;

(g) For providers of personal emergency response systems, a current retail business license; and

(h) For vendors and supply companies providing specialized diets, a current retail business license.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 427.005, 427.007, 430.215

Hist.: SDSD 12-2002, f. 12-26-02, cert. ef. 12-28-02; SPD 13-2004, f. & cert. ef. 6-1-04; SPD 11-2009, f. 7-31-09, cert. ef. 8-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 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 53-2013, f. 12-27-13. cert. ef. 12-28-13; APD 31-2014(Temp), f. & cert. ef. 8-20-14 thru 2-16-15; APD 4-2015, f. 2-13-15, cert. ef. 2-16-15

411-300-0175

Provider Enrollment Inactivation and Termination

(1) PERSONAL SUPPORT WORKERS. The provider enrollment for a personal support worker is inactivated or terminated as described in OAR chapter 411, division 375.

(2) 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:

(A) The provider has not provided any paid services to a child within the last previous 12 months;

(B) The provider informs the Department, CDDP, CIIS, or Support Services Brokerage that the provider is no longer providing services in Oregon;

(C) The background check for the provider results in a closed case pursuant to OAR 407-007-0325;

(D) The actions of the provider are being investigated by adult or child protective services for suspected abuse that poses imminent danger to current or future children; or

(E) Payments to the provider, either whole or in part, 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 enrollment for an independent provider, who is not a personal support worker, may be terminated when the Department determines after enrollment that the independent 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 authorized services;

(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) Been suspended or terminated as a provider by the Department or Oregon Health Authority;

(K) Violated the requirement to maintain a drug-free work place;

(L) Failed to provide services as required;

(M) 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

(N) Been excluded or debarred by the Office of the Inspector General.

(c) If the Department makes a decision to terminate the provider enrollment of an independent provider who is not a personal support worker, the Department 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 subsection (A) or (B) of this section; and

(iii) The appeal rights for the independent provider, including how to file an 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.

(d) 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.

(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.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 427.005, 427.007, 430.215

Hist.: APD 4-2015, f. 2-13-15, cert. ef. 2-16-15

411-300-0190

CIIS Documentation Needs

(1) Accurate timesheets of CIIS must be dated and signed by the provider and the parent or guardian of the child after the services are provided. Timesheets must be maintained and submitted to the Department with any request for payment for services.

(2) Requests for payment for CIIS must:

(a) Include the billing form indicating prior authorization for the services;

(b) Be signed by the provider acknowledging agreement with the terms and condition of the billing form and attesting that the hours were delivered as billed; and

(c) Be signed by the parent or guardian of the child after the services were delivered, verifying that the services were delivered as billed.

(3) Documentation of CIIS provided, including but not limited to daily activity logs as prescribed by the services coordinator, must be provided to the services coordinator upon request or as outlined in the ISP for the child and maintained in the family home or the place of business of the provider of services. The Department does not pay for services that are not outlined in the ISP for the child or unrelated to the disability of the child.

(4) Daily activity logs must be completed by the provider for each shift worked and the responsibility to complete daily activity logs must be listed in the job description for the provider.

(5) The Department retains billing forms and timesheets for at least five years from the date of CIIS.

(6) Behavior consultants must submit the following to the Department written in clear, concrete language understandable to the parent or guardian of the child and the provider:

(a) An evaluation of the child, the concerns of the parent or guardian, the environment of the child, current communication strategies used by the child and used by others with the child, and any other disability of the child that may impact the appropriateness of strategies to be used with the child; and

(b) Any behavior plan or instructions left with the parent or guardian and the provider that describes the suggested strategies to be used with the child.

(7) A Nursing Service Plan must be present when CIIS funds are used for community nursing services.

(8) Providers must maintain documentation of provided CIIS for at least seven years from the date of service. If a provider is a nurse, the nurse must either maintain documentation of provided services for at least five years or send the documentation to the Department.

(9) Providers must furnish requested documentation immediately 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, and within the time frame specified in the written request. Failure to comply with the request may be considered by the Department as reason to deny or recover payments.

(10) Access to records by the Department, including but not limited to medical, nursing, behavior, psychiatric, or financial records, and specifically including daily activity logs and records by providers and vendors providing goods and services, does not require authorization or release by the child or the parent or guardian of the child.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 427.005, 427.007 & 430.215
Hist.: SDSD 12-2002, f. 12-26-02, cert. ef. 12-28-02; SPD 11-2009, f. 7-31-09, cert. ef. 8-1-09; SPD 53-2013, f. 12-27-13. cert. ef. 12-28-13; APD 31-2014(Temp), f. & cert. ef. 8-20-14 thru 2-16-15; APD 4-2015, f. 2-13-15, cert. ef. 2-16-15

411-300-0200
Payment for CIIS

(1) Payment is made after CIIS are delivered as authorized.

(2) Effective July 28, 2009, CIIS 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.

(3) Section (2) of this rule does not apply to an employee of a parent or guardian or a provider who was hired prior to July 28, 2009 that remains in the current position for which the employee was hired.

(4) Payment for CIIS is made in accordance with the Expenditure Guidelines.

(5) Service levels are based on the individual needs of a child as identified by a functional needs assessment and behavior criteria and authorized in the ISP for the child.

(6) Authorization must be obtained prior to the delivery of any CIIS for the services to be eligible for payment.

(7) A provider must request payment authorization for CIIS provided during an unforeseeable emergency on the first business day following the emergency service. A services coordinator must determine if the service is eligible for payment.

(8) The Department makes payment to the employee of a parent or guardian on behalf of the parent or guardian. The Department pays the employer's share of the Federal Insurance Contributions Act tax (FICA) and withholds FICA as a service to the parent or guardian, who is the employer.

(9) The delivery of authorized CIIS must occur so that any individual employee of the parent or guardian does not exceed 40 hours per work week. The Department does not authorize services that require the payment of overtime without prior written authorization by the Department.

(10) The Department does not authorize or pay for any hours of CIIS provided by an individual provider beyond 16 hours in any 24-hour period without prior written authorization by the Department.

(11) Holidays are paid at the same rate as non-holidays.

(12) Travel time to reach the job site is not reimbursable.

(13) Payment by the Department for CIIS is considered full payment for the services rendered under Medicaid. A provider may not demand or receive additional payment for CIIS from the parent, guardian, or any other source, under any circumstances.

(14) Medicaid funds are the payer of last resort. A provider must bill all third party resources until all third party resources are exhausted.

(15) The Department reserves the right to make a claim against any third party payer before or after making payment to the provider.

(16) The Department may void without cause prior authorizations that have been issued.

(17) Upon submission of the billing form for payment, a provider must comply with:

(a) All rules in OAR chapter 407 and OAR chapter 411;

(b) 45 CFR Part 84 which implements Title V, Section 504 of the Rehabilitation Act of 1973 as amended;

(c) Title II and Title III of the Americans with Disabilities Act of 1991; and

(d) Title VI of the Civil Rights Act of 1964.

(18) All billings must be for CIIS provided within the licensure and certification of the provider.

(19) The provider must submit true and accurate information on the billing form. Use of a provider organization does not replace the responsibility of the provider for the truth and accuracy of submitted information.

(20) A person may not submit the following to the Department:

(a) A false billing form for payment;

(b) A billing form for payment that has been, or is expected to be, paid by another source; or

(c) Any billing form for CIIS that have not been provided.

(21) The Department only makes payment to an enrolled provider who actually performs the CIIS or the enrolled provider organization. Federal regulations prohibit the Department from making payment to a collection agency.

(22) Payment is denied if any provisions of these rules are not complied with.

(23) The Department recoups all overpayments.

(a) The amount to be recovered:

(A) Is the entire amount determined or agreed to by the Department;

(B) Is not limited to the amount determined by criminal or civil proceedings; and

(C) Includes interest to be charged at allowable state rates.

(b) A request for repayment of the overpayment or notification of recoupment of future payments is delivered to the provider by registered or certified mail or in person.

(c) Payment schedules with interest may be negotiated at the discretion of the Department.

(d) If recoupment is sought from a parent or guardian, the parent or guardian has the right to request a hearing as provided in ORS chapter 183.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 427.005, 427.007, 430.215
Hist.: SDSD 12-2002, f. 12-26-02, cert. ef. 12-28-02; SPD 11-2009, f. 7-31-09, cert. ef. 8-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 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 53-2013, f. 12-27-13. cert. ef. 12-28-13; APD 31-2014(Temp), f. & cert. ef. 8-20-14 thru 2-16-15; APD 4-2015, f. 2-13-15, cert. ef. 2-16-15

411-300-0205
Rights, Complaints, Notification of Planned Action, and Hearings

(1) RIGHTS OF A CHILD.

(a) The rights of a child are described in OAR 411-318-0010.

(b) Upon entry and request and annually thereafter, the individual rights described in OAR 411-318-0010 must be provided to the parent or guardian and the child.

(2) COMPLAINTS.

(a) Complaints must be addressed in accordance with OAR 411-318-0015.

(b) Upon entry and request and annually thereafter, the policy and procedures for complaints as described in OAR 411-318-0015 must be explained and provided to the parent or guardian of each child.

(3) NOTIFICATION OF PLANNED ACTION. In the event CIIS are 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) A parent or guardian 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 as described in OAR chapter 411, division 318 must be explained and provided to the parent or guardian of each child.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 427.005, 427.007 & 430.215
Hist.: SPD 11-2009, f. 7-31-09, cert. ef. 8-1-09; SPD 53-2013, f. 12-27-13. cert. ef. 12-28-13; APD 31-2014(Temp), f. & cert. ef. 8-20-14 thru 2-16-15; APD 4-2015, f. 2-13-15, cert. ef. 2-16-15

411-350-0010
Statement of Purpose

(1) The rules in OAR chapter 411, division 350 establish the policy of, and prescribe the standards and procedures for, the provision of medically fragile children's (MFC) services. These rules are established to ensure that MFC services augment and support independence, empowerment, dignity, and development of medically fragile children.

(2) MFC services are exclusively intended to enable a child who is medically fragile to have a permanent and stable familial relationship. MFC services are intended to supplement the natural supports and services provided by the family of a child and provide the support necessary to enable the family to meet the needs of caring for a medically fragile child.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 427.005, 427.007, 430.215
Hist.: MHD 21-1998(Temp), f. 11-25-98, cert. ef. 12-1-98 thru 5-29-99; MHD 3-1999, f. 5-17-99, cert. ef. 5-28-99; MHD 8-2003(Temp) f. & cert. ef. 12-11-03 thru 6-7-04; Renumbered from 309-044-0100, SPD 14-2004, f. & cert. ef. 6-1-04; SPD 1-2009, f. 2-24-09, cert. ef. 3-1-09; SPD 55-2013, f. 12-27-13, cert. ef. 12-28-13; APD 4-2015, f. 2-13-15, cert. ef. 2-16-15

411-350-0020
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 350:

(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) "Aide" means a non-licensed caregiver who may, or may not, be a certified nursing assistant.

(5) "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.

(6) "Assistive Devices" mean the devices, aids, controls, supplies, or appliances described in OAR 411-350-0050 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 411-350-0050 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 411-350-0050.

(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 as described in OAR 411-350-0080 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 primary caregiver or provider to follow in order to reduce the frequency and intensity of the challenging behaviors of a child and to modify the behavior of the primary caregiver or 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) "Case Management" means the functions performed by a services coordinator. 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.

(14) "CDDP" means "Community Developmental Disability Program" as defined in OAR 411-320-0020.

(15) "Child" means an individual who is less than 18 years of age, eligible for developmental disability services, and applying for, or accepted for, medically fragile children's services under the Hospital Model Waiver.

(16) "Chore Services" mean the services described in OAR 411-350-0050 that are needed to restore a hazardous or unsanitary situation in the family home to a clean, sanitary, and safe environment.

(17) "Clinical Criteria" means the criteria used by the Department to assess the nursing support needs of a child annually or as needed for determination of the overall assessed needs of the child.

(18) "Community Nursing Services" mean the nursing services described in OAR 411-350-0050 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.

(19) "Community Transportation" means the services described in OAR 411-350-0050 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.

(20) "Cost Effective" means being responsible and accountable with Department resources by offering less costly alternatives when providing choices that adequately meet the support needs of a child. Less costly alternatives include other programs available from the Department and the utilization of assistive devices, natural supports, environmental modifications, and alternative resources. Less costly alternatives may include resources not paid for by the Department.

(21) "Delegation" is the process by which a registered nurse authorizes an unlicensed person to perform nursing tasks and confirms that authorization in writing. Delegation may occur only after a registered nurse follows all steps of the delegation process as outlined in OAR chapter 851, division 047.

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

(23) "Designated Representative" means any adult who is not a paid provider of ODDS funded services, such as a family member or advocate, who is chosen by a parent or guardian and authorized by the parent or guardian to serve as the representative of the parent or guardian in connection with the provision of ODDS funded supports. A parent or guardian is not required to appoint a designated representative.

(24) "Developmental Disability" means "developmental disability" as defined in OAR 411-320-0020 and described in 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 purpose of obtaining MFC services through a personal support worker as described in these rules, the parent or guardian or a person selected by the parent or guardian to act on the behalf of the parent or guardian to conduct the employer responsibilities described in OAR 411-350-0075. An employer may also be a designated representative.

(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) "Entry" means admission to a Department-funded developmental disability service.

(29) "Environmental Modifications" mean the physical adaptations described in OAR 411-350-0050 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.

(30) "Environmental Safety Modifications" mean the physical adaptations described in OAR 411-350-0050 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.

(31) "Exit" means termination or discontinuance of MFC services.

(32) "Expenditure Guidelines" mean the guidelines published by the Department that describe allowable uses for MFC funds. The Department incorporates the Expenditure Guidelines into these rules by this reference. The Expenditure Guidelines are maintained by the Department at: http://www.oregon.gov/dhs/dd/. Printed copies 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.

(33) "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 MFC 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.

(34) "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 certified foster home funded by Child Welfare.

(35) "Family Training" means the training services described in OAR 411-350-0050 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.

(36) "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 a child enrolled in MFC services is known as the Child Needs Assessment (CNA). Effective December 31, 2014, the Department incorporates Version C of the CNA into these rules by this reference. The CNA is maintained by the Department at: http://www.dhs.state.or.us/spd/tools/dd/CNAchildInhome.xls. A printed copy of a blank CNA 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) "General Business Provider" means an organization or entity selected by a parent or guardian and paid with MFC 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.

(38) "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.

(39) "Hospital Model Waiver" means the waiver granted by the federal Centers for Medicare and Medicaid Services that allows Title XIX funds to be spent on children living in the family home who otherwise would have to be served in a hospital if the waiver was not available.

(40) "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.

(41) "Independent Provider" means a person selected by a parent or guardian and paid with MFC funds to directly provide services to a child.

(42) "Individual-Directed Goods and Services" mean the services, equipment, or supplies described in OAR 411-350-0050, not otherwise provided through other waiver or state plan services, that address an identified need in an ISP. Individual-directed goods and services may include services, equipment, or supplies that improve and maintain the full membership of a child in the community.

(43) "Intellectual Disability" means "intellectual disability" as defined in OAR 411-320-0020 and described in OAR 411-320-0080.

(44) "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. The ISP reflects 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.

(45) "Level of Care" means a child meets the following hospital level of care:

(a) The child has a documented medical condition and demonstrates the need for active treatment as assessed by the clinical criteria; and

(b) The medical condition requires the care and treatment of services normally provided in an acute medical hospital.

(46) "MFC" means "medically fragile children". Medically fragile children have a health impairment that requires long-term, intensive, specialized services on a daily basis, who have been found eligible for MFC services by the Department.

(47) "MFCU" means the "medically fragile children's unit". The MFCU is the program for medically fragile children's services administered by the Department.

(48) "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 the relatives, friends, neighbors, and the community that are not paid for by the Department.

(49) "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.

(50) "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.

(51) "ODDS" means the Department of Human Services, Office of Developmental Disability Services.

(52) "OHP" means the Oregon Health Plan.

(53) "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.

(54) "OIS" means the "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.

(55) "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.

(56) "Parent" means the biological parent, adoptive parent, or stepparent of a child. Unless otherwise specified, references to parent also include a person chosen by the parent or guardian to serve as the designated representative of the parent or guardian in connection with the provision of ODDS funded supports.

(57) "Person-Centered Planning":

(a) Means a timely and formal or informal process driven by a child, includes people chosen by the child, ensures the child directs the process to the maximum extent possible, and 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.

(58) "Personal Support Worker" means "personal support worker" as defined in OAR 411-375-0010.

(59) "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.

(60) "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. In this context, the term parent or guardian may include a designated representative.

(61) "Private Duty Nursing" means the nursing services described in OAR 411-350-0050 that are determined medically necessary to support a child receiving MFC services in the family home.

(62) "Protective Physical Intervention" means any manual physical holding of, or contact with, a child that restricts freedom of movement.

(63) "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. A provider is not a primary caregiver.

(64) "Provider Organization" means an entity licensed or certified by the Department that is selected by a parent or guardian and paid with MFC 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.

(65) "Relief Care" means the intermittent services described in OAR 411-350-0050 that are provided on a periodic basis for the relief of, or due to the temporary absence of, a primary caregiver.

(66) "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 or guardian, services coordinator, and ISP team.

(67) "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 a child is unable to provide for their own safety and the child 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.

(68) "Service Level" means the amount of attendant care, hourly relief care, private duty nursing, or skills training services determined necessary by a functional needs assessment and clinical criteria and made available to meet the identified support needs of a child.

(69) "Services Coordinator" means an employee of a CDDP, the Department, 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 who ensures the eligibility of a child for services. The services coordinator acts as the proponent for children with intellectual or developmental disabilities and their families and is the person-centered plan coordinator for the child as defined in the Community First Choice state plan amendment.

(70) "Skills Training" means the activities described in OAR 411-350-0050 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.

(71) "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 preauthorized 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 a 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.

(72) "Special Diet" means the specially prepared food or particular types of food described in OAR 411-350-0050 that are specific to the medical condition or diagnosis of a child and in support of an evidence-based treatment regimen.

(73) "Specialized Medical Supplies" mean the medical and ancillary supplies described in OAR 411-350-0050, 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.

(74) "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.

(75) "Supplant" means take the place of.

(76) "Support" means the assistance that a child and a family requires, solely because of the effects of an intellectual or developmental disability or medical condition 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.

(77) "These Rules" mean the rules in OAR chapter 411, division 350.

(78) "Transition Costs" mean the expenses described in OAR 411-350-0050 required for a child to make the transition to the family home from a nursing facility, acute care hospital, or intermediate care facility for individuals with intellectual or developmental disabilities.

(79) "Unacceptable Background Check" means an administrative process that produces information related to the background of a person that precludes the person from being an independent provider for one or more of the following reasons:

(a) Under OAR 407-007-0275, the person applying to be an independent provider has been found ineligible due to ORS 443.004;

(b) Under OAR 407-007-0275, the person was enrolled as an independent provider for the first time, or after any break in enrollment, after July 28, 2009 and has been found ineligible due to ORS 443.004; or

(c) A background check and fitness determination has been conducted resulting in a "denied" status as defined in OAR 407-007-0210.

(80) "Vehicle Modifications" mean the adaptations or alterations described in OAR 411-350-0050 that are made to the vehicle that is the pri-

mary means of transportation for a child in order to accommodate the service needs of the child.

(81) "Waiver Services" mean the menu of disability related services and supplies that are specifically identified by the Hospital Model Waiver.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 427.005, 427.007, 430.215
Hist.: MHD 21-1998(Temp), f. 11-25-98, cert. ef. 12-1-98 thru 5-29-99; MHD 3-1999, f. 5-17-99, cert. ef. 5-28-99; MHD 8-2003(Temp) f. & cert. ef. 12-11-03 thru 6-7-04; Renumbered from 309-044-0110, SPD 14-2004, f. & cert. ef. 6-1-04; SPD 1-2009, f. 2-24-09, cert. ef. 3-1-09; 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 28-2013(Temp), f. & cert. ef. 7-2-13 thru 12-29-13; SPD 55-2013, f. 12-27-13, cert. ef. 12-28-13; APD 31-2014(Temp), f. & cert. ef. 8-20-14 thru 2-16-15; APD 4-2015, f. 2-13-15, cert. ef. 2-16-15

411-350-0030
Eligibility for MFC Services

(1) ELIGIBILITY.

(a) In order to be eligible for MFC services, a child must:

(A) Be under the age of 18;

(B) Be an Oregon resident who meets the citizenship and alien status requirements of OAR 461-120-0110;

(C) Be receiving Medicaid Title XIX benefits under OSIPM or OHP Plus. This does not include CHIP Title XXI benefits;

(D) For a child with excess income, contribute to the cost of services pursuant to OAR 461-160-0610 and OAR 461-160-0620;

(E) Meet the level of care as defined in OAR 411-350-0020;

(F) Be accepted by the Department by scoring 50 or greater on the clinical criteria prior to starting services and have a status of medical need that is likely to last for more than two months;

(G) Reside in the family home; and

(H) Be safely served in the family home This includes, but is not limited to, a qualified primary caregiver demonstrating the willingness, skills, and ability to provide direct care as outlined in an ISP in a cost effective manner, as determined by a services coordinator within the limitations of OAR 411-300-0150, and participate in planning, monitoring, and evaluation of the MFC services provided.

(b) A child that resides in a foster home that meets the eligibility criteria in subsection (a)(A) to (E) of this section is eligible for private duty nursing as described in OAR 411-350-0050.

(c) A child that resides in a foster home is eligible for only private duty nursing as described in OAR 411-350-0050;

(d) 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 requirements of 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 evaluated according to OAR 461-145-0022;

(ii) A transfer of property when a child 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 a child is considered ineligible for MFC services due to a disqualifying transfer of assets, the parent or guardian 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) INELIGIBILITY. A child is not eligible for MFC services if the child:

(a) Resides in a medical hospital, psychiatric hospital, school, subacute facility, nursing facility, intermediate care facility for individuals with intellectual or developmental disabilities, residential facility, or other 24-hour residential setting;

(b) Does not require waiver services or Community First Choice state plan services as evidenced by a functional needs assessment;

(c) Has sufficient family, government, or community resources available to provide for his or her care; or

(d) Is not safely served in the family home as described in section (1)(a)(G) of this rule.

(3) REDETERMINATION. The Department redetermines the eligibility of a child for MFC services using the clinical criteria at least every six months, or as the status of the child changes.

(4) TRANSITION. A child whose reassessment score on the clinical criteria is less than 50 is transitioned out of MFC services within 60 days. The child must exit from MFC services at the end of the 60 day transition period.

(a) When possible and agreed upon by the parent or guardian and the services coordinator, MFC services may be incrementally reduced during the 60 day transition period.

(b) The services coordinator must coordinate and attend a transition planning meeting at least 30 days prior to the end of the transition period. The transition planning meeting must include a CDDP representative if eligible for developmental disability services, the parent or guardian, and any other person at the request of the parent or guardian.

(5) EXIT.

(a) MFC services may be terminated:

(A) At the oral or written request of a parent or legal guardian to end the service relationship; or

(B) In any of the following circumstances:

(i) The child no longer meets the eligibility criteria in section (1) of this rule;

(ii) The child does not require waiver services or Community First Choice state plan services;

(iii) There are sufficient family, government, community, or alternative resources available to provide for the care of the child;

(iv) The child may not able to be safely served in the family home as described in section (1)(a)(G) of this rule;

(v) The parent or guardian either cannot be located or has not responded after 30 days of repeated attempts by a services coordinator to complete ISP development and monitoring activities and does not respond to a notice of intent to terminate;

(vi) The services coordinator has sufficient evidence that the parent or guardian has engaged in fraud or misrepresentation, failed to use resources as agreed upon in the ISP, refused to cooperate with documenting expenses of MFC funds, or otherwise knowingly misused public funds associated with MFC services;

(vii) The child is incarcerated or admitted to a medical hospital, psychiatric hospital, sub-acute facility, nursing facility, intermediate care facility for individuals with intellectual or developmental disabilities, or other 24-hour residential setting and it is determined that the child is not returning to the family home or is not returning to the family home after 90 consecutive days; or

(viii) The child does not reside in Oregon.

(b) In the event MFC services are terminated, a written Notification of Planned Action must be provided as described in OAR chapter 411, division 318.

(6) WAIT LIST. If the maximum number of children allowed on the Hospital Model Waiver are enrolled and being served, the Department may place a child eligible for MFC services on a wait list. A child on the wait list may access other Medicaid-funded services or General Fund services for which the child is determined eligible through the CDDP.

(a) The date of the initial completed application for MFC services determines the order on the wait list. A child who previously received MFC services that currently meets the criteria for eligibility as described in section (1) of this rule is put on the wait list as of the date the original application for MFC services was complete.

(b) Children on the wait list are served on a first come, first served basis as space on the Hospital Model Waiver allows. A re-evaluation is completed prior to entry to determine current eligibility.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 427.005, 427.007, 430.215
Hist.: MHD 21-1998(Temp), f. 11-25-98, cert. ef. 12-1-98 thru 5-29-99; MHD 3-1999, f. 5-17-99, cert. ef. 5-28-99; MHD 8-2003(Temp) f. & cert. ef. 12-11-03 thru 6-7-04; Renumbered from 309-044-0120, SPD 14-2004, f. & cert. ef. 6-1-04; SPD 1-2009, f. 2-24-09, cert. ef. 3-1-09; SPD 28-2013(Temp), f. & cert. ef. 7-2-13 thru 12-29-13; SPD 55-2013, f. 12-27-13, cert. ef. 12-28-13; APD 31-2014(Temp), f. & cert. ef. 8-20-14 thru 2-16-15; APD 4-2015, f. 2-13-15, cert. ef. 2-16-15

411-350-0040
Service Planning

(1) FUNCTIONAL NEEDS ASSESSMENT.A services coordinator must complete a functional needs assessment using a person-centered planning approach initially and at least annually for each child to assess the service needs of the child.

(a) The functional needs assessment must be conducted face-to-face with the child and the services coordinator must interview the parent or guardian, other caregivers, and when appropriate, any other person at the request of the parent or guardian.

(b) The functional needs assessment must be completed:

(A) Within 30 days of entry into MFC services;

(B) Within 60 days prior to the annual renewal of an ISP; and

(C) Within 45 days from the date the parent or guardian requests a functional needs reassessment.

(c) The parent or guardian must participate in the 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 411-318-0020.

(B) The Department may allow additional time if circumstances beyond the control of the parent or guardian 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 services coordinator must mail a notice of the assessment process to the parent or guardian. 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.

(2) INDIVIDUAL SUPPORT PLAN.

(a) A child 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 services coordinator.

(B) The initial ISP must be authorized no later than the end of the month following the month in which the level of care determination was made.

(b) The services coordinator must develop, with the input of the child (as appropriate), parent or guardian, and any other person at the request of the parent or guardian, a written ISP prior to purchasing supports with MFC funds and annually thereafter that identifies:

(A) The service needs of the child;

(B) The most cost effective services for safely and appropriately meeting the service needs of the child; and

(C) The methods, resources, and strategies that address the service needs of the child.

(c) The ISP must include, but not be limited to:

(A) The legal name of the child and the name of the parent or guardian of the child;

(B) A description of the supports required that is consistent with the support needs identified in the assessment of the child;

(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 manner in which services are delivered and the frequency of services;

(F) The maximum hours of or units of provider services determined necessary by a functional needs assessment and clinical criteria;

(G) Provider type;

(H) Additional services authorized by the Department for the child;

(I) The estimated number of hours that an aide or personal support worker is authorized and the number of hours that a licensed nurse is authorized;

(J) Projected costs with sufficient detail to support estimates;

(K) The strengths and preferences of the child;

(L) Individually identified goals and desired outcomes of the child;

(M) 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;

(N) The risk factors and the measures in place to minimize the risk factors, including back-up plans for assistance with support and service needs;

(O) The identity of the person responsible for case management and monitoring the ISP;

(P) The date of the next ISP review that, at least, must be completed within 12 months of the previous ISP or more frequently if the medical status of the child changes;

(Q) A provision to prevent unnecessary or inappropriate services; and

(R) Any changes in support needs identified through a functional needs assessment and clinical criteria.

(d) An ISP must be reviewed with the parent or guardian prior to implementation. The parent or guardian and the services coordinator must sign the ISP. A copy of the ISP must be provided to the parent or guardian.

(e) The ISP must be understandable to the family and the people important in supporting the child. An ISP is translated, as necessary, upon request.

(f) Changes in services authorized in the ISP must be consistent with needs identified in a functional needs assessment and clinical criteria and documented in an amendment to the ISP that is signed by the parent or guardian and the services coordinator.

(g) An ISP must be renewed at least every 12 months. Each new plan year begins on the anniversary date of the initial or previous ISP.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 427.005, 427.007 & 430.215

Hist.: MHD 21-1998(Temp), f. 11-25-98, cert. ef. 12-1-98 thru 5-29-99; MHD 3-1999, f. 5-17-99, cert. ef. 5-28-99; MHD 8-2003(Temp) f. & cert. ef. 12-11-03 thru 6-7-04; Renumbered from 309-044-0130, SPD 14-2004, f. & cert. ef. 6-1-04; SPD 1-2009, f. 2-24-09, cert. ef. 3-1-09; SPD 28-2013(Temp), f. & cert. ef. 7-2-13 thru 12-29-13; SPD 55-2013, f. 12-27-13, cert. ef. 12-28-13; APD 31-2014(Temp), f. & cert. ef. 8-20-14 thru 2-16-15; APD 4-2015, f. 2-13-15, cert. ef. 2-16-15

411-350-0050

Scope of MFC Services and Limitations

(1) MFC services are intended to support, not supplant, the naturally occurring services provided by a legally responsible primary caregiver and enable the primary caregiver to meet the needs of caring for a child on the Hospital Model Waiver. MFC services are not meant to replace other available governmental or community services and supports. All services funded by the Department must be provided in accordance with the Expenditure Guidelines and based on the actual and customary costs related to best practice standards of care for children with similar disabilities.

(2) The use of MFC funds to purchase supports is limited to:

(a) The service level for a child as determined by a functional needs assessment and clinical criteria. The functional needs assessment determines the total number of hours needed to meet the identified needs of the child. 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 attendant care, skills training, hourly relief care, and private duty nursing.

(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 Expenditure Guidelines.

(3) To be authorized and eligible for payment by the Department, all MFC services and supports must be:

(a) Directly related to the disability of a child;

(b) Required to maintain the health and safety of a child;

(c) Cost effective;

(d) Considered not typical for a parent or guardian to provide to a child of the same age;

(e) Required to help the parent or guardian to continue to meet the needs of caring for the child;

(f) Included in an approved ISP;

(g) Provided in accordance with the Expenditure Guidelines; and

(h) Based on the actual and customary costs related to best practice standards of care for children with similar disabilities.

(4) When conditions of purchase are met and provided purchases are not prohibited under section (27) of this rule, MFC 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, clinical criteria, initial or annual ISP, and the OSIPM or OHP Plus benefits the child qualifies for:

(a) Community First Choice state plan services:

(A) Behavior support services as described in section (5) of this rule;

(B) Community nursing services as described in section (6) of this rule;

(C) Environmental modifications as described in section (7) of this rule;

(D) Attendant care as described in section (8) of this rule;

(E) Skills training as described in section (9) of this rule;

(F) Relief care as described in section (10) of this rule;

(G) Assistive devices as described in section (11) of this rule;

(H) Assistive technology as described in section (12) of this rule;

(I) Chore services as described in section (13) of this rule;

(J) Community transportation as described in section (14) of this rule; and

(K) Transition costs as described in section (15).

(b) Home and community based waiver services:

(A) Case management as defined in OAR 411-350-0020;

(B) Family training as described in section (16) of this rule;

(C) Environmental safety modifications as described in section (17) of this rule;

(D) Vehicle modifications as described in section (18) of this rule;

(E) Specialized medical supplies as described in section (19) of this rule;

(F) Special diet as described in section (20) of this rule; and

(G) Individual-directed goods and services as described in section (21) of this rule.

(c) State plan services, including private duty nursing as described in section (23) of this rule, and personal care services as described in OAR chapter 411, division 034.

(5) 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 enable 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 or guardian;

(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.

(i) When interventions in behavior are necessary, the interventions must be performed in accordance with positive behavioral theory and practice as defined in OAR 411-350-0020.

(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, 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 a primary caregiver or provider of a child;

(B) Developing a visual communication system as a strategy for behavior support; and

(C) Communicating, as authorized by a parent or guardian through a release of information, with other professionals about the strategies and outcomes of the Behavior Support Plan as written in the Behavior Support Plan within authorized consultation hours only.

(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;

(G) Relief care; or

(H) Communication or activities not directly related to the development, implementation, or revision of the Behavior Support Plan.

(6) 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 a primary caregiver 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 private duty nursing care.

(c) A Nursing Service Plan must be present when MFC 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 very six months or sooner if a change in a medical condition requires an update to the Nursing Service Plan.

(7) 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 health and safety needs of the child and identified in the ISP for 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 family 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 expendi-

tures through the Department prior to expenditure. Approval is based on the service and support needs and goals of the child 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 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 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 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.

(8) 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 goals, preferences, and 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, 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 provider, 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 the 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) Meal preparation and special diets;

(D) 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;

(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; and

(F) 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.

(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 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 prior 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 and clinical criteria;

(D) Support generally provided for a child of similar age without disabilities by the parent or guardian or other family members;

(E) Supports and services in the family home that are funded by Child Welfare;

(F) 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;

(G) Services provided by the family; and

(H) Home schooling.

(f) Attendant care services may not be provided on a 24-hour shift-staffing basis.

(9) 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 outline 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.

(10) 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 family home;

(B) A licensed or certified setting;

(C) The home of a qualified provider, chosen by the parent or guardian, as 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 for the child.

(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 seven 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.

(11) 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 be purchased with MFC 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.

(b) 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 provided by any other funding source to assist and enhance the independence of a child in performing ADLs or IADLs, such as durable medical equipment, mechanical apparatus, or electronic devices.

(c) 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. 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.

(d) Devices must be limited to the least costly option necessary to meet the assessed need of a child.

(e) To be authorized by a services coordinator, assistive devices must be:

(A) In addition to any assistive devices, medical equipment, or supplies furnished under OHP, private insurance, or alternative resources;

(B) Determined necessary to the daily functions of a child; and

(C) Directly related to the disability of a child.

(f) Assistive devices exclude:

(A) Items that are not necessary or of direct medical or remedial benefit to the child 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 a child;

(D) Toys or outdoor play equipment; and

(E) Equipment and furnishings of general household use.

(12) 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.

(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.

(13) 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.

(14) COMMUNITY TRANSPORTATION.

(a) Community transportation includes, but is not limited to:

(A) Community transportation provided by a common carrier or bus in accordance with standards established for these entities;

(B) Reimbursement on a per-mile basis for transporting a child; 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 used for behavioral intervention or calming;

(L) Transportation normally provided by a primary caregiver for a child of similar age without disabilities;

(M) Reimbursement for out-of-state travel expenses; and

(N) Transportation services that may be obtained through other means, such as OHP or other alternative resources available to the child.

(15) TRANSITION COSTS.

(a) Transition costs are limited to a child transitioning to the family home from a nursing facility, intermediate care facility for individuals with intellectual or developmental disabilities, 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.

(f) Transition costs may not supplant the legal responsibility of the parent or guardian. In this context, the term parent or guardian does not include a designated representative.

(16) 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 or medical condition 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.

(17) 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.

(f) 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.

(g) Environmental safety modifications must be completed by a state licensed contractor with a minimum of $1,000,000 liability insurance. Any modification requiring a permit must be inspected by a local inspector and certified as in compliance with local codes. Certification of compliance must be filed in the file for the contractor prior to payment.

(h) Environmental safety modifications must be made within the existing square footage of the family home and may not add to the square footage of the family home.

(i) Payment to the contractor is to be withheld until the work meets specifications.

(j) A scope of work as defined in OAR 411-308-0020 must be completed for each identified environmental modification project. All contractors submitting bids must be given the same scope of work.

(k) A services coordinator must follow the processes outlined in the Expenditure Guidelines for contractor bids and the awarding of work.

(l) All dwellings must be in good repair and have the appearance of sound structure.

(m) The identified home may not be in foreclosure or the subject of legal proceedings regarding ownership.

(n) Environmental modifications must only be completed to the family home.

(o) Upgrades in materials that are not directly related to the health and safety needs of the child are not paid for or permitted.

(p) Environmental modifications are subject to Department requirements regarding material and construction practices based on industry standards for safety, liability, and durability, as referenced in building codes, materials manuals, and industry and risk management publications.

(q) RENTAL PROPERTY.

(A) Environmental modifications to rental property may not substitute or duplicate services otherwise the responsibility of the landlord under the landlord tenant laws, the Americans with Disabilities Act, or the Fair Housing Act.

(B) Environmental modifications made to a rental structure must have written authorization from the owner of the rental property prior to the start of the work.

(C) The Department does not fund work to restore the rental structure to the former condition of the rental structure.

(18) 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.

(19) SPECIALIZED MEDICAL SUPPLIES. Specialized medical supplies do not cover services which are otherwise available to a child 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.

(20) SPECIAL DIET.

(a) A special diet is a supplement and is not intended to meet the complete, daily nutritional requirements for a child.

(b) A special diet must be ordered at least annually by a physician licensed by the Oregon Board of Medical Examiners and periodically monitored by a dietician or physician.

(c) The maximum monthly purchase for special diet supplies may not exceed $100 per month.

(d) Special diet supplies must be in support of an evidence-based treatment regimen.

(e) A special diet excludes restaurant and prepared foods, perishables vitamins, and supplements.

(21) INDIVIDUAL-DIRECTED GOODS AND SERVICES.

(a) Individual-directed goods and services provide equipment and supplies that are not otherwise available through another source, such as waiver services or state plan services.

(b) Individual-directed goods and services are therapeutic in nature and must be recommended in writing by at least one licensed health professional or by a behavior consultant.

(c) Individual-directed goods and services must directly address an identified disability related need of a child in the ISP.

(d) Individual-directed goods and services must:

(A) Decrease the need for other Medicaid services;

(B) Promote inclusion of a child in the community; or

(C) Increase the safety of a child in the family home.

(e) Individual-directed goods and services may not be:

(A) Otherwise available through another source, such as waiver services or state plan services;

(B) Experimental or prohibited treatment; or

(C) Goods or services that are normally purchased by a family for a typically developing child of the same age.

(f) Individual-directed goods and services purchased must be the most cost effective option available to meet the needs of the child.

(22) PRIVATE DUTY NURSING. If the service needs of a child require the presence of an RN or LPN on an ongoing basis as determined medically necessary based on the assessed needs of the child, private duty nursing services may be allocated to ensure medically necessary supports are provided.

(a) Private duty nursing may be provided on a shift staffing basis as necessary.

(b) Private duty nursing must be delivered by a licensed RN or LPN, as determined by the service needs of the child and documented in the ISP and Nursing Service Plan.

(c) The amount of private duty nursing available to a child is based on the acuity level of the child as measured by the clinical criteria as follows:

(A) Level 1. Score of 75 or greater and on a ventilator for 20 hours or more per day = up to a maximum of 554 nursing hours per month;

(B) Level 2. Score of 70 to 74 = up to a maximum of 462 nursing hours per month;

(C) Level 3. Score of 65 to 69 = up to a maximum of 385 nursing hours per month;

(D) Level 4. Score of 60 to 64 = up to a maximum of 339 nursing hours per month;

(E) Level 5. Score of 50 to 59 or if a child requires ventilation for sleeping hours = up to a maximum of 293 nursing hours per month; and

(F) Level 6. Score of less than 50 = up to a maximum of 140 nursing hours per month.

(23) All MFC services authorized by the Department must be included in a written ISP in order to be eligible for payment. The ISP must use the most cost effective services for safely and appropriately meeting the service needs of a child as determined by a services coordinator. Any goods purchased with MFC funds that are not used according to an ISP may be immediately recovered by the Department.

(24) All requests for General Fund expenditures and expenditures exceeding limitations in the Expenditure Guidelines must be authorized by the Department. The approval of the Department is limited to 90 days unless re-authorized. Exceptions associated with criteria hours may be approved for up to six months to align with the criteria redetermination. A request for a General Fund expenditure or an expenditure exceeding limitations in the Expenditure Guidelines is only authorized in the following circumstances:

(a) To prevent the hospitalization of a child;

(b) To provide initial teaching of new service needs;

(c) The child is not safely served in the family home without the expenditure;

(d) The expenditure provides supports for the emerging or changing service needs or behaviors of the child;

(e) A significant medical condition or event, as documented by a primary care provider, prevents or seriously impedes the primary caregiver from providing services; or

(f) The services coordinator determines, with a behavior consultant, that the child needs two staff present at one time to ensure the safety of the child and others. Prior to approval, the services coordinator must determine that a caregiver, including the parent or guardian, has been trained in behavior management and that all other feasible recommendations from the behavior consultant and the services coordinator have been implemented.

(25) Payment for MFC services is made in accordance with the Expenditure Guidelines.

(26) The Department may expend funds through contract, purchase order, use of credit card, payment directly to the vendor, or any other legal payment mechanism. No payments are made to families for reimbursement or to pay for services.

(27) The Department does not pay for MFC services that are:

(a) Illegal, experimental, or determined unsafe for the general public by a recognized child or consumer safety agency;

(b) Notwithstanding abuse as defined in ORS 419B.005, abusive, aversive, or demeaning;

(c) Not necessary, not in accordance with the Expenditure Guidelines, not cost effective, or do not meet the definition of support or social benefit as defined in OAR 411-350-0020;

(d) Educational services for school-age children, including professional instruction, formal training, and tutoring in communication, socialization, and academic skills;

(e) Services or activities that the legislative or executive branch of Oregon government has prohibited use of public funds;

(f) Medical treatments; or

(g) Provided by private health insurance, OHP, or alternative resources.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 427.005, 427.007 & 430.215

Hist.: MHD 21-1998(Temp), f. 11-25-98, cert. ef. 12-1-98 thru 5-29-99; MHD 3-1999, f. 5-17-99, cert. ef. 5-28-99; MHD 8-2003(Temp) f. & cert. ef. 12-11-03 thru 6-7-04; Renumbered from 309-044-0140, SPD 14-2004, f. & cert. ef. 6-1-04; SPD 1-2009, f. 2-24-09, cert. ef. 3-1-09; 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 28-2013(Temp), f. & cert. ef. 7-2-13 thru 12-29-13; SPD 55-2013, f. 12-27-13, cert. ef. 12-28-13; APD 31-2014(Temp), f. & cert. ef. 8-20-14 thru 2-16-15; APD 4-2015, f. 2-13-15, cert. ef. 2-16-15

411-350-0075
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 a parent or guardian 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 MFC services 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 any performance deficiencies with the personal support worker 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 timesheets, 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 MFC services 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. The child may receive MFC services provided by a provider organization or general business provider, when available.

(6) DESIGNATION OF EMPLOYER RESPONSIBLITIES.

(a) A parent or guardian 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 MFC services provided by a personal support worker; or

(B) Select a provider organization or general business provider to provide MFC services.

(b) A parent or guardian 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 or guardian is not able to meet in order for the child to receive or continue to receive MFC services provided by a personal support worker; and

(B) On a Department approved form, document the specific employer responsibilities to be performed by the parent or guardian 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 or guardian must:

(A) Designate a different employer representative in order for the child to receive or continue to receive MFC services provided by a personal support worker; or

(B) Select a provider organization or general business provider to provide MFC services.

(7) EMPLOYER REPRESENTATIVE.

(a) A parent or guardian may designate an employer representative to act on behalf of the parent or guardian to meet the employer responsibilities described in section (5)(a) of this rule.

(b) If a personal support worker is selected by the parent or guardian to act as the employer, the parent or guardian 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 adult 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 or guardian may select another employer representative.

(8) NOTICE.

(a) The Department shall mail a notice to the parent or guardian 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 or guardian does not agree with the action taken by the Department, the parent or guardian 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 MFC services, the hearing rights in OAR chapter 411, division 318 apply.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 427.005, 427.007, 430.215

Hist.: APD 31-2014(Temp), f. & cert. ef. 8-20-14 thru 2-16-15; APD 4-2015, f. 2-13-15, cert. ef. 2-16-15

411-350-0080

Standards for Providers Paid with MFC Funds

(1) PERSONAL SUPPORT WORKERS. A personal support worker must meet the qualifications described in OAR chapter 411, division 375.

(2) INDEPENDENT PROVIDERS WHO ARE NOT PERSONAL SUPPORT WORKERS.

(a) 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 MFC services 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 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, spouse, or other person legally responsible for the child receiving MFC services;

(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 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 required records;

(ii) Responsibility, maturity, and reputable character exercising sound judgment;

(iii) Ability to communicate with the parent or guardian; 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 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 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 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; and

(K) Sign a Medicaid provider agreement and be enrolled as a Medicaid provider prior to delivery of any services.

(b) Subsection (a)(C) of this section does not apply to employees of a parent or guardian, 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.

(c) If a provider is an independent contractor during the terms of a contract, the provider must maintain in force, at the expense of the provider, professional liability insurance with a combined single limit of not less than $1,000,000 for each claim, incident, or occurrence. Professional liability insurance is to cover damages caused by error, omission, or negligent acts related to the professional services.

(A) The provider must provide written evidence of insurance coverage to the Department prior to beginning work and at any time upon the request of the Department.

(B) There must be no cancellation of insurance coverage without 30 days prior written notice to the Department.

(3) 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.

(4) A provider must immediately notify the parent or guardian and the services coordinator of injury, illness, accident, or any unusual circumstance that may have a serious effect on the health, safety, physical, emotional well-being, or level of service required by the child for whom MFC services are being provided.

(5) All providers are mandatory reporters and are required to report suspected child abuse to the local Department office or to the police in the manner described in ORS 419B.010.

(6) Independent providers, including personal support workers, are not employees of the state, CDDP, or Support Services Brokerage.

(7) 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 411-350-0050;

(b) Have current certification demonstrating completion of OIS training; and

(c) Submit a resume or the equivalent to the Department 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 or related 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 411-350-0050.

(d) Additional education or experience may be required to safely and adequately provide the services described in OAR 411-350-0050.

(8) COMMUNITY NURSE. A nurse providing community nursing services must be an enrolled Medicaid provider and meet the qualifications in OAR 411-048-0210.

(9) DIETICIANS. Dieticians providing special diets must be licensed according to ORS 691.415 through 691.465.

(10) PROVIDER ORGANIZATIONS WITH CURRENT LICENSE OR CERTIFICATION.

(a) The following provider organizations may not require additional certification as an organization to provide relief care, attendant care, skills training, community transportation, or behavior support services:

(A) 24-hour residential settings certified, endorsed, and licensed under OAR chapter 411, division 325;

(B) Foster homes for children certified under OAR chapter 411, division 346; and

(C) Foster homes for adults licensed under OAR chapter 411, division 360.

(b) 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.

(c) Provider organizations must assure that all people directed by the provider organization as employees, contractors, or volunteers to provide services paid for with MFC funds meet the standards for independent providers described in this rule.

(11) GENERAL BUSINESS PROVIDERS. General business providers providing services to children paid with MFC funds must hold any current license appropriate to operate required by the state of Oregon or federal law or regulation. Services purchased with MFC 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 Contractors 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 transportation providers, a business license, vehicle insurance in compliance with the laws of the Department of Motor Vehicles, and operators 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;

(g) For providers of personal emergency response systems, a current retail business license; and

(h) For vendors and supply companies providing specialized diets, a current retail business license.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 427.005, 427.007 & 430.215

Hist.: MHD 21-1998(Temp), f. 11-25-98, cert. ef. 12-1-98 thru 5-29-99; MHD 3-1999, f. 5-17-99, cert. ef. 5-28-99; MHD 8-2003(Temp) f. & cert. ef. 12-11-03 thru 6-7-04; Renumbered from 309-044-0170, SPD 14-2004, f. & cert. ef. 6-1-04; SPD 1-2009, f. 2-24-09, cert. ef. 3-1-09; 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 55-2013, f. 12-27-13, cert. ef. 12-28-13; APD 31-2014(Temp), f. & cert. ef. 8-20-14 thru 2-16-15; APD 4-2015, f. 2-13-15, cert. ef. 2-16-15

411-350-0085

Provider Enrollment Inactivation and Termination

(1) PERSONAL SUPPORT WORKERS. The provider enrollment for a personal support worker is inactivated or terminated as described in OAR chapter 411, division 375.

(2) 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:

(A) The provider has not provided any paid services to a child within the last previous 12 months;

(B) The provider informs the Department, CDDP, CIIS, or Support Services Brokerage that the provider is no longer providing services in Oregon;

(C) The background check for the provider results in a closed case pursuant to OAR 407-007-0325;

(D) The actions of the provider are being investigated by adult or child protective services for suspected abuse that poses imminent danger to current or future children; or

(E) Payments to the provider, either whole or in part, for the provider have been suspended based on a credible allegation of fraud or has a conviction of fraud pursuant to federal law under 42 CFR 455.23.

(b) The enrollment for an independent provider, who is not a personal support worker, may be terminated when the Department determines after enrollment that the independent 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 authorized services;

(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) Been suspended or terminated as a provider by the Department or Oregon Health Authority;

(K) Violated the requirement to maintain a drug-free work place;

(L) Failed to provide services as required;

(M) 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

(N) Been excluded or debarred by the Office of the Inspector General.

(c) If the Department makes a decision to terminate the provider enrollment of an independent provider who is not a personal support worker, the Department must issue a written notice.

(d) The written notice must include:

(A) An explanation of the reason for termination of the provider enrollment;

(B) The alleged violation as listed in subsection (A) or (B) of this section; and

(C) The appeal rights for the independent provider, including how to file an appeal.

(e) 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.

(f) 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.

(g) 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
Stats. Implemented: ORS 427.005, 427.007, 430.215
Hist.: APD 4-2015, f. 2-13-15, cert. ef. 2-16-15

411-350-0100
MFC Documentation Needs

(1) Accurate timesheets of MFC services must be dated and signed by the provider and the parent or guardian of the child after the services are provided. Timesheets must be maintained and submitted to the Department with any request for payment for services.

(2) Requests for payment for MFC services must:

(a) Include the billing form indicating prior authorization for the services;

(b) Be signed by the provider acknowledging agreement with the terms and condition of the billing form and attesting that the hours were delivered as billed; and

(c) Be signed by the parent or guardian of the child after the services were delivered, verifying that the services were delivered as billed.

(3) Documentation of MFC services provided must be provided to the services coordinator upon request or as outlined in the ISP for the child and maintained in the family home or the place of business of the provider of services. The Department does not pay for services that are not outlined in the ISP for the child or unrelated to the disability of the child.

(4) The Department retains billing forms and timesheets for at least five years from the date of service.

(5) Behavior consultants must submit the following to the Department written in clear, concrete language understandable to the parent or guardian of the child and the provider:

(a) An evaluation of the child, the concerns of the parent or guardian, the environment of the child, current communication strategies used by the child and used by others with the child, and any other disability of the child that may impact the appropriateness of strategies to be used with the child; and

(b) Any behavior plan or instructions left with the parent or guardian and the provider that describes the suggested strategies to be used with the child.

(6) A Nursing Service Plan must be developed within seven days of the initiation of MFC services and submitted to the Department for approval when attendant care services are provided by a nurse.

(a) The Nursing Service Plan must be reviewed, updated, and resubmitted to the Department in the following instances:

(A) Every six months;

(B) Within seven working days of a change of the nurse who writes the Nursing Service Plan;

(C) With any request for authorization of an increase in hours of service; or

(D) After any significant change of condition, such as hospital admission or change in health status.

(b) The provider must share the Nursing Service Plan with the parent or guardian.

(7) The Department must be notified by the provider or the primary caregiver within one working day of the hospitalization or death of any eligible child.

(8) Providers must maintain documentation of provided services for at least seven years from the date of service. If a provider is a nurse, the nurse must either maintain documentation of provided services for at least five years or send the documentation to the Department.

(9) Providers must furnish requested documentation immediately 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, and within the timeframe specified in the written request. Failure to comply with the request may be considered by the Department as reason to deny or recover payments.

(10) Access to records by the Department including, but not limited to, medical, nursing, behavior, psychiatric, or financial records, to include providers and vendors providing goods and services, does not require authorization or release by the child or the parent or guardian of the child.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 427.005, 427.007 & 430.215
Hist.: MHD 21-1998(Temp), f. 11-25-98, cert. ef. 12-1-98 thru 5-29-99; MHD 3-1999, f. 5-17-99, cert. ef. 5-28-99; MHD 8-2003(Temp) f. & cert. ef. 12-11-03 thru 6-7-04; Renumbered from 309-044-0190, SPD 14-2004, f. & cert. ef. 6-1-04; SPD 1-2009, f. 2-24-09, cert. ef. 3-1-09; SPD 55-2013, f. 12-27-13, cert. ef. 12-28-13; APD 31-2014(Temp), f. & cert. ef. 8-20-14 thru 2-16-15; APD 4-2015, f. 2-13-15, cert. ef. 2-16-15

411-350-0110
Payment for MFC Services

(1) Payment is made after MFC services are delivered as authorized.

(2) Effective July 28, 2009, MFC 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.

(3) Section (2) of this rule does not apply to an employee of a parent or guardian or a provider who was hired prior to July 28, 2009 that remains in the current position for which the employee was hired.

(4) Payment for MFC services is made in accordance with the Expenditure Guidelines.

(5) Service levels are based on the individual needs of a child as identified by a functional needs assessment and clinical criteria and authorized in the ISP for the child.

(6) Authorization must be obtained prior to the delivery of any MFC services for the services to be eligible for payment.

(7) A provider must request payment authorization for MFC services provided during an unforeseeable emergency on the first business day following the emergency service. A services coordinator must determine if the service is eligible for payment.

(8) The Department makes payment to the employee of a parent or guardian on behalf of the parent or guardian. The Department pays the employer's share of the Federal Insurance Contributions Act tax (FICA) and withholds FICA as a service to the parent or guardian, who is the employer. The Department covers real and actual costs to the Employment Department in lieu of the parent or guardian, who is the employer.

(9) The delivery of authorized MFC services must occur so that any individual employee of the parent or guardian does not exceed 40 hours per work week. The Department does not authorize services that require the payment of overtime without prior written authorization by the MFCU Supervisor.

(10) Holidays are paid at the same rate as non-holidays.

(11) Travel time to reach the job site is not reimbursable.

(12) Payment by the Department for MFC services is considered full payment for the services rendered under Medicaid. A provider may not demand or receive additional payment for MFC services from the parent, guardian, or any other source, under any circumstances.

(13) Medicaid funds are the payer of last resort. A provider must bill all third party resources until all third party resources are exhausted.

(14) The Department reserves the right to make a claim against any third party payer before or after making payment to the provider.

(15) The Department may void without cause prior authorizations that have been issued in the event of any of the following:

(a) Change in the status of the child, such as hospitalization, improvement in health status, or death of the child;

(b) Decision of the parent or guardian to change providers;

(c) Inadequate services, inadequate documentation, or failure to perform other expected duties;

(d) Documentation of a person who is subject to background checks on or after July 28, 2009, as required by administrative rule, has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275; or

(e) Any situation, as determined by the services coordinator that puts the health or safety of the child at risk.

(16) Section (15)(d) of this rule does not apply to employees of parents or legal guardians or billing providers who were hired prior to July 28, 2009 that remain in the current position for which the employee was hired.

(17) Upon submission of the billing form for payment, a provider must comply with:

(a) All rules in OAR chapter 407 and OAR chapter 411;

(b) 45 CFR Part 84 that implements Title V, Section 504 of the Rehabilitation Act of 1973 as amended;

(c) Title II and Title III of the Americans with Disabilities Act of 1991; and

(d) Title VI of the Civil Rights Act of 1964.

(18) All billings must be for MFC services provided within the licensure and certification of the provider.

(19) The provider must submit true and accurate information on the billing form. Use of a provider organization does not replace the responsibility of the provider for the truth and accuracy of submitted information.

(20) A person may not submit the following to the Department:

(a) A false billing form for payment;

(b) A billing form for payment that has been, or is expected to be, paid by another source; or

(c) Any billing form for MFC services that have not been provided.

(21) The Department only makes payment to an enrolled provider who actually performs the MFC services or the enrolled provider organization. Federal regulations prohibit the Department from making payment to a collection agency.

(22) Payment is denied if any provisions of these rules are not complied with.

(23) The Department recoups all overpayments.

(a) The amount to be recovered:

(A) Is the entire amount determined or agreed to by the Department;

(B) Is not limited to the amount determined by criminal or civil proceedings; and

(C) Includes interest to be charged at allowable state rates.

(b) A request for repayment of the overpayment or notification of recoupment of future payments is delivered to the provider by registered or certified mail or in person.

(c) Payment schedules with interest may be negotiated at the discretion of the Department.

(d) If recoupment is sought from a parent or guardian, the parent or guardian has the right to request a hearing as provided in ORS chapter 183.

(24) The Department makes payment for MFC services, described in OAR 411-350-0050, after services are delivered as authorized in the ISP for the child and required documentation is received by the services coordinator.

(25) In order to be eligible for payment, requests for payments must be submitted to the Department within 12 months of the delivery of MFC services.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 427.005, 427.007 & 430.215
Hist.: MHD 21-1998(Temp), f. 11-25-98, cert. ef. 12-1-98 thru 5-29-99; MHD 3-1999, f. 5-17-99, cert. ef. 5-28-99; MHD 8-2003(Temp) f. & cert. ef. 12-11-03 thru 6-7-04; Renumbered from 309-044-0200, SPD 14-2004, f. & cert. ef. 6-1-04; SPD 1-2009, f. 2-24-09, cert. ef. 3-1-09; 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 55-2013, f. 12-27-13, cert. ef. 12-28-13; APD 31-2014(Temp), f. & cert. ef. 8-20-14 thru 2-16-15; APD 4-2015, f. 2-13-15, cert. ef. 2-16-15

411-350-0115
Rights, Complaints, Notification of Planned Action and Hearings

(1) RIGHTS OF A CHILD.

(a) The rights of a child are described in OAR 411-318-0010.

(b) Upon entry and request and annually thereafter, the individual rights described in OAR 411-318-0010 must be provided to the parent or guardian and the child.

(2) COMPLAINTS

(a) Complaints must be addressed in accordance with OAR 411-318-0015.

(b) Upon entry and request and annually thereafter, the policy and procedures for complaints as described in OAR 411-318-0015 must be explained and provided to the parent or guardian of each child.

(3) NOTIFICATION OF PLANNED ACTION. In the event MFC services are 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) The parent or guardian 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 as described in OAR chapter 411, division 318 must be explained and provided to the parent or guardian of each child.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 427.005, 427.007 & 430.215
Hist.: SPD 1-2009, f. 2-24-09, cert. ef. 3-1-09; SPD 55-2013, f. 12-27-13, cert. ef. 12-28-13; APD 31-2014(Temp), f. & cert. ef. 8-20-14 thru 2-16-15; APD 4-2015, f. 2-13-15, cert. ef. 2-16-15

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Department of Human Services, Child Welfare Programs
Chapter 413

Rule Caption: Amending rules relating to guardianship assistance
Adm. Order No.: CWP 4-2015(Temp)
Filed with Sec. of State: 1-21-2015
Certified to be Effective: 1-21-15 thru 7-19-15
Notice Publication Date:
Rules Amended: 413-070-0905, 413-070-0917, 413-070-0949
Rules Suspended: 413-070-0905(T)
Subject: OAR 413-070-0905 relating to definitions used in guardianship rules, 413-070-0917 relating to eligibility and extension of guardianship assistance, and 413-070-0949 relating to guardianship assistance requirements are being amended to allow a successor legal guardian to be named in the guardianship assistance agreement prior to a guardian's death or incapacitation to maintain the child's eligibility for guardianship assistance in the event of the guardian's death or incapacitation.
Rules Coordinator: Kris Skaro—(503) 945-6067

413-070-0905
Definitions

The following definitions apply to OAR 413-070-0900 to 413-070-0974:

(1) "Base rate payment" means a payment to the foster parent or relative caregiver for the costs of providing the child or young adult with the following:

(a) Food — including the cost to cover a child or young adult's special or unique nutritional needs;

(b) Clothing — including purchase and replacement;

(c) Housing — including maintenance of household utilities, furnishings, and equipment;

(d) Daily supervision — including teaching and directing to ensure safety and well-being at a level which is appropriate based on the child or young adult's chronological age;

(e) Personal incidentals — including personal care items, entertainment, reading materials, and miscellaneous items; and

(f) The cost of providing transportation — including local travel associated with expenditure for gas and oil, and vehicle maintenance and repair associated with transportation to and from extracurricular, child care, recreational, and cultural activities.

(2) "CANS screening" means Child and Adolescent Needs and Strengths screening, a process of gathering information on a child or young adult's needs and strengths used for one or more of the following purposes:

(a) Identifying case planning, service planning, and supervision needs of the child or young adult in substitute care with a certified family;

(b) Determining the level of care payment while in substitute care with a certified family; and

(c) Determining the level of care payment included in an adoption assistance agreement or guardianship assistance agreement.

(3) "Child" means a person under 18 years of age.

(4) "Department" means the Department of Human Services, Child Welfare.

(5) "Enhanced supervision" means the additional support, direction, observation, and guidance necessary to promote and ensure the safety and well-being of the child or young adult when the child or young adult qualifies for a level of care payment.

(6) "Guardian" means an individual who has been granted guardianship of a child through a judgment of the court.

(7) "Guardianship assistance" means assistance on behalf of an eligible child or young adult to offset the costs associated with establishing the guardianship and meeting the ongoing needs of the child or young adult. "Guardianship assistance" may be in the form of a payment, medical coverage, or reimbursement of guardianship expenses.

(8) "Guardianship assistance agreement" means a written agreement, binding on the parties to the agreement, between the Department and the potential guardian or guardian setting forth the assistance the Department is to provide on behalf of the child or young adult, the responsibilities of the guardian and the Department, and the manner in which the agreement and amount of assistance may be modified or terminated.

(9) "Guardianship assistance agreement only" means a written agreement, binding on the parties to the agreement, between the Department and the potential guardian or guardian of an eligible child or young adult, when the potential guardian or guardian is not receiving a guardianship assistance payment or medical coverage at the time of the agreement but may request it at a later date.

(10) "Guardianship assistance base rate" means the portion of the guardianship assistance payment that is negotiated with the potential guardian or guardian and cannot exceed the amount of the Oregon foster care base rate payment for the child or young adult's age.

(11) "Guardianship assistance payment" means a monthly payment made by the Department to the guardian on behalf of the eligible child or young adult.

(12) "Guardianship Assistance Review Committee" means a committee composed of local and central office Department staff that have expertise in the area of guardianship.

(13) "Incapacity" means a physical or mental defect, illness, or impairment that reduces substantially or eliminates the individual's ability to support or care for the child and is expected to be permanent.

(14) "Level of care payment" means the payment provided to an approved or certified family, a guardian, a pre-adoptive family, or an adoptive family based on the child or young adult's need for enhanced supervision as determined by applying the CANS algorithm to the results of the CANS screening.

(15) "Nonrecurring guardianship assistance agreement" means a written agreement, binding on the parties to the agreement, between the Department and the potential guardian of an eligible child for a one-time payment to reimburse the guardian for the reasonable and necessary expenses incurred in legally finalizing the guardianship.

(16) "Nonrecurring guardianship expenses" means a one-time payment of up to $2,000 per child that the Department will make to a guardian to assist with the reasonable and necessary expenses associated with obtaining legal guardianship of an eligible child.

(17) "Parent" means the biological or adoptive mother or the legal father of the child. A legal father is a man who has adopted the child or whose paternity has been established or declared under ORS 109.070, 416.400 to 416.465, or by a juvenile court. In cases involving an Indian child under the Indian Child Welfare Act (ICWA), a legal father includes a man who is a father under applicable tribal law. "Parent" also includes a putative father who has demonstrated a direct and significant commitment to the child by assuming or attempting to assume responsibilities normally associated with parenthood unless a court finds that the putative father is not the legal father.

(18) "Participating tribe" means a federally recognized Indian tribe in Oregon with a Title IV E agreement with the Department.

(19) "Permanency committee" means a group of individuals who are responsible for making a recommendation regarding a permanency plan or potential permanency resource when the child or young adult likely is not returning to his or her parent.

(20) "Potential guardian" means an individual who:

(a) Has been approved by the Department or participating tribe to be a child's guardian; and

(b) Is in the process of legalizing the relationship to the child through the judgment of the court.

(21) "Registered domestic partner" means an individual joined in a domestic partnership that is registered with a county clerk in accordance with ORS 106.300 to 106.340.

(22) "Relative" means (each of the following individuals is a "relative"):

(a) An individual with one of the following relationships to the child or young adult through the parent of the child or young adult unless the relationship has been dissolved by adoption of the child, young adult, or parent:

(A) Any blood relative of preceding generations denoted by the prefixes of grand, great, or great-great.

(B) Any half-blood relative of preceding generations denoted by the prefixes of grand, great, or great-great (individuals with one common biological parent are half-blood relatives).

(C) A sibling, also to include an individual with a sibling relationship to the child or young adult through a putative father.

(D) An aunt, uncle, nephew, niece, first cousin, and first cousin once removed.

(E) A spouse of anyone listed in paragraphs (A) to (D) of this subsection, even if a petition for annulment, dissolution, or separation has been filed or the marriage is terminated by divorce or death. To be considered a "relative" under this paragraph, the child or young adult must have had a relationship with the spouse prior to the most recent episode of Department custody.

(b) An individual with one of the following relationships to the child or young adult:

(A) An individual defined as a relative by the law or custom of the tribe of the child or young adult if the child or young adult is an Indian child under the Indian Child Welfare Act or in the legal custody of a tribe.

(B) An individual defined as a relative of a refugee child or young adult under Child Welfare Policy I-E.2.2, "Placement of Refugee Children", OAR 413-070-0300 to 413-070-0380.

(C) A stepparent or former stepparent if the child or young adult had a relationship with the former stepparent prior to the most recent episode of Department custody; a stepbrother; or a stepsister.

(D) The registered domestic partner of the parent of the child or young adult or a former registered domestic partner of the parent of the child or young adult if the child or young adult had a relationship with the former domestic partner prior to the most recent episode of Department custody.

(E) The adoptive parent of a sibling of the child or young adult.

(F) The unrelated legal or biological father or mother of a half-sibling of the child or young adult when the half-sibling of the child or young adult is living with the unrelated legal or biological father or mother.

(c) An individual identified by the child or young adult or the family of the child or young adult, or an individual who self-identifies, as being related to the child or young adult through the parent of the child or young adult by blood, adoption, or marriage to a degree other than an individual specified as a "relative" in paragraphs (A) to (D) of subsection (a) of this section unless the relationship has been dissolved by adoption of the child, young adult, or parent.

(d) An individual meeting the requirements of at least one of the following paragraphs:

(A) An individual not related to the child, young adult, or parent by blood, adoption, or marriage:

(i) Who is identified as a member of the family by the child or young adult or by the family of the child or young adult; and

(ii) Who had an emotionally significant relationship with the child or young adult or the family of the child or young adult prior to the most recent episode of Department custody.

(B) An individual who has a blood relationship to the child or young adult as described in paragraphs (a)(A) to (D) of this section through the birth parent of the child or young adult, but the prior legal relationship has been dissolved by adoption of the child, young adult, or birth parent, and who is identified as a member of the family by the child or young adult or who self-identifies as a member of the family.

(e) For eligibility for the guardianship assistance program under these rules, OAR 413-070-0900 to 413-070-0974:

(A) A stepparent is considered a parent and is not a "relative" for the purpose of eligibility for guardianship assistance unless a petition for annulment, dissolution, or separation has been filed, or the marriage to the adoptive or biological parent of the child has been terminated by divorce or death.

(B) A foster parent may only be considered a "relative" for the purpose of eligibility for guardianship assistance when:

(i) There is a compelling reason why adoption is not an achievable permanency plan;

(ii) The foster parent is currently caring for a child, in the care or custody of the Department or a participating tribe, who has a permanency plan or concurrent permanent plan of guardianship;

(iii) The foster parent has cared for the child for at least 12 of the past 24 months; and

(iv) The Department or tribe has approved the foster parent for consideration as a guardian.

(23) "Sibling" means one of two or more children or young adults related:

(a) By blood or adoption through a common legal parent;

(b) Through the marriage of the legal or biological parents of the children or young adults; or

(c) Through a legal or biological parent who is the registered domestic partner of the legal or biological parent of the children or young adults.

(24) "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.

(25) "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.

(26) "Successor legal guardian" means an individual who has been named in the guardianship assistance agreement, including any amendments to the agreement, as a replacement legal guardian in the event of the guardian's death or incapacitation.

(27) "Young adult" means a person aged 18 through 20 years.

Stat. Auth.: ORS 411.141 & 418.005

Stats. Implemented: ORS 409.010, 411.141, 418.005

Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 14-2003, f. & cert. ef. 1-9-03; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 8-2004, f. & cert. ef. 4-1-04; CWP 5-2009(Temp), f. & cert. ef. 3-31-09 thru 9-27-09; CWP 7-2009(Temp), f. & cert. ef. 7-1-09 thru 9-27-09; CWP 12-2009, f. & cert. ef. 9-28-09; CWP 18-2009(Temp), f. & cert. ef. 12-16-09 thru 6-14-10; CWP 1-2010(Temp), f. & cert. ef. 2-1-10 thru 6-14-10; CWP 18-2009(Temp), f. & cert. ef. 12-16-09 thru 6-14-10; CWP 6-2010, f. & cert. ef. 6-15-10; CWP 11-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11; CWP 24-2011(Temp), f. 9-30-11, cert. ef. 10-1-11 thru 12-27-11; CWP 30-2011, f. 12-27-11, cert. ef. 12-28-11; CWP 1-2014, f. 1-31-14, cert. ef. 2-1-14; CWP 11-2014, f. & cert. ef. 6-3-14; CWP 16-2014(Temp), f. & cert. ef. 8-4-14 thru 1-31-15; CWP 4-2015(Temp), f. & cert. ef. 1-21-15 thru 7-19-15

413-070-0917
Eligibility

(1) Eligibility: Child.

(a) Guardianship assistance will not be established for a child placed outside of the United States or a territory or possession thereof.

(b) A guardianship assistance agreement must be signed by the potential guardian and a Department representative before guardianship has been legally established by a state or participating tribal court.

(c) To be eligible for guardianship assistance, a child must meet all of the following:

(A) Be a United States citizen or qualified alien as described in Child Welfare Policy I-E.6.1, "Title IV-E Foster Care, Adoption Assistance, and Guardianship Assistance Eligibility", OAR 413-100-0210(2), and in 8 USC 1641(b) or (c).

(B) Be removed from his or her home pursuant to a voluntary placement or as a result of a judicial determination that continuation in the home would be contrary to the welfare of the child.

(C) The Department or participating tribe has determined that neither return home nor adoption is an appropriate permanency option for the child.

(D) Be eligible for Title IV-E foster care maintenance payments during a six consecutive month period during which the child resided in the home of the potential guardian who was fully licensed, certified, or approved by the state or a participating tribe as meeting the licensure or certification requirements for a foster family home in the state where the home is located. The Department determines a child's eligibility for a Title IV-E maintenance payment under Child Welfare Policy I-E.6.1, "Title IV-E Foster Care, Adoption Assistance and Guardianship Assistance Eligibility", OAR 413-100-0000 to 413-100-0345.

(E) Be in the Department's or participating tribe's care or custody for a minimum of:

(i) Six months, if the potential guardian is the child's relative as defined by OAR 413-070-0905(21)(a) through (d); or

(ii) Twelve months, if the potential guardian is a substitute caregiver who meets the definition of a relative under OAR 413-070-0905(21)(e)(B).

(F) Demonstrate a strong attachment to the potential guardian.

(G) Be consulted regarding the guardianship arrangement when the child has attained 14 years of age.

(2) In order for a child to be determined eligible for guardianship assistance, the following must be documented in the child's case plan:

(a) How the child meets the eligibility requirements;

(b) The steps the Department or participating tribe has taken to determine that return to the home or adoption is not appropriate;

(c) The efforts the Department or participating tribe has made to discuss adoption with the child's relative caregiver and the reasons why adoption is not an option;

(d) The efforts the Department or participating tribe has made to discuss kinship guardianship with the child's parent or parents or the reasons why efforts were not made;

(e) The reason why a permanent placement with a potential relative guardian and receipt of a kinship guardian assistance payment is in the child's best interests; and

(f) The reasons for any separation of siblings during placement. If the child's placement with the potential relative guardian does not include siblings, the case plan must also include a description of the reasons why the child is separated from siblings during placement.

(3) Siblings. Each sibling of a child or young adult eligible for guardianship assistance is also eligible for guardianship assistance without meeting the eligibility requirements set forth in paragraphs (1)(c)(B) to (F) of this rule when:

(a) The sibling is placed in a guardianship with the same potential guardian or guardian, whether the siblings are placed at the same time or not; and

(b) The potential guardian or guardian and the Department or participating tribe agree that both of the following are appropriate:

(A) Placing the child's sibling in the home of the potential guardian or guardian; and

(B) Guardianship as a permanency plan for the sibling.

(4) Extension of Guardianship Assistance for a Young Adult

(a) The Department may approve an extension of a guardianship assistance agreement for an individual under the age of 21 when the individual meets paragraph (A) or (B) of this subsection.

(A) An initial guardianship assistance agreement was entered into on behalf of the child and at the time of the child's 18th birthday, the child:

(i) Qualifies as an individual with a developmental disability as determined by the Oregon Department of Human Services, Developmental Disabilities Services;

(ii) Qualifies as an individual with a developmental disability as determined by the equivalent developmental disability program if living in a state other than Oregon; or

(iii) Qualifies for Supplemental Security Income (SSI) as determined by the Social Security Administration.

(B) An initial guardianship assistance agreement was entered into on behalf of the child who is age 16 or 17, and upon reaching the age of 18, the child is:

(i) Completing secondary school (or equivalent);

(ii) Enrolled in post-secondary or vocational school;

(iii) Participating in a program or activity that promotes or removes barriers to employment;

(iv) Employed for at least 80 hours a month; or

(v) Determined incapable of any of the above due to a documented medical condition, physical disability, or mental disability.

(b) In order for the extension of guardianship assistance under paragraph (a)(A) of this section to be approved on behalf of a young adult, the guardian must submit to the Department documentation from the agency making the determination described in subparagraphs (a)(A)(i) to (iii) of this section.

(c) In order for the extension of guardianship assistance under paragraph (a)(B) of this section to be approved on behalf of a young adult, the guardian must submit to the Department documentation verifying the circumstances described in subparagraphs (a)(B)(i) through (v) of this section. Documentation of circumstances described in subparagraph (a)(B)(v) of this section must be from a medical or mental health professional.

(d) The Department must receive the request for extension of the guardianship assistance agreement and the documentation described in subsections (b) and (c) of this section:

(A) At least 30 calendar days before the individual's 18th birthday; or

(B) Before a date determined by the Department when the Department approves a request from the guardian to submit the documentation after the individual's 18th birthday. The Department must receive the request before the individual's 18th birthday.

(e) If the Department does not receive the documentation as required by subsections (b) through (d) of this section, the Department may not approve an extension of a guardianship assistance agreement.

(f) When an extension of guardianship assistance has been approved under paragraph (a)(A) of this section, guardianship assistance will continue until the young adult turns 21 years old.

(g) When an extension of guardianship assistance has been approved under paragraph (a)(B) of this section, the Department will review the eligibility of the young adult for continued guardianship assistance:

(A) At least annually; or

(B) When information is received that indicates the young adult may no longer be eligible for guardianship assistance or may be eligible for guardianship assistance in a different amount.

(h) The guardian must notify the Department, orally or in writing, of any changes in circumstances that may make the young adult:

(A) Ineligible for guardianship assistance; or

(B) Eligible for guardianship assistance in a different amount.

(5) Successor Legal Guardian.

(a) In the event of the death or incapacity of the relative guardian, a child eligible for Title IV-E guardianship assistance remains eligible so long as a "successor legal guardian" is named in the guardianship assistance agreement prior to the guardian's death or incapacitation.

(b) A "successor legal guardian" may be added, removed, or replaced by amending the guardianship assistance agreement at any time prior to the guardian's death or incapacitation.

(c) A "successor legal guardian" must be granted guardianship of the child through a judgment of the court.

Stat. Auth.: ORS 411.141 & 418.005

Stats. Implemented: ORS 409.010, 411.141, 418.005

Hist.: SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 8-2004, f. & cert. ef. 4-1-04; CWP 5-2009(Temp), f. & cert. ef. 3-31-09 thru 9-27-09; CWP 7-2009(Temp), f. & cert. ef. 7-1-09 thru 9-27-09; CWP 12-2009, f. & cert. ef. 9-28-09; CWP 18-2009(Temp), f. & cert. ef. 12-16-09 thru 6-14-10; CWP 6-2010, f. & cert. ef. 6-15-10; CWP 11-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11; CWP 24-2011(Temp), f. 9-30-11, cert. ef. 10-1-11 thru 12-27-11; CWP 30-2011, f. 12-27-11, cert. ef. 12-28-11; CWP 1-2014, f. 1-31-14, cert. ef. 2-1-14; CWP 4-2015(Temp), f. & cert. ef. 1-21-15 thru 7-19-15

413-070-0949

Guardianship Assistance Agreement Requirements

(1) Before a guardian may receive guardianship assistance, there must be a negotiated written guardianship assistance agreement between the Department and the potential guardian or guardian signed by all parties prior to the court order establishing the legal guardianship.

(2) The guardianship assistance agreement must include each of the following:

(a) A statement indicating that a guardianship assistance agreement remains in effect without regard to the state of residency of the guardian.

(b) The effective date of the initial guardianship assistance agreement is the date of the court order of guardianship.

(c) That the Department will pay the nonrecurring guardianship expenses associated with obtaining legal guardianship of the child, to the extent the nonrecurring guardianship expenses do not exceed $2,000 per child.

(d) That the child or young adult for whom the Department is providing a guardianship assistance payment remains eligible for medical assistance provided:

(A) The guardianship remains in effect;

(B) A payment is being made; and

(C) The child or young adult is placed in the United States, a territory or possession thereof.

(e) Information regarding garnishment of guardianship assistance payments as set forth in OAR 413-070-0939(8).

(f) That the guardian agrees to comply with the reporting requirements under OAR 413-070-0964.

(g) That the guardian understands that a guardianship assistance agreement may be reviewed and the guardianship assistance may be adjusted, suspended, or terminated under OAR 413-070-0974.

(h) A statement indicating that the guardian understands that the provisions of ORS 192.558 allow the Oregon Health Plan (OHP) and the OHP managed care plans without the authorization of the guardian, child, or young adult to exchange the following protected health information for the purpose of treatment activities related to the behavioral or physical health of the child or young adult when the child or young adult is the recipient of OHP services:

(A) The name and Medicaid recipient number of the child or young adult;

(B) The name of the hospital or medical provider of the child or young adult;

(C) The Medicaid number of the hospital or medical provider;

(D) Each diagnosis for the child or young adult;

(E) Each treatment activity's date of service;

(F) Each treatment activity's procedure or revenue code;

(G) The quantity of units or services provided; and

(H) Information about medication prescription and monitoring.

(i) The amount of the guardianship assistance and the manner in which it is to be provided.

(j) The basis and requirements for periodic changes in the guardianship assistance payment, in consultation with the guardian, based on the circumstances of the guardian and the needs of the child or young adult.

(k) The additional services and assistance for which the child or young adult and guardian are eligible under the agreement and the procedure by which the guardian may apply for such services.

(l) When the Department has agreed to include such language, that the Department may continue to provide guardianship assistance for a child or young adult when child or young adult moves out of the home of the guardian to attend college or live independently.

(3) In the event of a guardian's death or incapacitation and if a successor legal guardian is named in the guardianship assistance agreement as outlined in 413-070-0917(5), before the successor legal guardian may receive guardianship assistance, the Department and the successor legal guardian must negotiate and enter into a written guardianship assistance agreement as described in section (2) of this rule signed by all parties.

(4) The Department must provide the guardian with a copy of the guardianship assistance agreement.

Stat. Auth.: ORS 411.141 & 418.005

Stats. Implemented: ORS 409.010, 411.141, 418.005

Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 49-2003(Temp), f. 12-31-03, cert. ef. 1-1-04 thru 4-28-04; CWP 8-2004, f. & cert. ef. 4-1-04; CWP 5-2009(Temp), f. & cert. ef. 3-31-09 thru 9-27-09; CWP 7-2009(Temp), f. & cert. ef. 7-1-09 thru 9-27-09; CWP 12-2009, f. & cert. ef. 9-28-09; Renumbered from 413-070-0935, CWP 18-2009(Temp), f. & cert. ef. 12-16-09 thru 6-14-10; CWP 1-2010(Temp), f. & cert. ef. 2-1-10 thru 6-14-10; CWP 6-2010, f. & cert. ef. 6-15-10; CWP 11-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11; CWP 24-2011(Temp), f. 9-30-11, cert. ef. 10-1-11 thru 12-27-11; CWP 30-2011, f. 12-27-11, cert. ef. 12-28-11; CWP 1-2014, f. 1-31-14, cert. ef. 2-1-14; CWP 4-2015(Temp), f. & cert. ef. 1-21-15 thru 7-19-15

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Rule Caption: Amending rules relating to Department responsibilities to identify and contact relatives

Adm. Order No.: CWP 5-2015(Temp)

Filed with Sec. of State: 1-21-2015

Certified to be Effective: 1-21-15 thru 7-19-15

Notice Publication Date:
Rules Amended: 413-070-0069, 413-070-0072
Subject: OAR 413-070-0069 and 413-070-0072 about Department responsibilities to identify and contact relatives and persons with a caregiver relationship are being amended to require the Department to notify parents who have custody of a sibling of a child who has been taken into Department custody.
Rules Coordinator: Kris Skaro—(503) 945-6067

413-070-0069
Responsibilities to Identify Relatives and Persons with a Caregiver Relationship

(1) The Department must begin the search for relatives or persons with a caregiver relationship:

(a) During a CPS assessment when the Department has determined that a child is unsafe and an individual other than the parent or guardian is required to manage a child's safety; or

(b) When a parent or guardian:

(A) Is requesting the voluntary placement of the child; or

(B) Is voluntarily giving custody of the child to the Department.

(2) The Department must communicate with the following individuals to identify the child or young adult's relatives or persons with a caregiver relationship:

(a) The child or young adult's parents or legal guardians;

(b) The child or young adult, whenever possible;

(c) When the child or young adult is a refugee, other individuals identified in Child Welfare Policy I-E.2.2, "Placement of Refugee Children" OAR 413-070-0300 to 413-070-0380; and

(d) When the child or young adult is an Indian child, the tribe, pursuant to Child Welfare Policy I-E-E.2.1, "Placement of Indian Children" OAR 413-070-0100 to 413-070-0260.

(3) The Department may use, but is not limited to using, the following resources to identify or locate a child or young adult's relatives, the parents of a sibling of a child where the parent has custody of the sibling, and persons with a caregiver relationship:

(a) An individual identified as a relative by the child or young adult or the child or young adult's family;

(b) An individual thought or known by the Department to be a relative of the child or young adult;

(c) Oregon data information systems available to the Department;

(d) The internet;

(e) Collateral contacts; and

(f) Other community resources available to search for the identity and contact information of relatives or persons with a caregiver relationship.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 109.119, 418.005, 419A.004, 419B.192
Hist.: SOSCF 19-1998(Temp), f. & cert. ef. 10-30-98 thru 4-28-99; SOSCF 6-1999, f. & cert. ef. 4-29-99; SOSCF 3-2001(Temp) f. & cert. ef. 1-24-01 thru 7-22-01; SOSCF 34-2001, f. 6-29-01 cert. ef. 7-1-01; CWP 10-2010, f. & cert. ef. 7-1-10; CWP 5-2015(Temp), f. & cert. ef. 1-21-15 thru 7-19-15

413-070-0072
Contact with Relatives or Persons with a Caregiver Relationship

(1) Unless a child welfare program manager or designee approves not contacting or a court orders no contact with an identified individual because the contact may compromise a child or young adult's or another individual's safety, the Department must make diligent efforts to contact each individual identified under OAR 413-070-0069 as soon as reasonably possible and no later than 30 calendar days after a child's initial:

(a) Removal from the custody of a parent or guardian; or

(b) Placement in substitute care through a voluntary placement agreement or voluntary custody agreement.

(2) During the contact required under section (1) of this rule, the Department must:

(a) Provide each grandparent, parents of a sibling of a child where the parent has custody of the sibling, and adult relative with notice in the individual's primary language that specifies:

(A) Whether the child or young adult has been removed from the custody of a parent or guardian to manage child safety or has been placed in substitute care through a voluntary placement agreement or voluntary custody agreement;

(B) Whether the child or young adult is currently residing with a relative;

(C) The opportunities and requirements associated with being assessed as a safe and appropriate safety service provider;

(D) The opportunities and requirements associated with being assessed to become a relative caregiver; and

(E) The rights of relatives set forth in Child Welfare Policy I-A.4.5, "Rights of Relatives" OAR 413-010-0300 to 413-010-0340, and the statutes governing intervention, limited participation, and post-adoption communication agreements.

(b) Request the names of other relatives not previously identified.

(3) The Department must document in the Department's information system:

(a) The approval not to contact an individual under section (1) of this rule;

(b) The name of each individual with whom the Department attempted or made contact;

(c) The individual's relationship to the child or young adult;

(d) The type of contact;

(e) Each individual's response to the notice required in subsection (2)(a) of this rule when a response is received; and

(f) The individual's contact information.

(4) The Department may make a decision to engage an individual as a safety service provider or may place a child in substitute care with a relative prior to contacting all known relatives.

(5) The Department must respond to inquiries from a relative in person or by telephone as soon as reasonably possible and no later than within 15 business days, if a contact telephone number has been provided or discovered, or, when a telephone number has not been provided, contact the individual by other means, including by mail or electronic mail if no other means of contact was identified by the relative.

(6) The caseworker may utilize any meeting or other contact with the family to identify and engage relatives for the purposes set forth in OAR 413-070-0060.

(7) Whenever the Department is provided the name of a relative or person with a caregiver relationship previously unknown to the Department through the diligent search efforts, the Department must:

(a) Document the name and contact information in the Department's information system;

(b) Attempt to contact the individual as soon as reasonably possible and no later than within 15 business days; and

(c) Provide notice as set forth in the requirements and limitations of sections (1) and (2) of this rule.

(8) When the Department is unable to locate contact information for an identified relative or person with a caregiver relationship, the Department must document the efforts to obtain contact information in the Department's information system.

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 109.119, 418.005, 419A.004, 419B.192
Hist.: SOSCF 19-1998(Temp), f. & cert. ef. 10-30-98 thru 4-28-99; SOSCF 6-1999, f. & cert. ef. 4-29-99; SOSCF 3-2001(Temp) f. & cert. ef. 1-24-01 thru 7-22-01; SOSCF 34-2001, f. 6-29-01 cert. ef. 7-1-01; CWP 10-2010, f. & cert. ef. 7-1-10; CWP 5-2015(Temp), f. & cert. ef. 1-21-15 thru 7-19-15

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Rule Caption: Amending the definition of 'relative' in child welfare rules
Adm. Order No.: CWP 6-2015
Filed with Sec. of State: 1-29-2015
Certified to be Effective: 2-1-15
Notice Publication Date: 12-1-2014
Rules Amended: 413-010-0310, 413-070-0063, 413-070-0505, 413-070-0620, 413-070-0655, 413-070-0905, 413-120-0010, 413-120-0195, 413-120-0510, 413-120-0710
Rules Repealed: 413-070-0905(T)
Subject: The Office of Child Welfare Programs is amending the definition of "relative" to address unintended consequences of a recent rule change. The Department changed the definition of "relative" effective June 3, 2014, to clarify the order in which the Department considers potential adoptive and substitute care resources for placement of children in the Department's custody, specifically where in the order of placement fall birth relatives of children or parents whose prior legal relationship has been dissolved by adoption. The June 3, 2014, change was intended to include as relatives only those blood relatives who are identified as a member of the family by the child or the individual. The change was interpreted, however, to require the Department to search for blood relatives of an adopted child, to whom the child has no connection. That interpretation may

have had negative consequences on the adoption process and the child, in addition to creating a practice change and workload increase the Department did not intend nor anticipate. The definition is being amended to add language to clarify that only those relatives who are identified as members of the family are included. These rule changes make permanent temporary rules that were adopted effective August 4, 2014.

"Relative" is defined in ten rules in OAR chapter 413, all of which are amended to adopt a consistent definition.

Rules Coordinator: Kris Skaro—(503) 945-6067

413-010-0310
Definition

The following definitions apply to OAR 413-010-0300 to 413-010-0340:

(1) "Child" means a person under 18 years of age.

(2) "Department" means the Department of Human Services, Child Welfare.

(3) "Indian child" means any unmarried person who is under 18 years of age and is either:

(a) A member of an Indian tribe; or

(b) Eligible for membership in an Indian tribe and the biological child of a member of an Indian tribe.

(4) "Parent" means the biological or adoptive mother or the legal father of the child. A legal father is a man who has adopted the child or whose paternity has been established or declared under ORS 109.070, ORS 416.400 to 416.465, or by a juvenile court. In cases involving an Indian child under the Indian Child Welfare Act (ICWA), a legal father includes a man who is a father under applicable tribal law. "Parent" also includes a putative father who has demonstrated a direct and significant commitment to the child by assuming or attempting to assume responsibilities normally associated with parenthood, unless a court finds that the putative father is not the legal father.

(5) "Registered domestic partner" means an individual joined in a domestic partnership that has been registered by a county clerk in accordance with ORS 106.300 to 106.340.

(6) "Relative" means (each of the following individuals is a "relative"):

(a) An individual with one of the following relationships to the child or young adult through the parent of the child or young adult unless the relationship has been dissolved by adoption of the child, young adult, or parent:

(A) Any blood relative of preceding generations denoted by the prefixes of grand, great, or great-great.

(B) Any half-blood relative of preceding generations denoted by the prefixes of grand, great, or great-great (individuals with one common biological parent are half-blood relatives).

(C) A sibling, also to include an individual with a sibling relationship to the child or young adult through a putative father.

(D) An aunt, uncle, nephew, niece, first cousin, and first cousin once removed.

(E) A spouse of anyone listed in paragraphs (A) to (D) of this subsection, even if a petition for annulment, dissolution, or separation has been filed or the marriage is terminated by divorce or death. To be considered a "relative" under this paragraph, the child or young adult must have had a relationship with the spouse prior to the most recent episode of Department custody.

(b) An individual with one of the following relationships to the child or young adult:

(A) An individual defined as a relative by the law or custom of the tribe of the child or young adult if the child or young adult is an Indian child under the Indian Child Welfare Act or in the legal custody of a tribe.

(B) An individual defined as a relative of a refugee child or young adult under Child Welfare Policy I-E.2.2, "Placement of Refugee Children", OAR 413-070-0300 to 413-070-0380.

(C) A stepparent or former stepparent if the child or young adult had a relationship with the former stepparent prior to the most recent episode of Department custody; a stepbrother; or a stepsister.

(D) The registered domestic partner of the parent of the child or young adult or a former registered domestic partner of the parent of the child or young adult if the child or young adult had a relationship with the former domestic partner prior to the most recent episode of Department custody.

(E) The adoptive parent of a sibling of the child or young adult.

(F) The unrelated legal or biological father or mother of a half-sibling of the child or young adult when the half-sibling of the child or young adult is living with the unrelated legal or biological father or mother.

(c) An individual identified by the child or young adult or the family of the child or young adult, or an individual who self-identifies, as being related to the child or young adult through the parent of the child or young adult by blood, adoption, or marriage to a degree other than an individual specified as a "relative" in paragraphs (A) to (D) of subsection (a) of this section unless the relationship has been dissolved by adoption of the child, young adult, or parent.

(d) An individual meeting the requirements of at least one of the following paragraphs:

(A) An individual not related to the child, young adult, or parent by blood, adoption, or marriage:

(i) Who is identified as a member of the family by the child or young adult or by the family of the child or young adult; and

(ii) Who had an emotionally significant relationship with the child or young adult or the family of the child or young adult prior to the most recent episode of Department custody.

(B) An individual who has a blood relationship to the child or young adult as described in paragraphs (a)(A) to (D) of this section through the birth parent of the child or young adult, but the prior legal relationship has been dissolved by adoption of the child, young adult, or birth parent, and who is identified as a member of the family by the child or young adult or who self-identifies as a member of the family.

(e) For eligibility for the guardianship assistance program:

(A) A stepparent is considered a parent and is not a "relative" for the purpose of eligibility for guardianship assistance unless a petition for annulment, dissolution, or separation has been filed, or the marriage to the adoptive or biological parent of the child has been terminated by divorce or death.

(B) A foster parent may only be considered a "relative" for the purpose of eligibility for guardianship assistance when:

(i) There is a compelling reason why adoption is not an achievable permanency plan;

(ii) The foster parent is currently caring for a child, in the care or custody of the Department or a participating tribe, who has a permanency plan or concurrent permanent plan of guardianship;

(iii) The foster parent has cared for the child for at least 12 of the past 24 months; and

(iv) The Department or tribe has approved the foster parent for consideration as a guardian.

(7) "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.

(8) "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.

(9) "Sibling" means one of two or more children or young adults related:

(a) By blood or adoption through a common legal parent;

(b) Through the marriage of the legal or biological parents of the children or young adults; or

(c) Through a legal or biological parent who is the registered domestic partner of the legal or biological parent of the children or young adults.

(10) "Young adult" means a person aged 18 through 20 years.

Stat. Auth.: ORS 109.119, 418.005 & 419A.004
Stats. Implemented: ORS 109.119, 418.005 & 419A.004
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 9-2010, f. & cert. ef. 7-1-10; CWP 14-2013, f. 12-31-13, cert. ef. 1-1-14; CWP 11-2014, f. & cert. ef. 6-3-14; CWP 16-2014(Temp), f. & cert. ef. 8-4-14 thru 1-31-15; CWP 6-2015, f. 1-29-15, cert. ef. 2-1-15

413-070-0063
Definitions

The following definitions apply to OAR 413-070-0060 to 413-070-0093:

(1) "Caregiver relationship" means a relationship between a person and a child that meets the requirements of the following subsections:

(a) The relationship has existed for the 12 months immediately preceding the initiation of a dependency proceeding, at least six months during a dependency proceeding, or half of the child's life if the child is less than six months of age.

(b) The person had physical custody of the child or resided in the same household as the child and provided the child on a daily basis with the love, nurturing, and other necessities required to meet the child's psychological and physical needs.

(c) The child depended on the relationship to meet the child's needs.

(d) A "caregiver relationship" does not include a relationship between a child and a person who is the unrelated foster parent of the child unless the relationship continued for a period of at least twelve consecutive months.

(2) "Certificate of approval" means a document that the Department issues to approve the operation of a child-specific relative caregiver home, child-specific foster home, pre-adoptive home, or a regular foster home.

(3) "Child" means a person under 18 years of age.

(4) "Department" means the Department of Human Services, Child Welfare.

(5) "Designee" means a person who the designator directly and immediately supervises or a person with equal or greater management responsibility than the designator.

(6) "Foster parent" means an individual 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) "Indian child" is any unmarried person under 18 years of age who is either a member of an Indian tribe or is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

(8) "Parent" means the biological or adoptive mother or the legal father of the child. A legal father is a man who has adopted the child or whose paternity has been established or declared under ORS 109.070, ORS 416.400 to 416.465, or by a juvenile court. In cases involving an Indian child under the Indian Child Welfare Act (ICWA), a legal father includes a man who is a father under applicable tribal law. "Parent" also includes a putative father who has demonstrated a direct and significant commitment to the child by assuming or attempting to assume responsibilities normally associated with parenthood, unless a court finds that the putative father is not the legal father.

(9) "Registered domestic partner" means an individual joined in a domestic partnership that has been registered by a county clerk in accordance with ORS 106.300 to 106.340.

(10) "Relative" means (each of the following individuals is a "relative"):

(a) An individual with one of the following relationships to the child or young adult through the parent of the child or young adult unless the relationship has been dissolved by adoption of the child, young adult, or parent:

(A) Any blood relative of preceding generations denoted by the prefixes of grand, great, or great-great.

(B) Any half-blood relative of preceding generations denoted by the prefixes of grand, great, or great-great (individuals with one common biological parent are half-blood relatives).

(C) A sibling, also to include an individual with a sibling relationship to the child or young adult through a putative father.

(D) An aunt, uncle, nephew, niece, first cousin, and first cousin once removed.

(E) A spouse of anyone listed in paragraphs (A) to (D) of this subsection, even if a petition for annulment, dissolution, or separation has been filed or the marriage is terminated by divorce or death. To be considered a "relative" under this paragraph, the child or young adult must have had a relationship with the spouse prior to the most recent episode of Department custody.

(b) An individual with one of the following relationships to the child or young adult:

(A) An individual defined as a relative by the law or custom of the tribe of the child or young adult if the child or young adult is an Indian child under the Indian Child Welfare Act or in the legal custody of a tribe.

(B) An individual defined as a relative of a refugee child or young adult under Child Welfare Policy I-E.2.2, "Placement of Refugee Children", OAR 413-070-0300 to 413-070-0380.

(C) A stepparent or former stepparent if the child or young adult had a relationship with the former stepparent prior to the most recent episode of Department custody; a stepbrother; or a stepsister.

(D) The registered domestic partner of the parent of the child or young adult or a former registered domestic partner of the parent of the child or young adult if the child or young adult had a relationship with the former domestic partner prior to the most recent episode of Department custody.

(E) The adoptive parent of a sibling of the child or young adult.

(F) The unrelated legal or biological father or mother of a half-sibling of the child or young adult when the half-sibling of the child or young adult is living with the unrelated legal or biological father or mother.

(c) An individual identified by the child or young adult or the family of the child or young adult, or an individual who self-identifies, as being related to the child or young adult through the parent of the child or young adult by blood, adoption, or marriage to a degree other than an individual specified as a "relative" in paragraphs (A) to (D) of subsection (a) of this section unless the relationship has been dissolved by adoption of the child, young adult, or parent.

(d) An individual meeting the requirements of at least one of the following paragraphs:

(A) An individual not related to the child, young adult, or parent by blood, adoption, or marriage:

(i) Who is identified as a member of the family by the child or young adult or by the family of the child or young adult; and

(ii) Who had an emotionally significant relationship with the child or young adult or the family of the child or young adult prior to the most recent episode of Department custody.

(B) An individual who has a blood relationship to the child or young adult as described in paragraphs (a)(A) to (D) of this section through the birth parent of the child or young adult, but the prior legal relationship has been dissolved by adoption of the child, young adult, or birth parent, and who is identified as a member of the family by the child or young adult or who self-identifies as a member of the family.

(e) For eligibility for the guardianship assistance program:

(A) A stepparent is considered a parent and is not a "relative" for the purpose of eligibility for guardianship assistance unless a petition for annulment, dissolution, or separation has been filed, or the marriage to the adoptive or biological parent of the child has been terminated by divorce or death.

(B) A foster parent may only be considered a "relative" for the purpose of eligibility for guardianship assistance when:

(i) There is a compelling reason why adoption is not an achievable permanency plan;

(ii) The foster parent is currently caring for a child, in the care or custody of the Department or a participating tribe, who has a permanency plan or concurrent permanent plan of guardianship;

(iii) The foster parent has cared for the child for at least 12 of the past 24 months; and

(iv) The Department or tribe has approved the foster parent for consideration as a guardian.

(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) "Relative search" means the efforts of the Department to identify, locate, and document the contact with a child or young adult's relatives.

(13) "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.

(14) "Sibling" means one of two or more children or young adults related:

(a) By blood or adoption through a common legal parent;

(b) Through the marriage of the legal or biological parents of the children or young adults; or

(c) Through a legal or biological parent who is the registered domestic partner of the legal or biological parent of the children or young adults.

(15) "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.

(16) "Young adult" means a person aged 18 through 20 years who remains in the care and custody of the Department, and lives in substitute care or lives independently through the Department's Independent Living Subsidy Program.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 109.119, 418.005, 419A.004 & 419B.192

Hist.: SOSCF 19-1998(Temp), f. & cert. ef. 10-30-98 thru 4-28-99; SOSCF 6-1999, f. & cert. ef. 4-29-99; SOSCF 3-2001(Temp) f. & cert. ef. 1-24-01 thru 7-22-01; SOSCF 34-2001, f. 6-29-01 cert. ef. 7-1-01; CWP 10-2010, f. & cert. ef. 7-1-10; CWP 10-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11; CWP 31-2011, f. 12-27-11, cert. ef. 12-28-11; CWP 11-2014, f. & cert. ef. 6-3-14; CWP 16-2014(Temp), f. & cert. ef. 8-4-14 thru 1-31-15; CWP 6-2015, f. 1-29-15, cert. ef. 2-1-15

413-070-0505
Definitions

The following definitions apply to OAR 413-070-0500 to 413-070-0519:

(1) "Adoptive resource" means an individual or individuals selected by the Department, another public child welfare agency, or a licensed adoption agency as the adoptive family for a child where no administrative review was requested within the timeframe allowed for such a request, or if

a review was requested, the selection has been sustained by that review and the review is complete.

(2) "CASA" means a court appointed special advocate: a volunteer who is appointed by the court, is a party to the juvenile proceeding, and advocates for the child pursuant to ORS 419A.170.

(3) "Child" means a person under 18 years of age.

(4) "Committee facilitator" means a Department staff member appointed as a member of the committee to facilitate a permanency or adoption committee meeting.

(5) "Concurrent permanent plan" means the alternate permanency plan whenever the child has been placed in substitute care when the goal of the permanency plan is to return the child to the parents. The "concurrent permanent plan" is developed simultaneously with the plan to return the child to the parents or legal guardians.

(6) "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.

(7) "Current caretaker" means a foster parent who:

(a) Is currently caring for a child in the legal custody of the Department who has a permanency plan or concurrent permanent plan of adoption;

(b) Has cared for the child or at least one sibling in a sibling group under consideration for at least the past 12 consecutive months; and

(c) Has been identified by the Department as a potential adoptive resource for the child and when appropriate, the siblings in a sibling group under consideration for adoption in the same adoptive family.

(8) "General applicant" means an individual who:

(a) Is neither a relative or current caretaker; and

(b) Has submitted a completed application to adopt a child.

(9) "Indian child" means any unmarried person who is under 18 years of age and is either:

(a) A member of an Indian tribe; or

(b) Eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

(10) "Legal assistance specialist" means an Adoption Program staff member who provides consultation on the technical and legal processes to achieve a permanency plan for a child in the legal custody of the Department.

(11) "Parent" means the biological or adoptive mother or the legal father of the child. A legal father is a man who has adopted the child or whose paternity has been established or declared under ORS 109.070, ORS 416.400 to 416.465, or by a juvenile court. In cases involving an Indian child under the Indian Child Welfare Act (ICWA), a legal father includes a man who is a father under applicable tribal law. "Parent" also includes a putative father who has demonstrated a direct and significant commitment to the child by assuming or attempting to assume responsibilities normally associated with parenthood, unless a court finds that the putative father is not the legal father.

(12) "Permanency committee" means a group of individuals who are responsible for making a recommendation regarding a permanency plan or a potential permanency resource when the child or young adult likely is not returning to his or her parent.

(13) "Permanency plan" means a written course of action for achieving safe and lasting family resources for the child. Although the plan may change as more information becomes available, the goal is to develop safe and permanent family resources with the parents, relatives, or other people who will assume legal responsibility for the child during the remaining years of dependency and be accessible and supportive to the child in adulthood.

(14) "RCWAC" means the Refugee Child Welfare Advisory Committee.

(15) "Refugee child" means, as defined under ORS 418.925, 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, sex, sexual orientation, 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, sex, sexual orientation, nationality, membership in a particular group, or political opinion.

(a) As used in this section, "persecution" means that harm or suffering will be inflicted upon the person to punish the person for possessing a particular belief or characteristic. "Persecution" does not include harm and suffering that is inflicted on persons generally by reason of civil or military strife in a country.

(b) As used in this section, "fear of persecution" means an apprehension or awareness, based on external objective facts, that the person will suffer persecution upon return to the person's country.

(16) "Relative" means (each of the following individuals is a "relative"):

(a) An individual with one of the following relationships to the child or young adult through the parent of the child or young adult unless the relationship has been dissolved by adoption of the child, young adult, or parent:

(A) Any blood relative of preceding generations denoted by the prefixes of grand, great, or great-great.

(B) Any half-blood relative of preceding generations denoted by the prefixes of grand, great, or great-great (individuals with one common biological parent are half-blood relatives).

(C) A sibling, also to include an individual with a sibling relationship to the child or young adult through a putative father.

(D) An aunt, uncle, nephew, niece, first cousin, and first cousin once removed.

(E) A spouse of anyone listed in paragraphs (A) to (D) of this subsection, even if a petition for annulment, dissolution, or separation has been filed or the marriage is terminated by divorce or death. To be considered a "relative" under this paragraph, the child or young adult must have had a relationship with the spouse prior to the most recent episode of Department custody.

(b) An individual with one of the following relationships to the child or young adult:

(A) An individual defined as a relative by the law or custom of the tribe of the child or young adult if the child or young adult is an Indian child under the Indian Child Welfare Act or in the legal custody of a tribe.

(B) An individual defined as a relative of a refugee child or young adult under Child Welfare Policy I-E.2.2, "Placement of Refugee Children", OAR 413-070-0300 to 413-070-0380.

(C) A stepparent or former stepparent if the child or young adult had a relationship with the former stepparent prior to the most recent episode of Department custody; a stepbrother; or a stepsister.

(D) The registered domestic partner of the parent of the child or young adult or a former registered domestic partner of the parent of the child or young adult if the child or young adult had a relationship with the former domestic partner prior to the most recent episode of Department custody.

(E) The adoptive parent of a sibling of the child or young adult.

(F) The unrelated legal or biological father or mother of a half-sibling of the child or young adult when the half-sibling of the child or young adult is living with the unrelated legal or biological father or mother.

(c) An individual identified by the child or young adult or the family of the child or young adult, or an individual who self-identifies, as being related to the child or young adult through the parent of the child or young adult by blood, adoption, or marriage to a degree other than an individual specified as a "relative" in paragraphs (A) to (D) of subsection (a) of this section unless the relationship has been dissolved by adoption of the child, young adult, or parent.

(d) An individual meeting the requirements of at least one of the following paragraphs:

(A) An individual not related to the child, young adult, or parent by blood, adoption, or marriage:

(i) Who is identified as a member of the family by the child or young adult or by the family of the child or young adult; and

(ii) Who had an emotionally significant relationship with the child or young adult or the family of the child or young adult prior to the most recent episode of Department custody.

(B) An individual who has a blood relationship to the child or young adult as described in paragraphs (a)(A) to (D) of this section through the birth parent of the child or young adult, but the prior legal relationship has been dissolved by adoption of the child, young adult, or birth parent, and who is identified as a member of the family by the child or young adult or who self-identifies as a member of the family.

(e) For eligibility for the guardianship assistance program:

(A) A stepparent is considered a parent and is not a "relative" for the purpose of eligibility for guardianship assistance unless a petition for annulment, dissolution, or separation has been filed, or the marriage to the adoptive or biological parent of the child has been terminated by divorce or death.

(B) A foster parent may only be considered a "relative" for the purpose of eligibility for guardianship assistance when:

(i) There is a compelling reason why adoption is not an achievable permanency plan;

(ii) The foster parent is currently caring for a child, in the care or custody of the Department or a participating tribe, who has a permanency plan or concurrent permanent plan of guardianship;

(iii) The foster parent has cared for the child for at least 12 of the past 24 months; and

(iv) The Department or tribe has approved the foster parent for consideration as a guardian.

(17) "Sibling" means one of two or more children or young adults related:

(a) By blood or adoption through a common legal parent;

(b) Through the marriage of the legal or biological parents of the children or young adults; or

(c) Through a legal or biological parent who is the registered domestic partner of the legal or biological parent of the children or young adults.

(18) "Substitute care" means an out-of-home placement of a child or young adult who is in the legal or physical custody and care of the Department.

(19) "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.

(20) "Young adult" means a person aged 18 through 20 years who remains in the care and custody of the Department, and lives in substitute care or lives independently through the Department's Independent Living Subsidy Program.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: SOSCF 10-2000, f. & cert. ef. 4-28-00; SOSCF 42-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 43-2003, f. 12-31-03, cert. ef. 1-1-04; CWP 27-2010, f. & cert. ef. 12-29-10; CWP 11-2014, f. & cert. ef. 6-3-14; CWP 16-2014(Temp), f. & cert. ef. 8-4-14 thru 1-31-15; CWP 6-2015, f. 1-29-15, cert. ef. 2-1-15

413-070-0620
Definitions

The following definitions apply to OAR 413-070-0600 to 413-070-0645:

(1) "Adoptive resource" means an individual or individuals selected by the Department, another public child welfare agency, or a licensed adoption agency as the adoptive family for a child where no administrative review was requested within the timeframe allowed for such a request, or if a review was requested, the selection has been sustained by that review and the review is complete.

(2) "CANS screening" means Child and Adolescent Needs and Strengths screening, a process of gathering information on a child or young adult's needs and strengths used for one or more of the following purposes:

(a) Identifying case planning, service planning, and supervision needs of the child or young adult in substitute care with a certified family;

(b) Determining the level of care payment while in substitute care with a certified family; and

(c) Determining the level of care payment included in an adoption assistance agreement or guardianship assistance agreement.

(3) "Caregiver relationship" means a relationship between a person and a child or young adult that meets the requirements of all of the following subsections:

(a) The relationship has existed for the 12 months immediately preceding the initiation of a dependency proceeding, for at least six months during a dependency proceeding, or for half of the child's life if the child is less than six months of age. A "caregiver relationship" does not include a relationship between a child or young adult and a person who is an unrelated foster parent of the child or young adult unless the relationship continued for a period of at least twelve consecutive months.

(b) The person had physical custody of the child or young adult or resided in the same household as the child and provided the child or young adult on a daily basis with the love, nurturing and other necessities required to meet the psychological and physical needs of the child or young adult.

(c) The child or young adult depended on the relationship to meet the needs of the child or young adult.

(4) "Child" means a person under 18 years of age.

(5) "Department" means the Department of Human Services, Child Welfare.

(6) "Foster parent" means an individual 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) "Indian child" means any unmarried person who is under 18 years of age and is either:

(a) A member of an Indian tribe; or

(b) Eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

(8) "Parent" means the biological or adoptive mother or the legal father of the child. A legal father is a man who has adopted the child or whose paternity has been established or declared under ORS 109.070, ORS 416.400 to 416.465, or by a juvenile court. In cases involving an Indian child under the Indian Child Welfare Act (ICWA), a legal father includes a man who is a father under applicable tribal law. "Parent" also includes a putative father who has demonstrated a direct and significant commitment to the child by assuming or attempting to assume responsibilities normally associated with parenthood, unless a court finds that the putative father is not the legal father.

(9) "Provider" means an individual 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.

(10) "Refugee child" means, as defined under ORS 418.925, 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, sex, sexual orientation, 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, sex, sexual orientation, nationality, membership in a particular group, or political opinion.

(a) As used in this section, "persecution" means that harm or suffering will be inflicted upon the person to punish the person for possessing a particular belief or characteristic. "Persecution" does not include harm and suffering that is inflicted on persons generally by reason of civil or military strife in a country.

(b) As used in this section, "fear of persecution" means an apprehension or awareness, based on external objective facts, that the person will suffer persecution upon return to the person's country.

(11) "Relative" means (each of the following individuals is a "relative"):

(a) An individual with one of the following relationships to the child or young adult through the parent of the child or young adult unless the relationship has been dissolved by adoption of the child, young adult, or parent:

(A) Any blood relative of preceding generations denoted by the prefixes of grand, great, or great-great.

(B) Any half-blood relative of preceding generations denoted by the prefixes of grand, great, or great-great (individuals with one common biological parent are half-blood relatives).

(C) A sibling, also to include an individual with a sibling relationship to the child or young adult through a putative father.

(D) An aunt, uncle, nephew, niece, first cousin, and first cousin once removed.

(E) A spouse of anyone listed in paragraphs (A) to (D) of this subsection, even if a petition for annulment, dissolution, or separation has been filed or the marriage is terminated by divorce or death. To be considered a "relative" under this paragraph, the child or young adult must have had a relationship with the spouse prior to the most recent episode of Department custody.

(b) An individual with one of the following relationships to the child or young adult:

(A) An individual defined as a relative by the law or custom of the tribe of the child or young adult if the child or young adult is an Indian child under the Indian Child Welfare Act or in the legal custody of a tribe.

(B) An individual defined as a relative of a refugee child or young adult under Child Welfare Policy I-E.2.2, "Placement of Refugee Children", OAR 413-070-0300 to 413-070-0380.

(C) A stepparent or former stepparent if the child or young adult had a relationship with the former stepparent prior to the most recent episode of Department custody; a stepbrother; or a stepsister.

(D) The registered domestic partner of the parent of the child or young adult or a former registered domestic partner of the parent of the child or young adult if the child or young adult had a relationship with the former domestic partner prior to the most recent episode of Department custody.

(E) The adoptive parent of a sibling of the child or young adult.

(F) The unrelated legal or biological father or mother of a half-sibling of the child or young adult when the half-sibling of the child or young adult is living with the unrelated legal or biological father or mother.

(c) An individual identified by the child or young adult or the family of the child or young adult, or an individual who self-identifies, as being related to the child or young adult through the parent of the child or young adult by blood, adoption, or marriage to a degree other than an individual specified as a "relative" in paragraphs (A) to (D) of subsection (a) of this section unless the relationship has been dissolved by adoption of the child, young adult, or parent.

(d) An individual meeting the requirements of at least one of the following paragraphs:

(A) An individual not related to the child, young adult, or parent by blood, adoption, or marriage:

(i) Who is identified as a member of the family by the child or young adult or by the family of the child or young adult; and

(ii) Who had an emotionally significant relationship with the child or young adult or the family of the child or young adult prior to the most recent episode of Department custody.

(B) An individual who has a blood relationship to the child or young adult as described in paragraphs (a)(A) to (D) of this section through the birth parent of the child or young adult, but the prior legal relationship has been dissolved by adoption of the child, young adult, or birth parent, and who is identified as a member of the family by the child or young adult or who self-identifies as a member of the family.

(e) For eligibility for the guardianship assistance program:

(A) A stepparent is considered a parent and is not a "relative" for the purpose of eligibility for guardianship assistance unless a petition for annulment, dissolution, or separation has been filed, or the marriage to the adoptive or biological parent of the child has been terminated by divorce or death.

(B) A foster parent may only be considered a "relative" for the purpose of eligibility for guardianship assistance when:

(i) There is a compelling reason why adoption is not an achievable permanency plan;

(ii) The foster parent is currently caring for a child, in the care or custody of the Department or a participating tribe, who has a permanency plan or concurrent permanent plan of guardianship;

(iii) The foster parent has cared for the child for at least 12 of the past 24 months; and

(iv) The Department or tribe has approved the foster parent for consideration as a guardian.

(12) "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 who is placed in the home by the Department.

(13) "Sibling" means one of two or more children or young adults related:

(a) By blood or adoption through a common legal parent;

(b) Through the marriage of the legal or biological parents of the children or young adults; or

(c) Through a legal or biological parent who is the registered domestic partner of the legal or biological parent of the children or young adults.

(14) "Substitute care" means an out-of-home placement of a child or young adult who is in the legal or physical custody and care of the Department.

(15) "Substitute caregiver" means a relative caregiver, foster parent, or provider who is authorized to provide care to a child or young adult who is in the legal or physical custody of the Department.

(16) "Young adult" means a person aged 18 through 20 years who remains in the care and custody of the Department, and lives in substitute care or lives independently through the Department's Independent Living Subsidy Program.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 409.010, 418.005, 419A.004 & 419B.192

Hist.: SOSCF 13-1999, f. 7-8-99, cert. ef. 7-12-99; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 26-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 8-2008, f. 6-27-08, cert. ef. 6-28-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09; CWP 29-2010, f. & cert. ef. 12-29-10; CWP 1-2013, f. & cert. ef. 1-15-13; CWP 11-2014, f. & cert. ef. 6-3-14; CWP 16-2014(Temp), f. & cert. ef. 8-4-14 thru 1-31-15; CWP 6-2015, f. 1-29-15, cert. ef. 2-1-15

413-070-0655

Definitions

The following definitions apply to OAR 413-070-0651 to 413-070-0670:

(1) "Child" means a person under 18 years of age.

(2) "Concurrent permanent plan" means the alternate permanency plan whenever the child has been placed in substitute care when the goal of the permanency plan is to return the child to the parents. The "concurrent permanent plan" is developed simultaneously with the plan to return the child to the parents or legal guardians.

(3) "Department" means the Department of Human Services, Child Welfare.

(4) "Foster care agency" means a private child-caring agency that offers to place children by taking physical custody of and then placing the children in a home certified by the agency.

(5) "Guardian" means an individual who has been granted guardianship of a child through a judgment of the court.

(6) "Guardianship assistance" means assistance provided by the Department to a guardian on behalf of an eligible child to offset the costs associated with meeting the ongoing needs of the child. "Guardianship assistance" may be in the form of a payment, medical coverage, or reimbursement of nonrecurring expenses.

(7) "Parent" means the biological or adoptive mother or the legal father of the child. A legal father is a man who has adopted the child or whose paternity has been established or declared under ORS 109.070, ORS 416.400 to 416.465, or by a juvenile court. In cases involving an Indian child under the Indian Child Welfare Act (ICWA), a legal father includes a man who is a father under applicable tribal law. "Parent" also includes a putative father who has demonstrated a direct and significant commitment to the child by assuming or attempting to assume responsibilities normally associated with parenthood, unless a court finds that the putative father is not the legal father.

(8) "Participating tribe" means a federally recognized Indian tribe in Oregon with a Title IV E agreement with the Department.

(9) "Permanency committee" means a group of individuals who are responsible for making a recommendation regarding a permanency plan or a potential permanency resource when the child or young adult likely is not returning to his or her parent.

(10) "Permanency plan" means a written course of action for achieving safe and lasting family resources for the child. Although the plan may change as more information becomes available, the goal is to develop safe and permanent family resources with the parents, relatives, or other people who will assume legal responsibility for the child during the remaining years of dependency and be accessible and supportive to the child in adulthood.

(11) "Potential guardian" means an individual who:

(a) Has been approved by the Department or participating tribe to be a child's guardian; and

(b) Is in the process of legalizing the relationship to the child through a judgment of the court.

(12) "Relative" means (each of the following individuals is a "relative"):

(a) An individual with one of the following relationships to the child or young adult through the parent of the child or young adult unless the relationship has been dissolved by adoption of the child, young adult, or parent:

(A) Any blood relative of preceding generations denoted by the prefixes of grand, great, or great-great.

(B) Any half-blood relative of preceding generations denoted by the prefixes of grand, great, or great-great (individuals with one common biological parent are half-blood relatives).

(C) A sibling, also to include an individual with a sibling relationship to the child or young adult through a putative father.

(D) An aunt, uncle, nephew, niece, first cousin, and first cousin once removed.

(E) A spouse of anyone listed in paragraphs (A) to (D) of this subsection, even if a petition for annulment, dissolution, or separation has been filed or the marriage is terminated by divorce or death. To be considered a "relative" under this paragraph, the child or young adult must have had a relationship with the spouse prior to the most recent episode of Department custody.

(b) An individual with one of the following relationships to the child or young adult:

(A) An individual defined as a relative by the law or custom of the tribe of the child or young adult if the child or young adult is an Indian child under the Indian Child Welfare Act or in the legal custody of a tribe.

(B) An individual defined as a relative of a refugee child or young adult under Child Welfare Policy I-E.2.2, "Placement of Refugee Children", OAR 413-070-0300 to 413-070-0380.

(C) A stepparent or former stepparent if the child or young adult had a relationship with the former stepparent prior to the most recent episode of Department custody; a stepbrother; or a stepsister.

(D) The registered domestic partner of the parent of the child or young adult or a former registered domestic partner of the parent of the child or young adult if the child or young adult had a relationship with the former domestic partner prior to the most recent episode of Department custody.

(E) The adoptive parent of a sibling of the child or young adult.

(F) The unrelated legal or biological father or mother of a half-sibling of the child or young adult when the half-sibling of the child or young adult is living with the unrelated legal or biological father or mother.

(c) An individual identified by the child or young adult or the family of the child or young adult, or an individual who self-identifies, as being related to the child or young adult through the parent of the child or young adult by blood, adoption, or marriage to a degree other than an individual specified as a "relative" in paragraphs (A) to (D) of subsection (a) of this section unless the relationship has been dissolved by adoption of the child, young adult, or parent.

(d) An individual meeting the requirements of at least one of the following paragraphs:

(A) An individual not related to the child, young adult, or parent by blood, adoption, or marriage:

(i) Who is identified as a member of the family by the child or young adult or by the family of the child or young adult; and

(ii) Who had an emotionally significant relationship with the child or young adult or the family of the child or young adult prior to the most recent episode of Department custody.

(B) An individual who has a blood relationship to the child or young adult as described in paragraphs (a)(A) to (D) of this section through the birth parent of the child or young adult, but the prior legal relationship has been dissolved by adoption of the child, young adult, or birth parent, and who is identified as a member of the family by the child or young adult or who self-identifies as a member of the family.

(e) For eligibility for the guardianship assistance program:

(A) A stepparent is considered a parent and is not a "relative" for the purpose of eligibility for guardianship assistance unless a petition for annulment, dissolution, or separation has been filed, or the marriage to the adoptive or biological parent of the child has been terminated by divorce or death.

(B) A foster parent may only be considered a "relative" for the purpose of eligibility for guardianship assistance when:

(i) There is a compelling reason why adoption is not an achievable permanency plan;

(ii) The foster parent is currently caring for a child, in the care or custody of the Department or a participating tribe, who has a permanency plan or concurrent permanent plan of guardianship;

(iii) The foster parent has cared for the child for at least 12 of the past 24 months; and

(iv) The Department or tribe has approved the foster parent for consideration as a guardian.

(13) "Sibling" means one of two or more children or young adults related:

(a) By blood or adoption through a common legal parent;

(b) Through the marriage of the legal or biological parents of the children or young adults; or

(c) Through a legal or biological parent who is the registered domestic partner of the legal or biological parent of the children or young adults.

(14) "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.

(15) "Young adult" means a person aged 18 through 20 years.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: CWP 36-2010(Temp), f. & cert. ef. 12-29-10 thru 6-27-11; CWP 7-2011, f. & cert. ef. 6-28-11; CWP 11-2014, f. & cert. ef. 6-3-14; CWP 16-2014(Temp), f. & cert. ef. 8-4-14 thru 1-31-15; CWP 6-2015, f. 1-29-15, cert. ef. 2-1-15

413-070-0905
Definitions

The following definitions apply to OAR 413-070-0900 to 413-070-0974:

(1) "Base rate payment" means a payment to the foster parent or relative caregiver for the costs of providing the child or young adult with the following:

(a) Food — including the cost to cover a child or young adult's special or unique nutritional needs;

(b) Clothing — including purchase and replacement;

(c) Housing — including maintenance of household utilities, furnishings, and equipment;

(d) Daily supervision — including teaching and directing to ensure safety and well-being at a level which is appropriate based on the child or young adult's chronological age;

(e) Personal incidentals — including personal care items, entertainment, reading materials, and miscellaneous items; and

(f) The cost of providing transportation — including local travel associated with expenditure for gas and oil, and vehicle maintenance and repair associated with transportation to and from extracurricular, child care, recreational, and cultural activities.

(2) "CANS screening" means Child and Adolescent Needs and Strengths screening, a process of gathering information on a child or young adult's needs and strengths used for one or more of the following purposes:

(a) Identifying case planning, service planning, and supervision needs of the child or young adult in substitute care with a certified family;

(b) Determining the level of care payment while in substitute care with a certified family; and

(c) Determining the level of care payment included in an adoption assistance agreement or guardianship assistance agreement.

(3) "Child" means a person under 18 years of age.

(4) "Department" means the Department of Human Services, Child Welfare.

(5) "Enhanced supervision" means the additional support, direction, observation, and guidance necessary to promote and ensure the safety and well-being of the child or young adult when the child or young adult qualifies for a level of care payment.

(6) "Guardian" means an individual who has been granted guardianship of a child through a judgment of the court.

(7) "Guardianship assistance" means assistance on behalf of an eligible child or young adult to offset the costs associated with establishing the guardianship and meeting the ongoing needs of the child or young adult. "Guardianship assistance" may be in the form of a payment, medical coverage, or reimbursement of guardianship expenses.

(8) "Guardianship assistance agreement" means a written agreement, binding on the parties to the agreement, between the Department and the potential guardian or guardian setting forth the assistance the Department is to provide on behalf of the child or young adult, the responsibilities of the guardian and the Department, and the manner in which the agreement and amount of assistance may be modified or terminated.

(9) "Guardianship assistance agreement only" means a written agreement, binding on the parties to the agreement, between the Department and the potential guardian or guardian of an eligible child or young adult, when the potential guardian or guardian is not receiving a guardianship assistance payment or medical coverage at the time of the agreement but may request it at a later date.

(10) "Guardianship assistance base rate" means the portion of the guardianship assistance payment that is negotiated with the potential guardian or guardian and cannot exceed the amount of the Oregon foster care base rate payment for the child or young adult's age.

(11) "Guardianship assistance payment" means a monthly payment made by the Department to the guardian on behalf of the eligible child or young adult.

(12) "Guardianship Assistance Review Committee" means a committee composed of local and central office Department staff who have expertise in the area of guardianship.

(13) "Level of care payment" means the payment provided to an approved or certified family, a guardian, a pre-adoptive family, or an adoptive family based on the child or young adult's need for enhanced supervision as determined by applying the CANS algorithm to the results of the CANS screening.

(14) "Nonrecurring guardianship assistance agreement" means a written agreement, binding on the parties to the agreement, between the Department and the potential guardian of an eligible child for a one-time payment to reimburse the guardian for the reasonable and necessary expenses incurred in legally finalizing the guardianship.

(15) "Nonrecurring guardianship expenses" means a one-time payment of up to $2,000 per child that the Department will make to a guardian to assist with the reasonable and necessary expenses associated with obtaining legal guardianship of an eligible child.

(16) "Parent" means the biological or adoptive mother or the legal father of the child. A legal father is a man who has adopted the child or whose paternity has been established or declared under ORS 109.070, ORS 416.400 to 416.465, or by a juvenile court. In cases involving an Indian

child under the Indian Child Welfare Act (ICWA), a legal father includes a man who is a father under applicable tribal law. "Parent" also includes a putative father who has demonstrated a direct and significant commitment to the child by assuming or attempting to assume responsibilities normally associated with parenthood unless a court finds that the putative father is not the legal father.

(17) "Participating tribe" means a federally recognized Indian tribe in Oregon with a Title IV E agreement with the Department.

(18) "Permanency committee" means a group of individuals who are responsible for making a recommendation regarding a permanency plan or potential permanency resource when the child or young adult likely is not returning to his or her parent.

(19) "Potential guardian" means an individual who:

(a) Has been approved by the Department or participating tribe to be a child's guardian; and

(b) Is in the process of legalizing the relationship to the child through the judgment of the court.

(20) "Registered domestic partner" means an individual joined in a domestic partnership that is registered with a county clerk in accordance with ORS 106.300 to 106.340.

(21) "Relative" means (each of the following individuals is a "relative"):

(a) An individual with one of the following relationships to the child or young adult through the parent of the child or young adult unless the relationship has been dissolved by adoption of the child, young adult, or parent:

(A) Any blood relative of preceding generations denoted by the prefixes of grand, great, or great-great.

(B) Any half-blood relative of preceding generations denoted by the prefixes of grand, great, or great-great (individuals with one common biological parent are half-blood relatives).

(C) A sibling, also to include an individual with a sibling relationship to the child or young adult through a putative father.

(D) An aunt, uncle, nephew, niece, first cousin, and first cousin once removed.

(E) A spouse of anyone listed in paragraphs (A) to (D) of this subsection, even if a petition for annulment, dissolution, or separation has been filed or the marriage is terminated by divorce or death. To be considered a "relative" under this paragraph, the child or young adult must have had a relationship with the spouse prior to the most recent episode of Department custody.

(b) An individual with one of the following relationships to the child or young adult:

(A) An individual defined as a relative by the law or custom of the tribe of the child or young adult if the child or young adult is an Indian child under the Indian Child Welfare Act or in the legal custody of a tribe.

(B) An individual defined as a relative of a refugee child or young adult under Child Welfare Policy I-E.2.2, "Placement of Refugee Children", OAR 413-070-0300 to 413-070-0380.

(C) A stepparent or former stepparent if the child or young adult had a relationship with the former stepparent prior to the most recent episode of Department custody; a stepbrother; or a stepsister.

(D) The registered domestic partner of the parent of the child or young adult or a former registered domestic partner of the parent of the child or young adult if the child or young adult had a relationship with the former domestic partner prior to the most recent episode of Department custody.

(E) The adoptive parent of a sibling of the child or young adult.

(F) The unrelated legal or biological father or mother of a half-sibling of the child or young adult when the half-sibling of the child or young adult is living with the unrelated legal or biological father or mother.

(c) An individual identified by the child or young adult or the family of the child or young adult, or an individual who self-identifies, as being related to the child or young adult through the parent of the child or young adult by blood, adoption, or marriage to a degree other than an individual specified as a "relative" in paragraphs (A) to (D) of subsection (a) of this section unless the relationship has been dissolved by adoption of the child, young adult, or parent.

(d) An individual meeting the requirements of at least one of the following paragraphs:

(A) An individual not related to the child, young adult, or parent by blood, adoption, or marriage:

(i) Who is identified as a member of the family by the child or young adult or by the family of the child or young adult; and

(ii) Who had an emotionally significant relationship with the child or young adult or the family of the child or young adult prior to the most recent episode of Department custody.

(B) An individual who has a blood relationship to the child or young adult as described in paragraphs (a)(A) to (D) of this section through the birth parent of the child or young adult, but the prior legal relationship has been dissolved by adoption of the child, young adult, or birth parent, and who is identified as a member of the family by the child or young adult or who self-identifies as a member of the family.

(e) For eligibility for the guardianship assistance program under these rules, OAR 413-070-0900 to 413-070-0974:

(A) A stepparent is considered a parent and is not a "relative" for the purpose of eligibility for guardianship assistance unless a petition for annulment, dissolution, or separation has been filed, or the marriage to the adoptive or biological parent of the child has been terminated by divorce or death.

(B) A foster parent may only be considered a "relative" for the purpose of eligibility for guardianship assistance when:

(i) There is a compelling reason why adoption is not an achievable permanency plan;

(ii) The foster parent is currently caring for a child, in the care or custody of the Department or a participating tribe, who has a permanency plan or concurrent permanent plan of guardianship;

(iii) The foster parent has cared for the child for at least 12 of the past 24 months; and

(iv) The Department or tribe has approved the foster parent for consideration as a guardian.

(22) "Sibling" means one of two or more children or young adults related:

(a) By blood or adoption through a common legal parent;

(b) Through the marriage of the legal or biological parents of the children or young adults; or

(c) Through a legal or biological parent who is the registered domestic partner of the legal or biological parent of the children or young adults.

(23) "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.

(24) "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.

(25) "Young adult" means a person aged 18 through 20 years.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 409.010, 411.141 & 418.005

Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 14-2003, f. & cert. ef. 1-9-03; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 8-2004, f. & cert. ef. 4-1-04; CWP 5-2009(Temp), f. & cert. ef. 3-31-09 thru 9-27-09; CWP 7-2009(Temp), f. & cert. ef. 7-1-09 thru 9-27-09; CWP 12-2009, f. & cert. ef. 9-28-09; CWP 18-2009(Temp), f. & cert. ef. 12-16-09 thru 6-14-10; CWP 1-2010(Temp), f. & cert. ef. 2-1-10 thru 6-14-10; CWP 18-2009(Temp), f. & cert. ef. 12-16-09 thru 6-14-10; CWP 6-2010, f. & cert. ef. 6-15-10; CWP 11-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11; CWP 24-2011(Temp), f. 9-30-11, cert. ef. 10-1-11 thru 12-27-11; CWP 30-2011, f. 12-27-11, cert. ef. 12-28-11; CWP 1-2014, f. 1-31-14, cert. ef. 2-1-14; CWP 11-2014, f. & cert. ef. 6-3-14; CWP 16-2014(Temp), f. & cert. ef. 8-4-14 thru 1-31-15; CWP 4-2015(Temp), f. & cert. ef. 1-21-15 thru 7-19-15; CWP 6-2015, f. 1-29-15, cert. ef. 2-1-15

413-120-0010
Definitions

The following definitions apply to OAR 413-120-0000 to 413-120-0060:

(1) "Adoption committee" means a group of individuals convened by Department staff to make recommendations to an Adoption Decision Specialist (ADS) regarding adoptive resources for a child.

(2) "Adoption home study" means a written report documenting the result of an assessment conducted by the Department, a licensed adoption agency, or another public agency to evaluate the suitability of an individual or individuals to adopt and make a lifelong permanent commitment to a child or children.

(3) "Adoption placement selection" means a decision made by the Department that an individual or individuals have been identified as the adoptive resource for the child.

(4) "Adoptive resource" means an individual or individuals selected by the Department, another public child welfare agency, or a licensed adoption agency as the adoptive family for a child where no administrative review was requested within the timeframe allowed for such a request or, if a review was requested, the selection was sustained by that review and the review is complete.

(5) "ADS" means an Adoption Decision Specialist, who is a Department employee appointed by the Adoption Program Manager to

attend an adoption committee and make an adoption placement selection for a child.

(6) "Child" means a person under 18 years of age.

(7) "Committee facilitator" means a Department staff member appointed as a member of the committee to facilitate a permanency committee or adoption committee meeting.

(8) "Current caretaker" means a foster parent who:

(a) Is currently caring for a child in the legal custody of the Department who has a permanency plan or concurrent permanent plan of adoption;

(b) Has cared for the child or at least one sibling in a sibling group under consideration for at least the past 12 consecutive months; and

(c) Has been identified by the Department as a potential adoptive resource for the child and when appropriate, the siblings in a sibling group under consideration for adoption in the same adoptive family.

(9) "Department" means the Department of Human Services, Child Welfare.

(10) "Foster parent" means an individual 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.

(11) "General applicant" means an individual who:

(a) Is neither a relative or current caretaker; and

(b) Has submitted a completed application to adopt a child.

(12) "Indian child" means any unmarried person who is under 18 years of age and is either:

(a) A member of an Indian tribe; or

(b) Eligible for membership in an Indian tribe and the biological child of a member of an Indian tribe.

(13) "Permanency committee" means a group of individuals who are responsible for making a recommendation regarding a permanency plan or a potential permanency resource when the child or young adult likely is not returning to his or her parent.

(14) "RCWAC" means the Refugee Child Welfare Advisory Committee.

(15) "Refugee child" means, as defined under ORS 418.925, 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, sex, sexual orientation, 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, sex, sexual orientation, nationality, membership in a particular group, or political opinion.

(a) As used in this section, "persecution" means that harm or suffering will be inflicted upon the person to punish the person for possessing a particular belief or characteristic. "Persecution" does not include harm and suffering that is inflicted on persons generally by reason of civil or military strife in a country.

(b) As used in this section, "fear of persecution" means an apprehension or awareness, based on external objective facts, that the person will suffer persecution upon return to the person's country.

(16) "Relative" means (each of the following individuals is a "relative"):

(a) An individual with one of the following relationships to the child or young adult through the parent of the child or young adult unless the relationship has been dissolved by adoption of the child, young adult, or parent:

(A) Any blood relative of preceding generations denoted by the prefixes of grand, great, or great-great.

(B) Any half-blood relative of preceding generations denoted by the prefixes of grand, great, or great-great (individuals with one common biological parent are half-blood relatives).

(C) A sibling, also to include an individual with a sibling relationship to the child or young adult through a putative father.

(D) An aunt, uncle, nephew, niece, first cousin, and first cousin once removed.

(E) A spouse of anyone listed in paragraphs (A) to (D) of this subsection, even if a petition for annulment, dissolution, or separation has been filed or the marriage is terminated by divorce or death. To be considered a "relative" under this paragraph, the child or young adult must have had a relationship with the spouse prior to the most recent episode of Department custody.

(b) An individual with one of the following relationships to the child or young adult:

(A) An individual defined as a relative by the law or custom of the tribe of the child or young adult if the child or young adult is an Indian child under the Indian Child Welfare Act or in the legal custody of a tribe.

(B) An individual defined as a relative of a refugee child or young adult under Child Welfare Policy I-E.2.2, "Placement of Refugee Children", OAR 413-070-0300 to 413-070-0380.

(C) A stepparent or former stepparent if the child or young adult had a relationship with the former stepparent prior to the most recent episode of Department custody; a stepbrother; or a stepsister.

(D) The registered domestic partner of the parent of the child or young adult or a former registered domestic partner of the parent of the child or young adult if the child or young adult had a relationship with the former domestic partner prior to the most recent episode of Department custody.

(E) The adoptive parent of a sibling of the child or young adult.

(F) The unrelated legal or biological father or mother of a half-sibling of the child or young adult when the half-sibling of the child or young adult is living with the unrelated legal or biological father or mother.

(c) An individual identified by the child or young adult or the family of the child or young adult, or an individual who self-identifies, as being related to the child or young adult through the parent of the child or young adult by blood, adoption, or marriage to a degree other than an individual specified as a "relative" in paragraphs (A) to (D) of subsection (a) of this section unless the relationship has been dissolved by adoption of the child, young adult, or parent.

(d) An individual meeting the requirements of at least one of the following paragraphs:

(A) An individual not related to the child, young adult, or parent by blood, adoption, or marriage:

(i) Who is identified as a member of the family by the child or young adult or by the family of the child or young adult; and

(ii) Who had an emotionally significant relationship with the child or young adult or the family of the child or young adult prior to the most recent episode of Department custody.

(B) An individual who has a blood relationship to the child or young adult as described in paragraphs (a)(A) to (D) of this section through the birth parent of the child or young adult, but the prior legal relationship has been dissolved by adoption of the child, young adult, or birth parent, and who is identified as a member of the family by the child or young adult or who self-identifies as a member of the family.

(e) For eligibility for the guardianship assistance program:

(A) A stepparent is considered a parent and is not a "relative" for the purpose of eligibility for guardianship assistance unless a petition for annulment, dissolution, or separation has been filed, or the marriage to the adoptive or biological parent of the child has been terminated by divorce or death.

(B) A foster parent may only be considered a "relative" for the purpose of eligibility for guardianship assistance when:

(i) There is a compelling reason why adoption is not an achievable permanency plan;

(ii) The foster parent is currently caring for a child, in the care or custody of the Department or a participating tribe, who has a permanency plan or concurrent permanent plan of guardianship;

(iii) The foster parent has cared for the child for at least 12 of the past 24 months; and

(iv) The Department or tribe has approved the foster parent for consideration as a guardian.

(17) "Sibling" means one of two or more children or young adults related:

(a) By blood or adoption through a common legal parent;

(b) Through the marriage of the legal or biological parents of the children or young adults; or

(c) Through a legal or biological parent who is the registered domestic partner of the legal or biological parent of the children or young adults.

(18) "Substitute caregiver" means a relative caregiver, foster parent, or provider who is authorized to provide care to a child or young adult who is in the legal or physical custody of the Department.

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

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 409.010, 418.005, 418.280, 418.285, 418.937, 419B.100 & 419B.192

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SCF 6-1996, f. & cert. ef. 9-17-96; SOSCF 7-1998, f. & cert. ef. 2-10-98; SOSCF 16-1999, f. & cert. ef. 8-12-99; SOSCF 2-2001(Temp), f. & cert. ef. 1-24-01 thru 7-21-01; SOSCF 35-2001, f. 6-29-01 cert. ef. 7-1-01; SOSCF 47-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 13-2007, f. & cert. ef. 8-1-07; CWP 16-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; CWP 31-2010, f. & cert. ef. 12-29-10; CWP 11-2014, f. & cert. ef. 6-3-14; CWP 16-2014(Temp), f. & cert. ef. 8-4-14 thru 1-31-15; CWP 6-2015, f. 1-29-15, cert. ef. 2-1-15

413-120-0195
Definitions

The following definitions apply to OAR 413-120-0190 to 413-120-0246:

(1) "Adoption agency" means an organization providing the services under any one of the following subsections:

(a) Identifying a child for adoption and arranging an adoption.

(b) Securing the necessary consent to relinquishment of parental rights and to adoption.

(c) Performing a background study on a child or a home study on a prospective adoptive parent and reporting on such a study.

(d) Making determinations of the best interests of a child and the appropriateness of adoption placement for a child.

(e) Monitoring a case after placement until final adoption.

(f) When necessary because of disruption before final adoption, assuming custody and providing child care or other social services for a child pending an alternative placement.

(2) "Adoption home study" means a written report documenting the result of an assessment conducted by the Department, a licensed adoption agency, or by another public agency to evaluate the suitability of an individual or individuals to adopt and to make a lifelong permanent commitment to a child or children.

(3) "Adoption placement selection" means a decision made by the Department that an individual or individuals have been identified as the adoptive resource for a child.

(4) "Adoptive resource" means an individual or individuals selected by the Department, another public child welfare agency, or a licensed adoption agency as the adoptive family for a child where no administrative review was requested within the timeframe allowed for such a request, or if a review was requested, the selection has been sustained by that review and the review is complete.

(5) "Child" means a person under 18 years of age.

(6) "Current caretaker" means a foster parent who:

(a) Is currently caring for a child in the legal custody of the Department who has a permanency plan or concurrent permanent plan of adoption;

(b) Has cared for the child or at least one sibling in a sibling group under consideration for at least the past 12 consecutive months; and

(c) Has been identified by the Department as a potential adoptive resource for the child and when appropriate, the siblings in a sibling group under consideration for adoption in the same adoptive family.

(7) "Department" means the Department of Human Services, Child Welfare.

(8) "Foster parent" means an individual 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.

(9) "General applicant" means an individual who:

(a) Is neither a relative or current caretaker; and

(b) Has submitted a completed application to adopt a child.

(10) "ICPC" means the Interstate Compact on the Placement of Children (see ORS 417.200).

(11) "Indian child" means any unmarried person who is under 18 years of age and is either:

(a) A member of an Indian tribe; or

(b) Eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

(12) "Relative" means (each of the following individuals is a "relative"):

(a) An individual with one of the following relationships to the child or young adult through the parent of the child or young adult unless the relationship has been dissolved by adoption of the child, young adult, or parent:

(A) Any blood relative of preceding generations denoted by the prefixes of grand, great, or great-great.

(B) Any half-blood relative of preceding generations denoted by the prefixes of grand, great, or great-great (individuals with one common biological parent are half-blood relatives).

(C) A sibling, also to include an individual with a sibling relationship to the child or young adult through a putative father.

(D) An aunt, uncle, nephew, niece, first cousin, and first cousin once removed.

(E) A spouse of anyone listed in paragraphs (A) to (D) of this subsection, even if a petition for annulment, dissolution, or separation has been filed or the marriage is terminated by divorce or death. To be considered a "relative" under this paragraph, the child or young adult must have had a relationship with the spouse prior to the most recent episode of Department custody.

(b) An individual with one of the following relationships to the child or young adult:

(A) An individual defined as a relative by the law or custom of the tribe of the child or young adult if the child or young adult is an Indian child under the Indian Child Welfare Act or in the legal custody of a tribe.

(B) An individual defined as a relative of a refugee child or young adult under Child Welfare Policy I-E.2.2, "Placement of Refugee Children", OAR 413-070-0300 to 413-070-0380.

(C) A stepparent or former stepparent if the child or young adult had a relationship with the former stepparent prior to the most recent episode of Department custody; a stepbrother; or a stepsister.

(D) The registered domestic partner of the parent of the child or young adult or a former registered domestic partner of the parent of the child or young adult if the child or young adult had a relationship with the former domestic partner prior to the most recent episode of Department custody.

(E) The adoptive parent of a sibling of the child or young adult.

(F) The unrelated legal or biological father or mother of a half-sibling of the child or young adult when the half-sibling of the child or young adult is living with the unrelated legal or biological father or mother.

(c) An individual identified by the child or young adult or the family of the child or young adult, or an individual who self-identifies, as being related to the child or young adult through the parent of the child or young adult by blood, adoption, or marriage to a degree other than an individual specified as a "relative" in paragraphs (A) to (D) of subsection (a) of this section unless the relationship has been dissolved by adoption of the child, young adult, or parent.

(d) An individual meeting the requirements of at least one of the following paragraphs:

(A) An individual not related to the child, young adult, or parent by blood, adoption, or marriage:

(i) Who is identified as a member of the family by the child or young adult or by the family of the child or young adult; and

(ii) Who had an emotionally significant relationship with the child or young adult or the family of the child or young adult prior to the most recent episode of Department custody.

(B) An individual who has a blood relationship to the child or young adult as described in paragraphs (a)(A) to (D) of this section through the birth parent of the child or young adult, but the prior legal relationship has been dissolved by adoption of the child, young adult, or birth parent, and who is identified as a member of the family by the child or young adult or who self-identifies as a member of the family.

(e) For eligibility for the guardianship assistance program:

(A) A stepparent is considered a parent and is not a "relative" for the purpose of eligibility for guardianship assistance unless a petition for annulment, dissolution, or separation has been filed, or the marriage to the adoptive or biological parent of the child has been terminated by divorce or death.

(B) A foster parent may only be considered a "relative" for the purpose of eligibility for guardianship assistance when:

(i) There is a compelling reason why adoption is not an achievable permanency plan;

(ii) The foster parent is currently caring for a child, in the care or custody of the Department or a participating tribe, who has a permanency plan or concurrent permanent plan of guardianship;

(iii) The foster parent has cared for the child for at least 12 of the past 24 months; and

(iv) The Department or tribe has approved the foster parent for consideration as a guardian.

(13) "Sibling" means one of two or more children or young adults related:

(a) By blood or adoption through a common legal parent;

(b) Through the marriage of the legal or biological parents of the children or young adults; or

(c) Through a legal or biological parent who is the registered domestic partner of the legal or biological parent of the children or young adults.

(14) "Substitute caregiver" means a relative caregiver, foster parent, or provider who is authorized to provide care to a child or young adult who is in the legal or physical custody of the Department.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005, 418.280 & 418.285
Hist.: SOSCF 36-2001, f. 6-29-01, cert. ef. 7-1-01; CWP 37-2008, f. & cert. ef. 11-3-08; CWP 15-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; CWP 33-2010, f. & cert. ef. 12-29-10; CWP 11-2014, f. & cert. ef. 6-3-14; CWP 16-2014(Temp), f. & cert. ef. 8-4-14 thru 1-31-15; CWP 6-2015, f. 1-29-15, cert. ef. 2-1-15

413-120-0510
Definitions

The following definitions apply to OAR 413-120-0500 to 413-120-0595:

(1) "Adoptive resource" means an individual or individuals selected by the Department as the adoptive family for a child where no administrative review was requested within the timeframe allowed for such a request, or if a review was requested, the selection has been sustained by that review and the Department review is complete.

(2) "Child" means a person under 18 years of age.

(3) "Concurrent permanent plan" means the alternate permanency plan whenever the child has been placed in substitute care when the goal of the permanency plan is to return the child to the parents. The "concurrent permanent plan" is developed simultaneously with the plan to return the child to the parents or legal guardians.

(4) "Current caretaker" means a foster parent who:

(a) Is currently caring for a child in the legal custody of the Department who has a permanency plan or concurrent permanent plan of adoption;

(b) Has cared for the child or at least one sibling in a sibling group under consideration for at least the past 12 consecutive months; and

(c) Has been identified by the Department as a potential adoptive resource for the child and when appropriate, the siblings in a sibling group under consideration for adoption in the same adoptive family.

(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 unrelated children or young adults who are placed in the home by the Department.

(7) "General applicant" means an individual who:

(a) Is neither a relative nor current caretaker; and

(b) Has submitted a completed application to adopt a child.

(8) "Indian child" means any unmarried person who is under 18 years of age and is either:

(a) A member of an Indian tribe; or

(b) Eligible for membership in an Indian tribe and the biological child of a member of an Indian tribe.

(9) "Permanency committee" means a group of individuals who are responsible for making a recommendation regarding a permanency plan or potential permanency resource when the child or young adult likely is not returning to his or her parent.

(10) "Permanency plan" means a written course of action for achieving safe and lasting family resources for the child. Although the plan may change as more information becomes available, the goal is to develop safe and permanent family resources with the parents, relatives, or other individuals who will assume legal responsibility for the child during the remaining years of dependency and be accessible and supportive to the child in adulthood.

(11) "Refugee child" means, as defined by ORS 418.925, 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, sex, sexual orientation, 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, sex, sexual orientation, nationality, membership in a particular group, or political opinion.

(a) As used in this section, "persecution" means that harm or suffering will be inflicted upon the person in order to punish the person for possessing a particular belief or characteristic. "Persecution" does not include harm and suffering that is inflicted on persons generally by reason of civil or military strife in a country.

(b) As used in this section, "fear of persecution" means an apprehension or awareness, based on external objective facts, that the person will suffer persecution upon return to the person's country.

(12) "Relative" means (each of the following individuals is a "relative"):

(a) An individual with one of the following relationships to the child or young adult through the parent of the child or young adult unless the relationship has been dissolved by adoption of the child, young adult, or parent:

(A) Any blood relative of preceding generations denoted by the prefixes of grand, great, or great-great.

(B) Any half-blood relative of preceding generations denoted by the prefixes of grand, great, or great-great (individuals with one common biological parent are half-blood relatives).

(C) A sibling, also to include an individual with a sibling relationship to the child or young adult through a putative father.

(D) An aunt, uncle, nephew, niece, first cousin, and first cousin once removed.

(E) A spouse of anyone listed in paragraphs (A) to (D) of this subsection, even if a petition for annulment, dissolution, or separation has been filed or the marriage is terminated by divorce or death. To be considered a "relative" under this paragraph, the child or young adult must have had a relationship with the spouse prior to the most recent episode of Department custody.

(b) An individual with one of the following relationships to the child or young adult:

(A) An individual defined as a relative by the law or custom of the tribe of the child or young adult if the child or young adult is an Indian child under the Indian Child Welfare Act or in the legal custody of a tribe.

(B) An individual defined as a relative of a refugee child or young adult under Child Welfare Policy I-E.2.2, "Placement of Refugee Children", OAR 413-070-0300 to 413-070-0380.

(C) A stepparent or former stepparent if the child or young adult had a relationship with the former stepparent prior to the most recent episode of Department custody; a stepbrother; or a stepsister.

(D) The registered domestic partner of the parent of the child or young adult or a former registered domestic partner of the parent of the child or young adult if the child or young adult had a relationship with the former domestic partner prior to the most recent episode of Department custody.

(E) The adoptive parent of a sibling of the child or young adult.

(F) The unrelated legal or biological father or mother of a half-sibling of the child or young adult when the half-sibling of the child or young adult is living with the unrelated legal or biological father or mother.

(c) An individual identified by the child or young adult or the family of the child or young adult, or an individual who self-identifies, as being related to the child or young adult through the parent of the child or young adult by blood, adoption, or marriage to a degree other than an individual specified as a "relative" in paragraphs (A) to (D) of subsection (a) of this section unless the relationship has been dissolved by adoption of the child, young adult, or parent.

(d) An individual meeting the requirements of at least one of the following paragraphs:

(A) An individual not related to the child, young adult, or parent by blood, adoption, or marriage:

(i) Who is identified as a member of the family by the child or young adult or by the family of the child or young adult; and

(ii) Who had an emotionally significant relationship with the child or young adult or the family of the child or young adult prior to the most recent episode of Department custody.

(B) An individual who has a blood relationship to the child or young adult as described in paragraphs (a)(A) to (D) of this section through the birth parent of the child or young adult, but the prior legal relationship has been dissolved by adoption of the child, young adult, or birth parent, and who is identified as a member of the family by the child or young adult or who self-identifies as a member of the family.

(e) For eligibility for the guardianship assistance program:

(A) A stepparent is considered a parent and is not a "relative" for the purpose of eligibility for guardianship assistance unless a petition for annulment, dissolution, or separation has been filed, or the marriage to the adoptive or biological parent of the child has been terminated by divorce or death.

(B) A foster parent may only be considered a "relative" for the purpose of eligibility for guardianship assistance when:

(i) There is a compelling reason why adoption is not an achievable permanency plan;

(ii) The foster parent is currently caring for a child, in the care or custody of the Department or a participating tribe, who has a permanency plan or concurrent permanent plan of guardianship;

(iii) The foster parent has cared for the child for at least 12 of the past 24 months; and

(iv) The Department or tribe has approved the foster parent for consideration as a guardian.

(13) "Sibling" means one of two or more children or young adults related:

(a) By blood or adoption through a common legal parent;

(b) Through the marriage of the legal or biological parents of the children or young adults; or

(c) Through a legal or biological parent who is the registered domestic partner of the legal or biological parent of the children or young adults.

(14) "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.

(15) "Young adult" means a person aged 18 through 20 years who remains in the care and custody of the Department, and lives in substitute care or lives independently through the Department's Independent Living Subsidy Program.

Stat. Auth.: ORS 418.005 & 418.945
Stats. Implemented: ORS 418.005 & 418.945
Hist.: SCF 6-1996, f. & cert. ef. 9-17-96; SOSCF 19-1998(Temp), f.& cert. ef. 10-30-98 thru 4-28-99; SOSCF 6-1999 f. & cert. ef. 4-29-99; SOSCF 1-2001(Temp) f. & cert. ef. 1-24-01 thru 7-20-01; SOSCF 37-2001, f. 6-29-01, cert. ef. 7-1-01; CWP 51-2003, f. 12-31-03, cert. ef. 1-1-04; CWP 16-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; CWP 34-2010, f. & cert. ef. 12-29-10; CWP 11-2014, f. & cert. ef. 6-3-14; CWP 16-2014(Temp), f. & cert. ef. 8-4-14 thru 1-31-15; CWP 6-2015, f. 1-29-15, cert. ef. 2-1-15

413-120-0710
Definitions

The following definitions apply to OAR 413-120-0700 to 413-120-0760:

(1) "Adoption home study" means a written report documenting the result of an assessment conducted by the Department, a licensed adoption agency, or another public agency to evaluate the suitability of an individual or individuals to adopt and make a lifelong permanent commitment to a child or children.

(2) "Adoptive resource" means an individual or individuals selected by the Department, another public child welfare agency, or a licensed adoption agency as the adoptive family for a child where no administrative review was requested within the timeframe allowed for such a request or, if a review was requested, the selection was sustained by that review and the review is complete.

(3) "Child" means a person under 18 years of age.

(4) "Current caretaker" means a foster parent who:

(a) Is currently caring for a child in the legal custody of the Department who has a permanency plan or concurrent permanent plan of adoption;

(b) Has cared for the child or at least one sibling in a sibling group under consideration for at least the past 12 consecutive months; and

(c) Has been identified by the Department as a potential adoptive resource for the child and when appropriate, the siblings in a sibling group under consideration for adoption in the same adoptive family.

(5) "Department" means the Department of Human Services, Child Welfare.

(6) "Foster parent" means an individual 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) "General applicant" means an individual who:

(a) Is neither relative or current caretaker; and

(b) Has submitted a complete application to adopt a child.

(8) "Indian child" means any unmarried person who is under 18 years of age and is either:

(a) A member of an Indian tribe; or

(b) Eligible for membership in an Indian tribe and the biological child of a member of an Indian tribe.

(9) "Permanency committee" means a group of individuals who are responsible for making a recommendation regarding a permanency plan or potential permanent resource when the child or young adult likely is not returning to his or her parent.

(10) "RCWAC" means the Refugee Child Welfare Advisory Committee.

(11) "Refugee child" has the meaning given that term per ORS 418.925.

(12) "Relative" means (each of the following individuals is a "relative"):

(a) An individual with one of the following relationships to the child or young adult through the parent of the child or young adult unless the relationship has been dissolved by adoption of the child, young adult, or parent:

(A) Any blood relative of preceding generations denoted by the prefixes of grand, great, or great-great.

(B) Any half-blood relative of preceding generations denoted by the prefixes of grand, great, or great-great (individuals with one common biological parent are half-blood relatives).

(C) A sibling, also to include an individual with a sibling relationship to the child or young adult through a putative father.

(D) An aunt, uncle, nephew, niece, first cousin, and first cousin once removed.

(E) A spouse of anyone listed in paragraphs (A) to (D) of this subsection, even if a petition for annulment, dissolution, or separation has been filed or the marriage is terminated by divorce or death. To be considered a "relative" under this paragraph, the child or young adult must have had a relationship with the spouse prior to the most recent episode of Department custody.

(b) An individual with one of the following relationships to the child or young adult:

(A) An individual defined as a relative by the law or custom of the tribe of the child or young adult if the child or young adult is an Indian child under the Indian Child Welfare Act or in the legal custody of a tribe.

(B) An individual defined as a relative of a refugee child or young adult under Child Welfare Policy I-E.2.2, "Placement of Refugee Children", OAR 413-070-0300 to 413-070-0380.

(C) A stepparent or former stepparent if the child or young adult had a relationship with the former stepparent prior to the most recent episode of Department custody; a stepbrother; or a stepsister.

(D) The registered domestic partner of the parent of the child or young adult or a former registered domestic partner of the parent of the child or young adult if the child or young adult had a relationship with the former domestic partner prior to the most recent episode of Department custody.

(E) The adoptive parent of a sibling of the child or young adult.

(F) The unrelated legal or biological father or mother of a half-sibling of the child or young adult when the half-sibling of the child or young adult is living with the unrelated legal or biological father or mother.

(c) An individual identified by the child or young adult or the family of the child or young adult, or an individual who self-identifies, as being related to the child or young adult through the parent of the child or young adult by blood, adoption, or marriage to a degree other than an individual specified as a "relative" in paragraphs (A) to (D) of subsection (a) of this section unless the relationship has been dissolved by adoption of the child, young adult, or parent.

(d) An individual meeting the requirements of at least one of the following paragraphs:

(A) An individual not related to the child, young adult, or parent by blood, adoption, or marriage:

(i) Who is identified as a member of the family by the child or young adult or by the family of the child or young adult; and

(ii) Who had an emotionally significant relationship with the child or young adult or the family of the child or young adult prior to the most recent episode of Department custody.

(B) An individual who has a blood relationship to the child or young adult as described in paragraphs (a)(A) to (D) of this section through the birth parent of the child or young adult, but the prior legal relationship has been dissolved by adoption of the child, young adult, or birth parent, and who is identified as a member of the family by the child or young adult or who self-identifies as a member of the family.

(e) For eligibility for the guardianship assistance program:

(A) A stepparent is considered a parent and is not a "relative" for the purpose of eligibility for guardianship assistance unless a petition for annulment, dissolution, or separation has been filed, or the marriage to the adoptive or biological parent of the child has been terminated by divorce or death.

(B) A foster parent may only be considered a "relative" for the purpose of eligibility for guardianship assistance when:

(i) There is a compelling reason why adoption is not an achievable permanency plan;

(ii) The foster parent is currently caring for a child, in the care or custody of the Department or a participating tribe, who has a permanency plan or concurrent permanent plan of guardianship;

(iii) The foster parent has cared for the child for at least 12 of the past 24 months; and

(iv) The Department or tribe has approved the foster parent for consideration as a guardian.

(13) "Sibling" means one of two or more children or young adults related:

(a) By blood or adoption through a common legal parent;

(b) Through the marriage of the legal or biological parents of the children or young adults; or

(c) Through a legal or biological parent who is the registered domestic partner of the legal or biological parent of the children or young adults.

(14) "Substitute caregiver" means a relative caregiver, foster parent, or provider who is authorized to provide care to a child or young adult who is in the legal or physical custody of the Department.

Stat. Auth.: ORS 109.309 & 418.005

Stats. Implemented: ORS 109.309, 418.005, 418.285, 418.937, 419B.090, 419B.100 & 419B.192

Hist.: CWP 16-2010(Temp), f. & cert. ef. 7-1-10 thru 12-28-10; CWP 35-2010, f. & cert. ef. 12-29-10; CWP 11-2014, f. & cert. ef. 6-3-14; CWP 16-2014(Temp), f. & cert. ef. 8-4-14 thru 1-31-15; CWP 6-2015, f. 1-29-15, cert. ef. 2-1-15

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Rule Caption: Amending definitions applicable to guardianship assistance rules

Adm. Order No.: CWP 7-2015(Temp)

Filed with Sec. of State: 1-30-2015

Certified to be Effective: 2-1-15 thru 7-19-15

Notice Publication Date:

Rules Amended: 413-070-0905

Subject: OAR 413-070-0905 relating to definitions used in guardianship rules were amended by temporary rule on January 21, 2015 to add definitions for 'incapacity' and 'successor legal guardian'. On February 1, 2015, unrelated permanent amendments were filed to OAR 413-070-0905, displacing the temporary changes filed on January 21, 2015. Therefore, the changes filed on January 21, 2015 are being filed again to combine the new permanent language with the January 21, 2015 temporary rule language.

Rules Coordinator: Kris Skaro—(503) 945-6067

413-070-0905

Definitions

The following definitions apply to OAR 413-070-0900 to 413-070-0974:

(1) "Base rate payment" means a payment to the foster parent or relative caregiver for the costs of providing the child or young adult with the following:

(a) Food — including the cost to cover a child or young adult's special or unique nutritional needs;

(b) Clothing — including purchase and replacement;

(c) Housing — including maintenance of household utilities, furnishings, and equipment;

(d) Daily supervision — including teaching and directing to ensure safety and well-being at a level which is appropriate based on the child or young adult's chronological age;

(e) Personal incidentals — including personal care items, entertainment, reading materials, and miscellaneous items; and

(f) The cost of providing transportation — including local travel associated with expenditure for gas and oil, and vehicle maintenance and repair associated with transportation to and from extracurricular, child care, recreational, and cultural activities.

(2) "CANS screening" means Child and Adolescent Needs and Strengths screening, a process of gathering information on a child or young adult's needs and strengths used for one or more of the following purposes:

(a) Identifying case planning, service planning, and supervision needs of the child or young adult in substitute care with a certified family;

(b) Determining the level of care payment while in substitute care with a certified family; and

(c) Determining the level of care payment included in an adoption assistance agreement or guardianship assistance agreement.

(3) "Child" means a person under 18 years of age.

(4) "Department" means the Department of Human Services, Child Welfare.

(5) "Enhanced supervision" means the additional support, direction, observation, and guidance necessary to promote and ensure the safety and well-being of the child or young adult when the child or young adult qualifies for a level of care payment.

(6) "Guardian" means an individual who has been granted guardianship of a child through a judgment of the court.

(7) "Guardianship assistance" means assistance on behalf of an eligible child or young adult to offset the costs associated with establishing the guardianship and meeting the ongoing needs of the child or young adult. "Guardianship assistance" may be in the form of a payment, medical coverage, or reimbursement of guardianship expenses.

(8) "Guardianship assistance agreement" means a written agreement, binding on the parties to the agreement, between the Department and the potential guardian or guardian setting forth the assistance the Department is to provide on behalf of the child or young adult, the responsibilities of the guardian and the Department, and the manner in which the agreement and amount of assistance may be modified or terminated.

(9) "Guardianship assistance agreement only" means a written agreement, binding on the parties to the agreement, between the Department and the potential guardian or guardian of an eligible child or young adult, when the potential guardian or guardian is not receiving a guardianship assistance payment or medical coverage at the time of the agreement but may request it at a later date.

(10) "Guardianship assistance base rate" means the portion of the guardianship assistance payment that is negotiated with the potential guardian or guardian and cannot exceed the amount of the Oregon foster care base rate payment for the child or young adult's age.

(11) "Guardianship assistance payment" means a monthly payment made by the Department to the guardian on behalf of the eligible child or young adult.

(12) "Guardianship Assistance Review Committee" means a committee composed of local and central office Department staff that have expertise in the area of guardianship.

(13) "Incapacity" means a physical or mental defect, illness, or impairment that reduces substantially or eliminates the individual's ability to support or care for the child and is expected to be permanent.

(14) "Level of care payment" means the payment provided to an approved or certified family, a guardian, a pre-adoptive family, or an adoptive family based on the child or young adult's need for enhanced supervision as determined by applying the CANS algorithm to the results of the CANS screening.

(15) "Nonrecurring guardianship assistance agreement" means a written agreement, binding on the parties to the agreement, between the Department and the potential guardian of an eligible child for a one-time payment to reimburse the guardian for the reasonable and necessary expenses incurred in legally finalizing the guardianship.

(16) "Nonrecurring guardianship expenses" means a one-time payment of up to $2,000 per child that the Department will make to a guardian to assist with the reasonable and necessary expenses associated with obtaining legal guardianship of an eligible child.

(17) "Parent" means the biological or adoptive mother or the legal father of the child. A legal father is a man who has adopted the child or whose paternity has been established or declared under ORS 109.070, ORS 416.400 to 416.465, or by a juvenile court. In cases involving an Indian child under the Indian Child Welfare Act (ICWA), a legal father includes a man who is a father under applicable tribal law. "Parent" also includes a putative father who has demonstrated a direct and significant commitment to the child by assuming or attempting to assume responsibilities normally associated with parenthood unless a court finds that the putative father is not the legal father.

(18) "Participating tribe" means a federally recognized Indian tribe in Oregon with a Title IV E agreement with the Department.

(19) "Permanency committee" means a group of individuals who are responsible for making a recommendation regarding a permanency plan or potential permanency resource when the child or young adult likely is not returning to his or her parent.

(20) "Potential guardian" means an individual who:

(a) Has been approved by the Department or participating tribe to be a child's guardian; and

(b) Is in the process of legalizing the relationship to the child through the judgment of the court.

(21) "Registered domestic partner" means an individual joined in a domestic partnership that is registered with a county clerk in accordance with ORS 106.300 to 106.340.

(22) "Relative" means (each of the following individuals is a "relative"):

(a) An individual with one of the following relationships to the child or young adult through the parent of the child or young adult unless the relationship has been dissolved by adoption of the child, young adult, or parent:

(A) Any blood relative of preceding generations denoted by the prefixes of grand, great, or great-great.

(B) Any half-blood relative of preceding generations denoted by the prefixes of grand, great, or great-great (individuals with one common biological parent are half-blood relatives).

(C) A sibling, also to include an individual with a sibling relationship to the child or young adult through a putative father.

(D) An aunt, uncle, nephew, niece, first cousin, and first cousin once removed.

(E) A spouse of anyone listed in paragraphs (A) to (D) of this subsection, even if a petition for annulment, dissolution, or separation has been filed or the marriage is terminated by divorce or death. To be considered a "relative" under this paragraph, the child or young adult must have had a relationship with the spouse prior to the most recent episode of Department custody.

(b) An individual with one of the following relationships to the child or young adult:

(A) An individual defined as a relative by the law or custom of the tribe of the child or young adult if the child or young adult is an Indian child under the Indian Child Welfare Act or in the legal custody of a tribe.

(B) An individual defined as a relative of a refugee child or young adult under Child Welfare Policy I-E.2.2, "Placement of Refugee Children", OAR 413-070-0300 to 413-070-0380.

(C) A stepparent or former stepparent if the child or young adult had a relationship with the former stepparent prior to the most recent episode of Department custody; a stepbrother; or a stepsister.

(D) The registered domestic partner of the parent of the child or young adult or a former registered domestic partner of the parent of the child or young adult if the child or young adult had a relationship with the former domestic partner prior to the most recent episode of Department custody.

(E) The adoptive parent of a sibling of the child or young adult.

(F) The unrelated legal or biological father or mother of a half-sibling of the child or young adult when the half-sibling of the child or young adult is living with the unrelated legal or biological father or mother.

(c) An individual identified by the child or young adult or the family of the child or young adult, or an individual who self-identifies, as being related to the child or young adult through the parent of the child or young adult by blood, adoption, or marriage to a degree other than an individual specified as a "relative" in paragraphs (A) to (D) of subsection (a) of this section unless the relationship has been dissolved by adoption of the child, young adult, or parent.

(d) An individual meeting the requirements of at least one of the following paragraphs:

(A) An individual not related to the child, young adult, or parent by blood, adoption, or marriage:

(i) Who is identified as a member of the family by the child or young adult or by the family of the child or young adult; and

(ii) Who had an emotionally significant relationship with the child or young adult or the family of the child or young adult prior to the most recent episode of Department custody.

(B) An individual who has a blood relationship to the child or young adult as described in paragraphs (a)(A) to (D) of this section through the birth parent of the child or young adult, but the prior legal relationship has been dissolved by adoption of the child, young adult, or birth parent, and who is identified as a member of the family by the child or young adult or who self-identifies as a member of the family.

(e) For eligibility for the guardianship assistance program under these rules, OAR 413-070-0900 to 413-070-0974:

(A) A stepparent is considered a parent and is not a "relative" for the purpose of eligibility for guardianship assistance unless a petition for annulment, dissolution, or separation has been filed, or the marriage to the adoptive or biological parent of the child has been terminated by divorce or death.

(B) A foster parent may only be considered a "relative" for the purpose of eligibility for guardianship assistance when:

(i) There is a compelling reason why adoption is not an achievable permanency plan;

(ii) The foster parent is currently caring for a child, in the care or custody of the Department or a participating tribe, who has a permanency plan or concurrent permanent plan of guardianship;

(iii) The foster parent has cared for the child for at least 12 of the past 24 months; and

(iv) The Department or tribe has approved the foster parent for consideration as a guardian.

(23) "Sibling" means one of two or more children or young adults related:

(a) By blood or adoption through a common legal parent;

(b) Through the marriage of the legal or biological parents of the children or young adults; or

(c) Through a legal or biological parent who is the registered domestic partner of the legal or biological parent of the children or young adults.

(24) "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.

(25) "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.

(26) "Successor legal guardian" means an individual who has been named in the guardianship assistance agreement, including any amendments to the agreement, as a replacement legal guardian in the event of the guardian's death or incapacitation.

(27) "Young adult" means a person aged 18 through 20 years.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 409.010, 411.141 & 418.005

Hist.: SOSCF 18-1999(Temp), f. & cert. ef. 9-14-99 thru 3-12-00; SOSCF 7-2000, f. & cert. ef. 2-10-00; SOSCF 43-2001, f. 12-31-01, cert. ef. 1-1-02; CWP 14-2003, f. & cert. ef. 1-9-03; CWP 26-2003, f. & cert. ef. 7-31-03; CWP 8-2004, f. & cert. ef. 4-1-04; CWP 5-2009(Temp), f. & cert. ef. 3-31-09 thru 9-27-09; CWP 7-2009(Temp), f. & cert. ef. 7-1-09 thru 9-27-09; CWP 12-2009, f. & cert. ef. 9-28-09; CWP 18-2009(Temp), f. & cert. ef. 12-16-09 thru 6-14-10; CWP 1-2010(Temp), f. & cert. ef. 2-1-10 thru 6-14-10; CWP 18-2009(Temp), f. & cert. ef. 12-16-09 thru 6-14-10; CWP 6-2010, f. & cert. ef. 6-15-10; CWP 11-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11; CWP 24-2011(Temp), f. 9-30-11, cert. ef. 10-1-11 thru 12-27-11; CWP 30-2011, f. 12-27-11, cert. ef. 12-28-11; CWP 1-2014, f. 1-31-14, cert. ef. 2-1-14; CWP 11-2014, f. & cert. ef. 6-3-14; CWP 16-2014(Temp), f. & cert. ef. 8-4-14 thru 1-31-15; CWP 4-2015(Temp), f. & cert. ef. 1-21-15 thru 7-19-15; CWP 6-2015, f. 1-29-15, cert. ef. 2-1-15; CWP 7-2015(Temp), f. 1-30-15, cert. ef. 2-1-15 thru 7-19-15

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Rule Caption: Updating exhibit used to determine level of personal care services

Adm. Order No.: CWP 8-2015(Temp)

Filed with Sec. of State: 2-5-2015

Certified to be Effective: 2-5-15 thru 8-3-15

Notice Publication Date:

Rules Amended: 413-090-0133, 413-090-0150

Subject: OAR 413-090-0133 relating to conducting a personal care services assessment and OAR 413-090-0150 relating to payment determination are being amended to update the exhibit referenced in these rules. The exhibit contains rating criteria used in personal care services assessments to determine the level of personal care services for a child or young adult. Specifically, the exhibit is amended to: add criteria for prescribed therapies performed by a foster parent or caregiver for children and young adults 24 months and older; add a category for toileting for infants under 24 months; update rating scale for personal hygiene, dressing, and bathing; and update section titles.

Rules Coordinator: Kris Skaro—(503) 945-6067

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; CWP 8-2015(Temp), f. & cert. ef. 2-5-15 thru 8-3-15

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; CWP 8-2015(Temp), f. & cert. ef. 2-5-15 thru 8-3-15

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Department of Human Services, Self-Sufficiency Programs
Chapter 461

Rule Caption: Allowing some clients with disabilities to receive free assistance with SSD applications and appeals

Adm. Order No.: SSP 5-2015

Filed with Sec. of State: 1-29-2015

Certified to be Effective: 1-29-15

Notice Publication Date: 1-1-2015

Rules Amended: 461-125-0370

Subject: OAR 461-125-0370 about disability as a basis of need for the Oregon Supplemental Income Program (OSIP) and the Oregon Supplemental Income Program-Medical (OSIPM) is being amended to allow an individual who has been determined by the Presumptive Medicaid Disability Determination Team (PMDDT) to have a disability to receive free assistance from the Department with applications and administrative appeals for Social Security Disability Insurance (SSD) benefits in order to meet the requirements of OAR 461-120-0330 (Requirement to Pursue Assets). This program was originally created as a pilot through temporary rule adopted on August 1, 2014. The geographical area of the pilot was expanded through temporary rules adopted on September 1, 2014, October 1, 2014, and December 8, 2014. This amendment makes the program permanent and statewide.

Rules Coordinator: Kris Skaro—(503) 945-6067

461-125-0370

Disability as the Basis of Need; OSIP and OSIPM

(1) In the OSIP and OSIPM programs (except OSIP-EPD and OSIPM-EPD), an individual meets the eligibility requirement to have a disability if the requirements of one of the following subsections are met:

(a) The individual is receiving Social Security Disability Income (SSDI) or Supplemental Security Income (SSI) based on disability. Eligibility continues as long as the individual remains eligible for SSDI or SSI.

(b) The individual was eligible for and received Aid to the Disabled benefits in Oregon in December 1973. These grandfathered cases continue to be eligible as long as they are continuously disabled as defined by Oregon requirements that were in effect in 1973.

(c) The Department has determined the individual meets the listing of impairments found in 20 C.F.R. Part 404, Subpart P, Appendix 1; meets the medical vocational guidelines found in 20 C.F.R. Part 404, Subpart P, Appendix 2 for SSI; or meets the definition of disability in 20 C.F.R. Sections 404.1505 or 416.905.

(d) The Social Security Administration (SSA) has determined the individual meets the listing of impairments found in 20 C.F.R. Part 404, Subpart P, Appendix 1; meets the medical vocational guidelines found in 20 C.F.R. Part 404, Subpart P, Appendix 2; or meets the definition of disability in 20 C.F.R. Sections 404.1505 or 416.905.

(2) If the Department finds the individual eligible for OSIPM in the absence of a disability determination by SSA, the individual remains eligible, provided that the individual continues to meet the disability criteria for eligibility for OSIPM, until SSA denies the disability claim in a final administrative decision.

(3) For OSIP and OSIPM, a disability determination made by SSA that is unfavorable to an individual is binding on the Department unless the requirements of at least one of the following subsections are met (see 42 C.F.R. Section 435.541(c)(1) and (c)(4)):

(a) SSA made the determination for a reason other than disability.

(b) The individual alleges a disabling condition different from, or in addition to, that considered by SSA in making its determination.

(c) More than 12 months after the most recent SSA determination denying disability, the individual alleges that his or her condition has changed or deteriorated since that SSA determination, and the individual has not made application to SSA based on these allegations.

(d) The individual alleges less than 12 months after the most recent SSA determination denying disability that the condition which SSA evaluated has changed or deteriorated since that SSA determination; and one or both of the following apply:

(A) The individual has requested reconsideration or reopening of the most recent SSA determination denying disability and SSA has declined to consider the new allegations.

(B) It is clear that the individual no longer meets SSI eligibility requirements unrelated to disability status but may satisfy comparable Medicaid eligibility requirements.

(4) If a binding SSA disability determination is not in place, the determination of disability to qualify for OSIPM is made by the Presumptive Medicaid Disability Determination Team (PMDDT), composed of a medical or psychological consultant and another individual who is qualified to interpret and evaluate medical reports, other evidence relating to the individual's physical or mental impairments, and (as necessary) to determine

the capacities of the individual to perform substantial gainful activity, as specified in 20 C.F.R. Part 416, Subpart J (see 42 C.F.R. Section 435.541(f)(2)).

(5) The Presumptive Medicaid Disability Determination Team (PMDDT) obtains and reviews medical reports and other non-medical evidence pertaining to the individual and the claimed disability. The medical report and non-medical evidence must include diagnosis and other information in accordance with the requirements for evidence applicable to disability determinations under the SSI program specified in 20 CFR Part 416, Subpart I. The PMDDT then makes a decision about medical eligibility and whether and when a redetermination will be made (see 42 C.F.R. Section 435.541(f)(1) and (3)).

(6) In the OSIP-EPD and OSIPM-EPD programs, an individual is disabled (see OAR 461-001-0035) or has a disability (see OAR 461-001-0035) if the individual has a physical or mental impairment, or a combination of these impairments, that meets the definition of disability used by SSA when determining eligibility for SSI or SSDI under 20 C.F.R. Part 404. The determination is made as follows:

(a) A determination by SSA that the individual is disabled or has a disability is accepted by the Department.

(b) If the individual was determined to have a disability by SSA and lost their SSDI eligibility due to their own income, the SSA determination remains effective for one year from the date that the individual loses eligibility for SSDI.

(c) If there is no currently effective SSA determination finding the individual has a disability, the case is referred to the Department's central office for a disability determination (see OAR 461-001-0035) using the standards of 20 C.F.R. Parts 404 and 416 and considering all relevant medical and vocational information.

(d) For OSIPM-EPD, an individual is engaging in substantial gainful activity (SGA, see OAR 461-001-0035) if the earnings of the individual are at or above the EPD Income Standard.

(e) For OSIPM-EPD, any work activity engaged in during the OSIPM-EPD application process or certification period is not evaluated as past relevant work (PRW, see OAR 461-001-0035).

(7) An individual who is served by a branch office (see OAR 461-001-0000) and who has been determined by the Presumptive Medicaid Disability Determination Team (PMDDT) to have a disability (see section (1) of this rule) may receive free assistance from the Department with applications and administrative appeals for Social Security Disability Insurance (SSD) benefits in order to meet the requirements of OAR 461-120-0330 (Requirement to Pursue Assets).

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404 & 411.706

Stats. Implemented: ORS 409.010, 411.050, 411.060, 411.070, 411.404, 411.704 & 411.706

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1991, f. & cert. ef. 10-1-91; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; 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; SSP 9-2003(Temp), f. & cert. ef. 4-11-03 thru 6-30-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 20-2014(Temp), f. & cert. ef. 8-1-14 thru 1-28-15; SSP 22-2014(Temp), f. 8-29-14, cert. ef. 9-1-14 thru 1-28-15; SSP 27-2014(Temp), f. & cert. ef. 10-1-14 thru 1-28-15; SSP 31-2014(Temp), f. & cert. ef. 12-8-14 thru 1-28-15; SSP 5-2015, f. & cert. ef. 1-29-15

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Rule Caption: Amending rule relating to eligibility requirements for some child care providers

Adm. Order No.: SSP 6-2015

Filed with Sec. of State: 1-30-2015

Certified to be Effective: 2-1-15

Notice Publication Date: 11-1-2014

Rules Amended: 461-165-0180

Rules Repealed: 461-165-0180(T)

Subject: OAR 461-165-0180 about eligibility of child care providers is being amended to increase and clarify standards and requirements for providers that care for individuals receiving child care benefits through the Employment Related Day Care (ERDC) program or Temporary Assistance to Needy Families Jobs Opportunities and Basic Skills (TANF-JOBS) program. This rule amendment makes the following changes to protect the health, safety and the physical, moral, and mental well-being of children cared for by DHS-approved child care providers, align with the Office of Child Care rules for licensed providers, and the goals of the Governor's Early Learning Council for quality child care:

Prohibits individuals who hold a medical marijuana card, distribute, grow, or use marijuana (including medical marijuana) or any controlled substance (except lawfully prescribed and over-the-counter medications) from being a DHS-approved child care provider.

Prohibits controlled substances (except lawfully prescribed and over-the-counter medications), marijuana (including medical marijuana, marijuana edibles, and other products containing marijuana), marijuana plants, derivatives, and associated paraphernalia from being on the child care premises during child care operational hours or anytime child care children are present. Adds a definition of premises which includes the home or facility structure and grounds, including indoors and outdoors and space not directly used for child care.

Clarifies the prohibition on consumption of alcohol and use of controlled substances (except lawfully prescribed and over-the-counter medications) and marijuana (including medical marijuana).

Prohibits child care providers, any individual supervising, transporting, preparing meals, or otherwise working in the proximity of child care children and those completing daily attendance and billing records from being "under the influence". Adds a definition of this term which includes observed abnormal behavior or impairments in mental or physical performance leading a reasonable person to believe the individual has used alcohol, any controlled substance (including lawfully prescribed and over-the-counter medications), marijuana (including medical marijuana), or inhalants that impairs their performance of essential job function or creates a direct threat to child care children or others.

Prohibits smoking within ten feet of any entrance, exit, window that opens, or any ventilation intake that serves an enclosed area and adds e-cigarettes and vaporizers to the list of smoking products that are prohibited.

Adds a requirement for the provider to report to DHS when they no longer meet the provider eligibility requirements under this rule.

Adds requirement to report if any subject individual has any involvement with adult protective services, (in addition to child protective services).

Clarifies alcohol, inhalants, tobacco and e-cigarette products, matches and lighters, any prescription or non-prescription medications are also considered items that may be dangerous to children and must be kept in a secure place out of a child's reach.

Many of these changes have been in place since August 13, 2014 by temporary rule.

Rules Coordinator: Kris Skaro—(503) 945-6067

461-165-0180

Eligibility of Child Care Providers

(1) The Department must approve a child care provider to receive payment for child care if information available to the Department provides no basis for denying eligibility unless the Department determines, following a preliminary or final fitness determination (see OAR 407-007-0320) or Child Protective Service (CPS) records checks, that the provider or other subject individual (see OAR 407-007-0210(30)(a)(A), (B), (F), (I), and (P)) is not eligible for payment.

(2) Ineligibility for payment may result from any of the following:

(a) A finding of "denied". A provider may be denied under OAR 461-165-0410 and 461-165-0420. If, after conducting a weighing test as described in OAR 407-007-0210, the Department finds substantial risk to the health or safety of a child in the care of the provider, the provider must be denied and is ineligible for payment. A provider who has been denied has the right to a hearing under OAR 407-007-0330.

(b) A finding of "failed". A provider may be failed if the Department determines, based on a specific eligibility requirement and evidence, that a provider does not meet the eligibility requirements of this rule. A provider with a status of "failed" may reapply at any time by providing the required documents and information to the Department for review.

(c) The Department has referred an overpayment against the provider for collection and the claim is unsatisfied.

(3) The provider must submit a completed Child Care Provider Listing Form (DHS 7494) to the Department within 30 calendar days from the date the Department issues the listing form to the client. The provider and each individual identified under section (4) of this rule must complete and sign the authorization for a records check through the Criminal History (CH) record system maintained by the Oregon State Police (OSP), Federal

Bureau of Investigation (FBI), and the Child Protective Service (CPS) record system maintained by the Department and, if necessary, an authorization to release information and fingerprint cards. The provider, each individual described in section (4) of this rule, and each subject individual described in OAR 407-007-0210(30)(a)(A), (B), (F), (I) or (P) must fully disclose all requested information as part of the records check.

(4) This rule also establishes additional requirements for the following individuals:

(a) The site director of an exempt child care facility and each employee of the facility who may have unsupervised access to a child in care.

(b) The child care provider and each individual the provider uses to supervise a child in his or her absence.

(c) In the case of a provider who provides care for a child in the provider's home:

(A) Each individual 16 years of age or older who lives in the provider's home; and

(B) Each individual who visits the home of the provider during the hours care is provided and may have unsupervised access to a child in care.

(5) To receive payment or authorization for payment, the provider must meet the requirements of either subsection (a) or (b) of this section:

(a) Currently be certified or registered with the Office of Child Care (OCC) of the Oregon Department of Education (ODE) under OAR 414-205-0000 to 414-205-0170, 414-300-0000 to 414-300-0440, or 414-350-0000 to 414-350-0250 unless legally exempt, and be in compliance with the applicable rules. The provider must also complete the Department's listing process and be approved by the Department.

(b) If legally exempt from being certified or registered with the OCC, complete the Department's background check process and be approved by the Department.

(6) Each individual described in section (4) of this rule must:

(a) Allow the Department to conduct a national criminal history records check through the Oregon State Police and the Federal Bureau of Investigation as specified in OAR 407-007-0250.

(b) Provide, in a manner specified by the Department, information required to conduct CH, FBI, OSP, and CPS records checks and determine whether the provider meets health and safety requirements.

(c) Have a history of behavior that indicates no substantial risk to the health or safety of a child in the care of the provider.

(7) Each provider must:

(a) Obtain written approval from their certifier or certifier's supervisor if the provider is also certified as a foster parent.

(b) Be 18 years of age or older and in such physical and mental health as will not affect adversely the ability to meet the needs of safety, health, and well-being of a child in care.

(c) Not be in the same filing group as the child cared for and cannot be the parent (see OAR 461-001-0000) of the child.

(d) Allow the Department to inspect the site of care while child care is provided.

(e) Keep daily attendance records showing the arrival and departure times for each child in care and billing records for each child receiving child care benefits from the Department. The provider must keep written records of any attendance that is not able to be recorded in the Child Care Billing and Attendance Tracking (CCBAT) system. These written records must be retained for a minimum of 12 months and provided to the Department upon request.

(f) Be the individual or facility listed as providing the child care. The provider may only use someone else to supervise a child on a temporary basis if the person was included on the most current listing form and the provider notifies the Department's Direct Pay Unit.

(g) Not bill a Department client for an amount collected by the Department to recover an overpayment or an amount paid by the Department to a creditor of the provider because of a lien, garnishment, or other legal process.

(h) Report to the Department's Direct Pay Unit within five days of occurrence:

(A) Any arrest or conviction of any subject individual or individual described in section (4) of this rule.

(B) Any involvement of any subject individual or individual described in section (4) of this rule with CPS or any other agencies providing child or adult protective services.

(C) Any change to the provider's name or address including any location where care is provided.

(D) The addition of any subject individual or individual described in section (4) of this rule.

(E) Any reason the provider no longer meets the requirements under this rule.

(i) Report suspected child abuse of any child in his or her care to CPS or a law enforcement agency.

(j) Supervise each child in care at all times.

(k) Prevent any individual who behaves in a manner that may harm children from having access to a child in the care of the provider. This includes anyone under the influence (see section (11) of this rule).

(l) Allow the custodial parent of a child in his or her care to have immediate access to the child at all times.

(m) Inform a parent of the need to obtain immunizations for a child.

(n) Take reasonable steps to protect a child in his or her care from the spread of infectious diseases.

(o) Ensure that the home or facility where care is provided meets all of the following standards:

(A) Each floor level used by a child has two usable exits to the outdoors (a sliding door or window that can be used to evacuate a child is considered a usable exit). If a second floor is used for child care, the provider must have a written plan for evacuating occupants in the event of an emergency.

(B) The home or facility has safe drinking water.

(C) The home or facility has a working smoke detector on each floor level and in any area where a child naps.

(D) Each fireplace, space heater, electrical outlet, wood stove, stairway, pool, pond, and any other hazard has a barrier to protect a child. Gates and enclosures have the Juvenile Products Manufacturers Association (JPMA) certification seal to ensure safety.

(E) Any firearm, ammunition, and other items that may be dangerous to children, including but not limited to alcohol, inhalants, tobacco and e-cigarette products, matches and lighters, any legally prescribed or over-the-counter medicine, cleaning supplies, paint, plastic bags, and poisonous and toxic materials are kept in a secure place out of a child's reach.

(F) The building, grounds, any toy, equipment, and furniture are maintained in a clean, sanitary, and hazard free condition.

(G) The home or facility has a telephone in operating condition.

(H) No one may smoke or carry any lighted smoking instrument, including e-cigarettes or vaporizers, in the home or facility or within ten feet of any entrance, exit, window that opens, or any ventilation intake that serves an enclosed area, during child care operational hours or anytime child care children are present. No one may use smokeless tobacco in the home or facility during child care operational hours or anytime child care children are present. No one may smoke or carry any lighted smoking instrument, including e-cigarettes and vaporizers, or use smokeless tobacco in motor vehicles while child care children are passengers.

(I) No one may consume alcohol or use controlled substances (except legally prescribed and over-the-counter medications) or marijuana (including medical marijuana) on the premises (see section (11) of this rule) during child care operational hours or anytime child care children are present. No one under the influence of alcohol, controlled substances (except legally prescribed and over-the-counter medications) or marijuana (including medical marijuana) may be on the premises during child care operational hours or anytime child care children are present. No one may consume alcohol or use controlled substances (except legally prescribed and over-the-counter medications) or marijuana (including medical marijuana) in motor vehicles while child care children are passengers.

(J) Is not a half-way house, hotel, motel, shelter, or other temporary housing such as a tent, trailer, or motor home. The restriction in this paragraph does not apply to licensed (registered or certified) care approved in a hotel, motel, or shelter.

(K) Is not a structure:

(i) Designed to be transportable; and

(ii) Not attached to the ground, another structure, or to any utilities system on the same premises.

(L) Controlled substances (except lawfully prescribed and over-the-counter medications), marijuana (including medical marijuana, marijuana edibles, and other products containing marijuana), marijuana plants, derivatives, and associated paraphernalia may not be on the premises during child care operational hours or anytime child care children are present.

(p) Complete and submit a new listing form every two years, or sooner at the request of the Department, so that the Department may review the provider's eligibility.

(q) Provide evidence of compliance with the Department's administrative rules, upon request of Department staff.

(r) Complete registration for the CCBAT system within 45 days of the date of the registration notice.

(s) Comply with state and federal laws related to child safety systems and seat belts in vehicles, bicycle safety, and crib standards under 16 CFR 1219 and 1220.

(t) Place infants to sleep on their backs.

(u) Not hold a medical marijuana card; or distribute, grow, or use marijuana (including medical marijuana) or any controlled substance (except lawfully prescribed and over-the-counter medications).

(8) Child Care providers who are License Exempt or Registered Family Child Care Providers with the Office of Child Care (OCC) of the Oregon Department of Education (ODE) under OAR 414-205-0000 to 414-205-0170 must complete the "Basic Child Care Health and Safety" two-hour, web-based training or the three-hour Oregon Kids Healthy and Safe (OKHS) classroom training prior to being approved by the Department.

(a) Prior to June 16, 2014, a provider who sends the Department a Child Care Provider Listing and Provider Information Sheet (DHS 7494) with a revision date of March 2013, or those who attempt to take the web-based training but are unable due to technical difficulties at the training site, will not be failed for not meeting this training requirement.

(b) License Exempt or Registered Family Child Care Providers who are exempt from this training are those who state at least one of the following:

(A) English is a second language.

(B) No internet access is available.

(9) A child care provider not subject to certification or registration with the Office of Child Care (OCC) of the Oregon Department of Education (ODE) under OAR 414-205-0000 to 414-205-0170, 414-300-0000 to 414-300-0440, or 414-350-0000 to 414-350-0250, must complete an orientation provided by the Department or a Child Care Resource and Referral agency within 90 days of being approved by the Department if he or she:

(a) Receives funds from the Department; and

(b) Begins providing child care services after June 30, 2010, or resumes providing child care services, after a break of more than one year that began after June 30, 2010.

(10) Child care providers and any individual supervising, transporting, preparing meals, or otherwise working in the proximity of child care children and those completing daily attendance and billing records shall not be under the influence.

(11) For purposes of these rules:

(a) "Premises" means the home or facility structure and grounds, including indoors and outdoors and space not directly used for child care.

(b) "Under the influence" means observed abnormal behavior or impairments in mental or physical performance leading a reasonable person to believe the individual has used alcohol, any controlled substances (including lawfully prescribed and over-the-counter medications), marijuana (including medical marijuana), or inhalants that impairs their performance of essential job function or creates a direct threat to child care children or others. Examples of abnormal behaviors include, but are not limited to hallucinations, paranoia, or violent outbursts. Examples of impairments in physical or mental performance include, but are not limited to slurred speech as well as difficulty walking or performing job activities.

Stat. Auth.: ORS 181.537, 409.050, 411.060 & 411.070

Stats. Implemented: ORS 181.537, 409.010, 409.050, 409.610, 411.060, 411.070, 411.122 & 329A.340

Hist.: AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 17-1994(Temp), f. & cert. ef. 8-15-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 2-1997, f. 2-27-97, cert. ef. 3-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 12-1997, f. & cert. ef. 8-25-97; AFS 14-1999, f. & cert. ef. 11-1-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 13-2004, f. 4-29-04, cert. ef. 5-1-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 6-2005(Temp), f. & cert. ef. 4-25-05 thru 9-30-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 5-2009, f. & cert. ef. 4-1-09; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 32-2010, f. & cert. ef. 10-1-10; SSP 25-2012, f. 6-29-12, cert. ef. 7-1-12; SSP 30-2012, f. 9-28-12, cert. ef. 10-1-12; SSP 8-2013, f. & cert. ef. 4-1-13; SSP 5-2014(Temp), f. 2-4-14, cert. ef. 3-1-14 thru 8-28-14; SSP 10-2014(Temp), f. & cert. ef. 4-1-14 thru 8-28-14; SSP 15-2014, f. & cert. ef. 7-1-14; SSP 21-2014(Temp), f. & cert. ef. 8-13-14 thru 2-9-15; SSP 6-2015, f. 1-30-15, cert. ef. 2-1-15

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Rule Caption: Updating poverty related income standards to reflect 2015 Federal Poverty Level (FPL)
Adm. Order No.: SSP 7-2015
Filed with Sec. of State: 1-30-2015
Certified to be Effective: 2-1-15
Notice Publication Date: 11-1-2014
Rules Amended: 461-155-0180
Subject: OAR 461-155-0180 about poverty related income standards (for non-medical programs) is being amended to reflect the 2015 Federal Poverty Level (FPL). The poverty guidelines are updated annually by the US Department of Health and Human Services based on the Consumer Price Index for All Urban Consumers (CPI-U). The poverty guidelines are used to determine financial eligibility for public assistance programs.
Rules Coordinator: Kris Skaro—(503) 945-6067

461-155-0180
Poverty Related Income Standards; Not OSIP, OSIPM, QMB

(1) A Department program may cite this rule if the program uses a monthly income standard based on the federal poverty level.

(2) A monthly income standard set at 100 percent of the 2014 federal poverty level is set at the following amounts: [Table not included. See ED. NOTE.]

(3) A monthly income standard set at 133 percent of the 2014 federal poverty level is set at the following amounts: [Table not included. See ED. NOTE.]

(4) A monthly income standard set at 150 percent of the 2014 federal poverty level is set at the following amounts: [Table not included. See ED. NOTE.]

(5) A monthly income standard set at 163 percent of the 2014 federal poverty level is set at the following amounts: [Table not included. See ED. NOTE.]

(6) A monthly income standard set at 185 percent of the 2015 federal poverty level is set at the following amounts: [Table not included. See ED. NOTE.]

(7) A monthly income standard set at 200 percent of the 2014 federal poverty level is set at the following amounts: [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.816, 412.014, 412.049

Stats. Implemented: ORS 409.010, 411.060, 411.070, 411.816, 412.014, 412.049Hist.: SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 1-2007, f. & cert. ef. 1-24-07; SSP 1-2008(Temp), f. & cert. ef. 1-24-08 thru 6-30-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 1-2009, f. & cert. ef. 1-27-09; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10; SSP 4-2010, f. & cert. ef. 3-31-10; SSP 25-2010(Temp), f. & cert. ef. 8-16-10 thru 2-12-11; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11; SSP 1-2011(Temp), f. & cert. ef. 1-20-11 thru 7-19-11; SSP 17-2011, f. & cert. ef. 7-1-11; SSP 2-2012, f. & cert. ef. 1-25-12; SSP 3-2013, f. & cert. ef. 1-30-13; SSP 5-2013(Temp), f. & cert. ef. 2-1-13 thru 7-31-13; SSP 13-2013, f. & cert. ef. 7-1-13; SSP 22-2013(Temp), f. & cert. ef. 8-23-13 thru 2-19-14; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14; SSP 2-2014, f. 1-31-14, cert. ef. 2-1-14; SSP 7-2015, f. 1-30-15, cert. ef. 2-1-15

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Department of Justice
Chapter 137

Rule Caption: Amends Model Rules for soliciting public contracts, primarily Construction Manager/General Contractor and design professionals.
Adm. Order No.: DOJ 2-2015
Filed with Sec. of State: 2-3-2015
Certified to be Effective: 2-3-15
Notice Publication Date: 1-1-2015
Rules Amended: 137-046-0130, 137-047-0260, 137-047-0265, 137-047-0270, 137-047-0300, 137-047-0450, 137-047-0560, 137-048-0130, 137-048-0210, 137-048-0220, 137-049-0100, 137-049-0120, 137-049-0130, 137-049-0380, 137-049-0600, 137-049-0610, 137-049-0620, 137-049-0630, 137-049-0640, 137-049-0650, 137-049-0660, 137-049-0690, 137-049-0820
Subject: Most of the rule amendments addressed in this Certificate, particularly the amendments to existing rules in OAR chapter 137, division 049, are required by 2013 Oregon Laws, chapter 522 (Senate Bill 254). That enactment establishes new procedures, under ORS 279C.335, for exempting public contracts for construction manager/general contractor ("CM/GC") services from traditional competitive bidding requirements. The legislation (and these rule amendments) also regulates the contractor selection processes and contracting requirements for CM/GC projects. 2013 Oregon Laws, chapter 522 §4 directs the Attorney General to adopt rules to implement that enactment. These rules accomplish that implementation,

and represent a more complete version of the Temporary Rules filed by the Department on July 1, 2014.

Amendments to the construction contract retainage rule, OAR 137-049-0820, make the rule comply with 2013 Oregon Laws chapter 410.

Certain amendments to the design services and related services consultant contracting rules (OAR chapter 137, division 048) also were made necessary by 2013 Oregon Laws, chapter 522. The Department of Justice took advantage of this opportunity to make refinements to consultant selection procedures for design services and related services consultants, beyond the revisions related to CM/GC procurements under 2013 Oregon Laws, chapter 522 (Senate Bill 254). Most of these rule refinements pertain to related services consultant selection procedures, and the informal selection procedures for both design services and related services consultants.

2013 Oregon Laws chapter 66 changed the dollar amounts involved in conducting Small Procurements and Intermediate Procurements for goods and services in ORS 279B.065 and 279B.070. The amendments to OAR 137-047-260 and 137-047-0265 implement the increase in the dollars limits on Small Procurements and Intermediate Procurements to meet the new dollar amounts in 2013 Oregon Laws chapter 66.

Additional rule amendments update and correct several cross-references within OAR chapter 137, division 047 to other parts of OAR chapter 137, Division 047 or to provisions within ORS Chapter 279B.

One amendment to OAR 137-046-0130 was needed to update the rule based on provisions within 2013 Oregon Laws, chapter 522 (Senate Bill 254) pertaining to CM/GC procurements and the application of the Model Rules under ORS 279A.065 with regard to CM/GC procurements.

Rules Coordinator: Carol Riches—(503) 947-4700

137-046-0130
Application of the Code and Model Rules; Exceptions

(1) Except as set forth in this section, a Contracting Agency shall exercise all procurement authority related to Public Contracting in accordance with the Code and the Model Rules.

(2) A Contracting Agency that has specifically opted out of the Model Rules and adopted its own rules of procedure for Public Contracting pursuant to 279A.065 in the exercise of its own contracting authority is not subject to these Model Rules, except for those portions of the Model Rules that the Contracting Agency has prescribed for its own use for Public Contracting and except for those portions of the Model Rules pertaining to the procurement of Construction Manager/General Contractor Services under ORS 279A.065(3), where the Contracting Agency is not permitted to opt out of the Model Rules.

(3) Contracts or classes of Contracts for Personal Services of a Local Contracting Agency designated as such by the Local Contracting Agency's Local Contract Review Board pursuant to ORS 279A.055, are not subject to these Model Rules, unless the Local Contracting Agency adopts OAR 137-047-0250 through 137-047-0290 as the procedures the Local Contracting Agency will use to screen and select persons to perform Contracts for Personal Services other than Architectural, Engineering and Surveying Services and Related Services.

(4) These Model Rules do not apply to the Contracts or the classes of Contracts described in ORS 279A.025(2).

(5) These Model Rules do not apply to the contracting activities of the public bodies listed in ORS 279A.025(3).

(6) Contracting Agencies otherwise subject to the Code and these Model Rules may enter into Contracts for Goods or Services with non-profit agencies providing employment opportunities for individuals with disabilities pursuant to ORS 279.835 through 279.855 without following the source selection procedures set forth in either 279A.200 through 279A.225, or 279B.050 through 279B.085. However, Contracting Agencies must enter into such Contracts in accordance with administrative rules promulgated by the Department.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.050, 279A.055, 279A.065 & 279A.180
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 10-2014(Temp), f. & cert. ef. 7-1-14 thru 12-26-14; Administrative correction, 1-27-15; DOJ 2-2015, f. & cert. ef. 2-3-15

137-047-0260
Competitive Sealed Proposals

(1) Generally. A Contracting Agency may procure Goods or Services by competitive sealed Proposals as set forth in ORS 279B.060. A Contracting Agency shall use a Request for Proposal to initiate a competitive sealed Proposal solicitation. The Request for Proposal must contain the information required by 279B.060(2) and by section (2) of this rule. The Contracting Agency shall provide public notice of the Request for Proposal as set forth in OAR 137-047-0300.

(2) Request for Proposal. In addition to the provisions required by ORS 279B.060(2), the Request for Proposal must include the following:

(a) General Information.

(A) Notice of any pre-Offer conference as follows:

(i) The time, date and location of any pre-Offer conference;

(ii) Whether attendance at the conference will be mandatory or voluntary; and

(iii) A provision that provides that statements made by the Contracting Agency's representatives at the conference are not binding upon the Contracting Agency unless confirmed by Written Addendum.

(B) The form and instructions for submission of Proposals and any other special information, e.g., whether Proposals may be submitted by electronic means. (See OAR 137-047-0330 for required provisions of electronic Proposals);

(C) The time, date and place of Opening;

(D) The office where the Solicitation Document may be reviewed;

(E) Proposer's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4). (See OAR 137-046-0210(2)); and

(F) How the Contracting Agency will notify Proposers of Addenda and how the Contracting Agency will make Addenda available. (See OAR 137-047-0430).

(b) Contracting Agency Need to Purchase. The character of the Goods or Services the Contracting Agency is purchasing including, if applicable, a description of the acquisition, Specifications, delivery or performance schedule, inspection and acceptance requirements. As required by ORS 279B.060(2)(c), the Contracting Agency's description of its need to purchase must:

(A) Identify the scope of the work to be performed under the resulting Contract, if the Contracting Agency awards one;

(B) Outline the anticipated duties of the Contractor under any resulting Contract;

(C) Establish the expectations for the Contractor's performance of any resulting Contract; and

(D) Unless the Contractor under any resulting Contract will provide architectural, engineering, photogrammetric mapping, transportation planning, or land surveying services, or related services that are subject to ORS 279C.100 to 279C.125, or the Contracting Agency for Good Cause specifies otherwise, the scope of work must require the Contractor to meet the highest standards prevalent in the industry or business most closely involved in providing the Goods or Services that the Contracting Agency is purchasing.

(c) Proposal and Evaluation Process.

(A) The anticipated solicitation schedule, deadlines, protest process, and evaluation process;

(B) The Contracting Agency shall set forth selection criteria in the Solicitation Document in accordance with the requirements of ORS 279B.060(3)(e). Evaluation criteria need not be precise predictors of actual future costs and performance, but to the extent possible, the factors shall be reasonable estimates of actual future costs based on information available to the Contracting Agency;

(C) If the Contracting Agency's solicitation process calls for the Contracting Agency to establish a Competitive Range, the Contracting Agency shall generally describe, in the Solicitation Document, the criteria or parameters the Contracting Agency will apply to determine the Competitive Range. The Contracting Agency, however, subsequently may determine or adjust the number of Proposers in the Competitive Range in accordance with OAR 137-047-0261(6).

(d) Applicable Preferences, including those described in ORS 279A.120, 279A.125(2) and 282.210.

(e) For Contracting Agencies subject to ORS 305.385, the Proposers' certification of compliance with the Oregon tax laws in accordance with ORS 305.385.

(f) All contractual terms and conditions the Contracting Agency determines are applicable to the Procurement. The Contracting Agency's determination of contractual terms and conditions that are applicable to the

Procurement may take into consideration, as authorized by ORS 279B.060(3), those contractual terms and conditions the Contracting Agency will not include in the Request for Proposal because the Contracting Agency either will reserve them for negotiation, or will request Proposers to offer or suggest those terms or conditions. (See OAR 137-047-0260(3)).

(g) As required by ORS 279B.060(2)(h), the Contract terms and conditions must specify the consequences of the Contractor's failure to perform the scope of work or to meet the performance standards established by the resulting Contract. Those consequences may include, but are not limited to:

(A) The Contracting Agency's reduction or withholding of payment under the Contract;

(B) The Contracting Agency's right to require the Contractor to perform, at the Contractor's expense, any additional work necessary to perform the scope of work or to meet the performance standards established by the resulting Contract; and

(C) The Contracting Agency's rights, which the Contracting Agency may assert individually or in combination, to declare a default of the resulting Contract, to terminate the resulting Contract, and to seek damages and other relief available under the resulting Contract or applicable law.

(3) The Contracting Agency may include the applicable contractual terms and conditions in the form of Contract provisions, or legal concepts to be included in the resulting Contract. Further, the Contracting Agency may specify that it will include or use Proposer's terms and conditions that have been pre-negotiated under OAR 137-047-0550(3), but the Contracting Agency may only include or use a Proposer's pre-negotiated terms and conditions in the resulting Contract to the extent those terms and conditions do not materially conflict with the applicable contractual terms and conditions. The Contracting Agency shall not agree to any Proposer's terms and conditions that were expressly rejected in a solicitation protest under OAR 137-047-0420.

(4) For multiple Award Contracts, the Contracting Agency may enter into Contracts with different terms and conditions with each Contractor to the extent those terms and conditions do not materially conflict with the applicable contractual terms and conditions. The Contracting Agency shall not agree to any Proposer's terms and conditions that were expressly rejected in a solicitation protest under OAR 137-047-0420.

(5) Good Cause. For the purposes of this rule, "Good Cause" means a reasonable explanation for not requiring Contractor to meet the highest standards prevalent in the industry or business most closely involved in providing the Goods or Services under the Contract, and may include an explanation of circumstances that support a finding that the requirement would unreasonably limit competition or is not in the best interest of the Contracting Agency. The Contracting Agency shall document in the Procurement file the basis for the determination of Good Cause for specifying otherwise. A Contracting Agency will have Good Cause to specify otherwise when the Contracting Agency determines:

(a) The use or purpose to which the Goods or Services will be put does not justify a requirement that the Contractor meet the highest prevalent standards in performing the Contract;

(b) Imposing express technical, standard, dimensional or mathematical specifications will better ensure that the Goods or Services will be compatible with, or will operate efficiently or effectively with, associated information technology, hardware, software, components, equipment, parts, or on-going Services with which the Goods or Services will be used, integrated, or coordinated;

(c) The circumstances of the industry or business that provides the Goods or Services are sufficiently volatile in terms of innovation or evolution of products, performance techniques, or scientific developments, that a reliable highest prevalent standard does not exist or has not been developed;

(d) That other circumstances exist in which the Contracting Agency's interest in achieving economy, efficiency, compatibility or availability in the Procurement of the Goods or Services reasonably outweighs the Contracting Agency's practical need for the highest standard prevalent in the applicable or closest industry or business that supplies the Goods or Services to be delivered under the resulting Contract.

Stat. Auth.: ORS 279A.065, OL 2011, ch 458
Stats. Implemented: ORS 279B.060, OL 2011, ch 458
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12; DOJ 10-2014(Temp), f. & cert. ef. 7-1-14 thru 12-26-14; Administrative correction, 1-27-15; DOJ 2-2015, f. & cert. ef. 2-3-15

137-047-0265
Small Procurements

(1) Generally. For Procurements of Goods or Services less than or equal to the dollar amount stated in ORS 279B.065, a Contracting Agency may Award a Contract as a small Procurement pursuant to ORS 279B.065.

(2) Amendments. A Contracting Agency may amend a Contract Awarded as a small Procurement in accordance with OAR 137-047-0800, but the cumulative amendments may not increase the total Contract Price to greater than one hundred twenty-five percent (125%) of the dollar amount stated in ORS 279B.065.

Stat. Auth.: ORS 279A.065 & 279B.065
Stats. Implemented: ORS 279B.065
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 10-2014(Temp), f. & cert. ef. 7-1-14 thru 12-26-14; Administrative correction, 1-27-15; DOJ 2-2015, f. & cert. ef. 2-3-15

137-047-0270
Intermediate Procurements

(1) Generally. For Procurements of Goods or Services greater than the dollar amount stated in ORS 279B.065 and less than or equal to the higher dollar amount stated in ORS 279B.070, a Contracting Agency may Award a Contract as an intermediate Procurement pursuant to ORS 279B.070.

(2) Negotiations. A Contracting Agency may negotiate with a prospective Contractor who offers to provide Goods or Services in response to an intermediate Procurement to clarify its quote or Offer or to effect modifications that will make the quote or Offer more Advantageous to the Contracting Agency.

(3) Amendments. A Contracting Agency may amend a Contract Awarded as an intermediate Procurement in accordance with OAR 137-047-0800, but the cumulative amendments may not increase the total Contract Price to a sum that exceeds the higher dollar amount stated in ORS 279B.070 or one hundred twenty-five percent (125%) of the original Contract Price, whichever is greater.

Stat. Auth.: ORS 279A.065 & 279B.070
Stats. Implemented: ORS 279B.070
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 5-2012, f. & cert. ef. 2-27-12; DOJ 10-2014(Temp), f. & cert. ef. 7-1-14 thru 12-26-14; Administrative correction, 1-27-15; DOJ 2-2015, f. & cert. ef. 2-3-15

137-047-0300
Public Notice of Solicitation Documents

(1) Notice of Solicitation Documents; Fee. A Contracting Agency shall provide public notice of every Solicitation Document in accordance with section (2) of this rule. The Contracting Agency may give additional notice using any method it determines appropriate to foster and promote competition, including:

(a) Mailing notice of the availability of the Solicitation Document to Persons that have expressed an interest in the Contracting Agency's Procurements;

(b) Placing notice on the Contracting Agency's Electronic Procurement System; or

(c) Placing notice on the Contracting Agency's Internet World Wide Web site.

(2) Advertising. A Contracting Agency shall advertise every notice of a Solicitation Document as follows:

(a) The Contracting Agency shall publish the advertisement for Offers in accordance with the requirements of ORS 279B.055(4) and 279B.060(5); or

(b) A Contracting Agency may publish the advertisement for Offers on the Contracting Agency's Electronic Procurement System instead of publishing notice in a newspaper of general circulation as required by ORS 279B.055(4)(b) if, by rule or order, the Contracting Agency's Contract Review Authority has authorized the Contracting Agency to publish notice of Solicitation Documents on the Contracting Agency's Electronic Procurement System.

(3) Content of Advertisement. All advertisements for Offers shall set forth:

(a) Where, when, how, and for how long the Solicitation Document may be obtained;

(b) A general description of the Goods or Services to be acquired;

(c) The interval between the first date of notice of the Solicitation Document given in accordance with section (2)(a) or (b) above and Closing, which shall not be less than fourteen (14) Days for an Invitation to Bid and thirty (30) Days for a Request for Proposals, unless the Contracting Agency determines that a shorter interval is in the public's interest, and that a shorter interval will not substantially affect competition. However, in no event shall the interval between the first date of notice of the Solicitation

Document given in accordance with section (2)(a) or (b) above and Closing be less than seven (7) Days as set forth in ORS 279B.055(4)(f). The Contracting Agency shall document the specific reasons for the shorter public notice period in the Procurement file;

(d) The date that Persons must file applications for prequalification if prequalification is a requirement and the class of Goods or Services is one for which Persons must be prequalified;

(e) The office where Contract terms, conditions and Specifications may be reviewed;

(f) The name, title and address of the individual authorized by the Contracting Agency to receive Offers;

(g) The scheduled Opening; and

(h) Any other information the Contracting Agency deems appropriate.

(4) Posting Advertisement for Offers. The Contracting Agency shall post a copy of each advertisement for Offers at the principal business office of the Contracting Agency. An Offeror may obtain a copy of the advertisement for Offers upon request.

(5) Fees. The Contracting Agency may charge a fee or require a deposit for the Solicitation Document.

(6) Notice of Addenda. The Contracting Agency shall provide potential Offerors notice of any Addenda to a Solicitation Document in accordance with OAR 137-047-0430.

Stat. Auth.: ORS 279A.065, 279B.055 & 279B.060
Stats. Implemented: ORS 279B.055 & 279B.060
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 10-2014(Temp), f. & cert. ef. 7-1-14 thru 12-26-14; Administrative correction, 1-27-15; DOJ 2-2015, f. & cert. ef. 2-3-15

137-047-0450
Receipt, Opening, and Recording of Offers; Confidentiality of Offers

(1) Receipt. A Contracting Agency shall electronically or mechanically time-stamp or hand-mark each Offer and any modification upon receipt. The Contracting Agency shall not open the Offer or modification upon receipt, but shall maintain it as confidential and secure until Opening. If the Contracting Agency inadvertently opens an Offer or a modification prior to the Opening, the Contracting Agency shall return the Offer or modification to its secure and confidential state until Opening. The Contracting Agency shall document the resealing for the Procurement file (e.g. "Contracting Agency inadvertently opened the Offer due to improper identification of the Offer.").

(2) Opening and Recording. A Contracting Agency shall publicly open Offers including any modifications made to the Offer pursuant to OAR 137-047-0440(1). In the case of Invitations to Bid, to the extent practicable, the Contracting Agency shall read aloud the name of each Bidder, and such other information as the Contracting Agency considers appropriate. However, the Contracting Agency may withhold from disclosure information in accordance with ORS 279B.055(5)(c) and 279B.060(6). In the case of Requests for Proposals or voluminous Bids, if the Solicitation Document so provides, the Contracting Agency will not read Offers aloud.

Stat. Auth.: ORS 279A.065 & 279B.055
Stats. Implemented: ORS 279B.055
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 10-2014(Temp), f. & cert. ef. 7-1-14 thru 12-26-14; Administrative correction, 1-27-15; DOJ 2-2015, f. & cert. ef. 2-3-15

137-047-0560
Personal Services Contract to Provide Specifications — State Agency Disqualification as Bidder or Proposer

(1) For the purposes of ORS 279B.040(1), a reasonable person would believe that a person who assisted a state contracting agency, under a personal services contract, in the development of a solicitation for goods or services (or that person's affiliate), would have an advantage in obtaining the public contract that is the subject of the solicitation if:

(a) The specifications recommended by the personal service contractor for the sequence of services, incorporation of special service or fabrication techniques, or design of any goods or components or elements of goods that the state contracting agency published in its solicitation documents call for, expressly or implicitly, requirements that only the personal services contractor (or the contractor's affiliate), or a limited class of individuals in the contractor's area of specialty, have the ability to perform or produce or have the rights to perform or produce.

(b) The rendering of solicitation document development assistance under the personal services contract gives the contractor knowledge of the state contracting agency's special needs or procedures, not generally known to the public, that give the contractor (or the contractor's affiliate) a material competitive advantage in competing for the contract for goods or services.

(c) The rendering of solicitation document development assistance under the personal services contract gives the contractor, significantly in advance of other prospective bidders or proposers, knowledge of the solicitation document requirements that would allow the personal services contractor (or the contractor's affiliate) a materially longer period in which to craft or refine a proposal in response to the solicitation documents.

(2) For the purposes of ORS 279B.040(1), a reasonable person would believe that a person who assisted a state contracting agency, under a personal services contract, in the development of a solicitation for goods or services (or that person's affiliate) would appear to have an advantage in obtaining the public contract that is the subject of the solicitation if:

(a) Taking into account the personal services contractor's announced areas of specialization, expertise or experience, the personal service contractor (or the contractor's affiliate), or only a limited class of individuals in the contractor's area of specialty, appear to have the capability to conform closely with the solicitation document requirements.

(b) Taking into account the personal services contractor's announced areas of specialization, expertise or experience, the personal service contractor (or the contractor's affiliate), or only a severely limited class of individuals in the contractor's area of specialty, appear to have the qualifications, training, experience or capacity to satisfy any minimum requirements that may be stated in the solicitation documents.

(c) The solicitation documents for a contract for goods or services contain restrictions, deadlines or requirements that do not, when viewed objectively, reasonably promote rational procurement objectives of the state contracting agency.

(3) If a state contracting agency engages a personal services contractor to advise or assist in the development of solicitation documents for a public contract for goods or services and the personal services contractor is engaged in the business of providing goods or services described in the solicitation documents, and the agency wishes to accept a bid or proposal from the personal services contractor under conditions described in section (2) or section (3) of this rule, the agency must apply to the Director of the Department of Administrative Services, as permitted by ORS 279B.040(2), for an exemption from the disqualification from the ability to submit a bid or proposal.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.040
Hist.: DOJ 8-2012, f. 7-2-12, cert. ef. 8-1-12; DOJ 10-2014(Temp), f. & cert. ef. 7-1-14 thru 12-26-14; Administrative correction, 1-27-15; DOJ 2-2015, f. & cert. ef. 2-3-15

137-048-0130
Applicable Selection Procedures; Pricing Information; Disclosure of Proposals; Conflicts of Interest

(1) When selecting the most qualified Consultant to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, Contracting Agencies shall follow the applicable selection procedure under either OAR 137-048-0200 (Direct Appointment Procedure), 137-048-0210 (Informal Selection Procedure) or 137-048-0220 (Formal Selection Procedure). Contracting Agencies selecting a Consultant under this section (1) may solicit or use pricing policies and pricing Proposals, or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead, to determine a Consultant's compensation only after the Contracting Agency has selected the most qualified Consultant in accordance with the applicable selection procedure; provided, however, this restriction on a Contracting Agency's solicitation or use of pricing policies, pricing Proposals or other pricing information does not apply to selection procedures used by the Contracting Agency to select a Consultant when the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services for the Project do not exceed $100,000 or in an Emergency, pursuant to ORS 279C.0110(8) and (9). In following the Direct Appointment Procedure under OAR 137-048-0200, a Contracting Agency may base its selection of a Consultant on any information available to the Agency prior to beginning the Direct Appointment Procedure for the Project involved.

(2) Contracting Agencies selecting a Consultant to perform Related Services shall follow one of the following selection procedures:

(a) When selecting a Consultant on the basis of qualifications alone, Contracting Agencies shall follow the applicable selection procedure under OAR 137-048-0200 (Direct Appointment Procedure), 137-048-0210 (Informal Selection Procedure), or 137-048-0220 (Formal Selection Procedure);

(b) When selecting a Consultant on the basis of price competition alone, Contracting Agencies shall follow the applicable provisions under OAR 137-048-0200 (Direct Appointment Procedure), the applicable provisions of 137-048-0210 (Informal Selection Procedure) pertaining to obtaining and evaluating price Proposals and other pricing information, or the

applicable provisions of 137-048-0220 (Formal Selection Procedure) pertaining to obtaining and evaluating price Proposals and other pricing information; and

(c) When selecting a Consultant on the basis of price and qualifications, Contracting Agencies shall follow the applicable provisions under OAR 137-048-0200 (Direct Appointment Procedure), the applicable provisions of 137-048-0210 (Informal Selection Procedure) pertaining to obtaining and evaluating price and qualifications Proposals, or the applicable provisions of 137-048-0220 (Formal Selection Procedure) pertaining to obtaining and evaluating price and qualifications Proposals. For selections under the informal selection procedure of OAR 137-048-0210, Contracting Agencies may use abbreviated requests for Proposals that nevertheless meet the requirements of OAR 137-048-0210, when the Contracting Agency determines, in its sole discretion, that the characteristics of the Project and the Related Services required by the Contracting Agency would be adequately addressed by a more abbreviated request for Proposals document, generally comparable to the intermediate Procurement procedures and related documentation under ORS 279B.070 and OAR 137-047-0270. Contracting Agencies subject to this section (2) may request and consider a Proposer's pricing policies and pricing Proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead, submitted with a Proposal.

(3) A Contracting Agency is not required to follow the procedures in Section (1) or Section (2) of this rule, when the Contracting Agency has established Price Agreements with more than one Consultant and is selecting a single Consultant to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services under an individual work order or task order. Provided, however, the criteria and procedures the Contracting Agency uses to select a single Consultant, when the Contracting Agency has established Price Agreements with more than one Consultant, must meet the requirements of OAR 137-048-0270 (Price Agreements).

(4) Contracting Agencies may use electronic methods to screen and select a Consultant in accordance with the procedures described in sections (1) and (2) of this rule. If a Contracting Agency uses electronic methods to screen and select a Consultant, the Contracting Agency shall first promulgate rules for conducting the screening and selection procedure by electronic means, substantially in conformance with OAR 137-047-0330 (Electronic Procurement).

(5) For purposes of these division 48 rules, a "mixed" Contract is one requiring the Consultant to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and also provide Related Services, other Services or other related Goods under the Contract. A Contracting Agency's classification of a procurement that will involve a "mixed" Contract will be determined by the predominant purpose of the Contract. A Contracting Agency will determine the predominant purpose of the Contract by determining which of the Services involves the majority of the total Estimated Fee to be paid under the Contract. If the majority of the total Estimated Fee to be paid under the Contract is for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, the Contracting Agency shall comply with the requirements of ORS 279C.110 and section (1) of this rule. If majority of the total Estimated Fee to be paid under the Contract is for Related Services, the Contracting Agency shall comply with the requirements of ORS 279C.120 and section (2) of this rule. If the majority of the total Estimated Fee to be paid under the Contract is for some other Services or Goods under the Public Contracting Code, the Contracting Agency shall comply with the applicable provisions of the Public Contracting Code and divisions 46, 47 and 49 of the Model Rules that match the predominant purpose of the Contract.

(6) In applying these rules, State Contracting Agencies shall support the state's goal of promoting a sustainable economy in the rural areas of the state.

(7) Consistent with the requirements of ORS 279C.107 and the remaining requirements of ORS 279C.100, 279C.105 and 279C.110 through 279C.125, the following provisions apply to Proposals received by a Contracting Agency for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services:

(a) The term "competitive proposal," for purposes of ORS 279C.107, includes Proposals under OAR 137-048-0200 (Direct Appointment Procedure), 137-048-0210 (Informal Selection Procedure), 137-048-0220 (Formal Selection Procedure) or 137-048-0130(2)(c) (selection based on price and qualifications) and any Proposals submitted in response to a selection process for a work order or task order under 137-048-0270 (Price Agreements).

(b) For purposes of Proposals received by a Contracting Agency under OAR 137-048-0200 (Direct Appointment Procedure), a formal notice of intent to award is not required. As a result, while a Contracting Agency may make Proposals under 137-048-0200 (Direct Appointment Procedure) open for public inspection following the Contracting Agency's decision to begin Contract negotiations with the selected Consultant, 137-048-0200 Proposals are not required to be open for public inspection until after the Contracting Agency has executed a Contract with the selected Consultant.

(c) In the limited circumstances permitted by ORS 279C.110, 279C.115 and 279C.120, where the Contracting Agency is conducting discussions or negotiations with Proposers who submit Proposals that the Contracting Agency has determined to be closely competitive or to have a reasonable chance of being selected for award, the Contracting Agency may open Proposals so as to avoid disclosure of Proposal contents to competing Proposers, consistent with the requirements of ORS 279C.107. Otherwise, Contracting Agencies may open Proposals in such a way as to avoid disclosure of the contents until after the Contracting Agency executes a Contract with the selected Consultant. If the Contracting Agency determines that it is in the best interest of the Contracting Agency to do so, the Contracting Agencies may make Proposals available for public inspection following the Contracting Agency's issuance of a notice of intent to award a Contract to a Consultant; and

(d) Disclosure of Proposals and Proposal information is otherwise governed by ORS 279C.107.

(8) As required by ORS 279C.307, pertaining to requirements to ensure the objectivity and independence of providers of certain Personal Services which are procured under ORS chapter 279C, Contracting Agencies may not:

(a) Procure the Personal Services identified in ORS 279C.307 from a Contractor or an affiliate of a Contractor who is a party to the Public Contract that is subject to administration, management, monitoring, inspection, evaluation or oversight by means of the Personal Services; or

(b) Procure the Personal Services identified in ORS 279C.307 through the Public Contract that is subject to administration, management, monitoring, inspection, evaluation or oversight by means of the Personal Services.

(9) The requirements of ORS 279C.307 and section (8) of this rule apply in the following circumstances, except as provided in section (10) of this rule:

(a) A Contracting Agency requires the Procurement of Personal Services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a Public Contract or performance under a Public Contract that is subject to ORS chapter 279C. A Public Contract that is "subject to ORS chapter 279C" includes a Public Contract for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, a Public Contract for Related Services or a Public Contract for construction services under ORS chapter 279C.

(b) The Procurements of Personal Services subject to the restrictions of ORS 279C.307 include, but are not limited to, the following:

(A) Procurements for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, which involve overseeing or monitoring the performance of a construction Contractor under a Public Contract for construction services subject to ORS chapter 279C;

(B) Procurements for commissioning services, which involve monitoring, inspecting, evaluating or otherwise overseeing the performance of a Contractor providing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or the performance of a construction Contractor under a Public Contract for construction services subject to ORS chapter 279C;

(C) Procurements for project management services, which involve administration, management, monitoring, inspecting, evaluating compliance with or otherwise overseeing the performance of a Contractor providing Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, construction services subject to ORS chapter 279C, commissioning services or other Related Services for a Project;

(D) Procurements for special inspections and testing services, which involve inspecting, testing or otherwise overseeing the performance of a construction Contractor under a Public Contract for construction services subject to ORS chapter 279C; and

(E) Procurements for other Related Services or Personal Services, which involve administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing the Public Contracts described in Section (9)(a) of this rule.

(10) The restrictions of ORS 279C.307 do not apply in the following circumstances, except as further specified below:

(a) To a Contracting Agency's Procurement of both design services and construction services through a single "Design-Build" Procurement, as that term is defined in OAR 137-049-0610. Such a Design-Build Procurement includes a Procurement under an Energy Savings Performance Contract, as defined in ORS 279A.010. Provided, however, the restrictions of ORS 279C.307 do apply to a Contracting Agency's Procurement of Personal Services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a Design-Build Contract or performance under such a Contract resulting from a Design-Build Procurement; and

(b) To a Contracting Agency's Procurement of both pre-construction services and construction services through a single Procurement of Construction Manager/General Contractor Services, as that term is defined in ORS 279C.332(3). Provided, however, the restrictions of ORS 279C.307 do apply to a Contracting Agency's Procurement of Personal Services for the purpose of administering, managing, monitoring, inspecting, evaluating compliance with or otherwise overseeing a Construction Manager/General Contractor Services Contract or performance under such a Contract resulting from a Procurement of Construction Manager/General Contractor Services.

Stat. Auth.: ORS 279A.065, OL 2011, ch 458

Stats. Implemented: ORS 279A.065, 279C.100-279C.125, OL 2009, ch. 880, sec. 11, OL 2011, ch 458

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12; DOJ 8-2012, f. 7-2-12, cert. ef. 8-1-12; DOJ 10-2014(Temp), f. & cert. ef. 7-1-14 thru 12-26-14; Administrative correction, 1-27-15; DOJ 2-2015, f. & cert. ef. 2-3-15

137-048-0210

Informal Selection Procedure

(1) Contracting Agencies may use the informal selection procedure described in this rule to obtain a Contract if the Estimated Fee is expected not to exceed $250,000.

(2) Contracting Agencies using the informal selection procedure on the basis of qualifications alone or, for Related Services, on the basis of price and qualifications shall:

(a) Create a request for Proposals ("RFP") that includes at a minimum the following:

(A) A description of the Project for which a Consultant's Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services are needed and a description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services that will be required under the resulting Contract;

(B) The anticipated Contract performance schedule;

(C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including construction services;

(D) The date and time Proposals are due and other directions for submitting Proposals;

(E) Criteria upon which the most qualified Consultant will be selected. Selection criteria may include, but are not limited to, the following:

(i) The amount and type of resources and number of experienced staff the Consultant has committed to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP within the applicable time limits, including the current and projected workloads of such staff and the proportion of time such staff would have available for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services;

(ii) Proposed management techniques for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP;

(iii) A Consultant's capability, experience and past performance history and record in providing similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services, including but not limited to quality of work, ability to meet schedules, cost control methods and Contract administration practices;

(iv) A Consultant's approach to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP and design philosophy, if applicable;

(v) A Consultant's geographic proximity to and familiarity with the physical location of the Project;

(vi) Volume of work, if any, previously awarded to a Consultant, with the objective of effecting equitable distribution of Contracts among qualified Consultants, provided such distribution does not violate the principle of selecting the most qualified Consultant for the type of professional services required;

(vii) A Consultant's ownership status and employment practices regarding women, minorities and emerging small businesses or historically underutilized businesses;

(viii) If the Contracting Agency is selecting a Consultant to provide Related Services, pricing policies and pricing proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead.

(F) A Statement that Proposers responding to the RFP do so solely at their expense, and Contracting Agency is not responsible for any Proposer expenses associated with the RFP;

(G) A statement directing Proposers to the protest procedures set forth in these Division 48 rules; and

(H) A sample form of the Contract.

(b) Provide an RFP to a minimum of five (5) prospective Consultants. If fewer than five (5) prospective Consultants are available, Contracting Agencies shall provide the RFP to all available prospective Consultants and shall maintain a written record of the Contracting Agencies' efforts to locate available prospective Consultants for the RFP. Contracting Agencies shall draw prospective Consultants from:

(A) The Contracting Agency's list of Consultants that is created and maintained under OAR 137-048-0120 (List of Interested Consultants; Performance Record);

(B) Another Contracting Agency's list of Consultants that is created and maintained under OAR 137-048-0120 (List of Interested Consultants; Performance Record); or

(C) All Consultants that the Contracting Agency reasonably can locate that offer the desired Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services, or any combination of the foregoing.

(c) Review and rank all Proposals received according to the criteria set forth in the RFP, and select the three highest ranked Proposers.

(3) Contracting Agencies using the informal selection procedure for Related Services on the basis of price Proposals and other pricing information alone shall:

(a) Create an RFP that includes at a minimum the following:

(A) A description of the Project for which a Consultant's Related Services are needed and a description of the Related Services that will be required under the resulting Contract;

(B) The anticipated Contract performance schedule;

(C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including construction services;

(D) The date and time Proposals are due and other directions for submitting Proposals;

(E) Any minimum or pass-fail qualifications that the Proposers must meet, including but not limited to any such qualifications in the subject matter areas described in section (2)(a)(E)(i) through section (2)(a)(E)(vii) of this rule that are related to the Related Services described in the RFP;

(F) Pricing criteria upon which the highest ranked Consultant will be selected. Pricing criteria may include, but are not limited to, the total price for the Related Services described in the RFP, Consultant pricing policies and other pricing information such as the Consultant's estimated number of staff hours needed to perform the Related Services described in the RFP, expenses, hourly rates and overhead;

(G) A statement directing Proposers to the protest procedures set forth in these Division 48 rules; and

(H) A sample form of the Contract.

(b) Provide the RFP to a minimum of five (5) prospective Consultants. If fewer than five (5) prospective Consultants are available, Contracting Agencies shall provide the RFP to all available prospective Consultants and shall maintain a written record of the Contracting Agencies' efforts to locate available prospective Consultants for the RFP. Contracting Agencies shall draw prospective Consultants from:

(A) The Contracting Agency's list of Consultants that is created and maintained under OAR 137-048-0120 (List of Interested Consultants; Performance Record);

(B) Another Contracting Agency's list of Consultants that is created and maintained under OAR 137-048-0120 (List of Interested Consultants; Performance Record); or

(C) All Consultants that the Contracting Agency reasonably can locate that offer the desired Related Services; and.

(c) Review and rank all responsive Proposals received, according to the total price for the Related Services described in the RFP, Consultant pricing policies and other pricing information requested in the RFP, including but not limited to the number of hours proposed for the Related Services required, expenses, hourly rates and overhead, and select the three highest-ranked Proposers.

(4) When the Estimated Fee in an informal selection procedure is expected not to exceed $150,000, the Contracting Agency is only required to provide the RFP under sections (2) and (3) of this rule to three (3) prospective Consultants. If fewer than three (3) prospective Consultants are available, the Contracting Agency shall provide the RFP to all available prospective Consultants and shall maintain a written record of the Contracting Agency's efforts to locate available prospective Consultants for the RFP.

(5) If the Contracting Agency does not cancel the RFP after it reviews the Proposals and ranks each Proposer, the Contracting Agency will begin negotiating a Contract with the highest ranked Proposer. The Contracting Agency shall direct Contract negotiations toward obtaining written agreement on the following:

(a) The Consultant's performance obligations and performance schedule;

(b) Payment methodology and a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the Contract that is fair and reasonable to the Contracting Agency as determined solely by the Contracting Agency, taking into account the value, scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services; and

(c) Any other provisions the Contracting Agency believes to be in the Contracting Agency's best interest to negotiate.

(6) The Contracting Agency shall, either orally or in writing, formally terminate negotiations with the highest ranked Proposer, if the Contracting Agency and the Proposer are unable for any reason to reach agreement on a Contract within a reasonable amount of time. The Contracting Agency may thereafter negotiate with the second ranked Proposer, and if necessary, with the third ranked Proposer, in accordance with section (4) of this rule, until negotiations result in a Contract. If negotiations with any of the top three Proposers do not result in a Contract within a reasonable amount of time, the Contracting Agency may end the particular informal solicitation and thereafter may proceed with a new informal solicitation under this rule or proceed with a formal solicitation under OAR 137-048-0220 (Formal Selection Procedure).

(7) The Contracting Agency shall terminate the informal selection procedure and proceed with the formal selection procedure under OAR 137-048-0220 if the scope of the anticipated Contract is revised during negotiations so that the Estimated Fee will exceed $250,000.

Stat. Auth.: ORS 279A.065, OL 2011, ch 458

Stats. Implemented: ORS 279C.110, OL 2011, ch 458

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12; DOJ 10-2014(Temp), f. & cert. ef. 7-1-14 thru 12-26-14; Administrative correction, 1-27-15; DOJ 2-2015, f. & cert. ef. 2-3-15

137-048-0220

Formal Selection Procedure

(1) Subject to OAR 137-048-0130 (Applicable Selection Procedures; Pricing Information; Disclosure of Proposals), Contracting Agencies shall use the formal selection procedure described in this rule to select a Consultant if the Consultant cannot be selected under either 137-048-0200 (Direct Appointment Procedure) or under 137-048-0210 (Informal Selection Procedure). The formal selection procedure described in this rule may otherwise be used at Contracting Agencies' discretion.

(2) Contracting Agencies using the formal selection procedure shall obtain Contracts through public advertisement of RFPs, or Requests for Qualifications followed by RFPs.

(a) Except as provided in subsection (b) of this section, a Contracting Agency shall advertise each RFP and RFQ at least once in at least one newspaper of general circulation in the area where the Project is located and in as many other issues and publications as may be necessary or desirable to achieve adequate competition. Other issues and publications may include, but are not limited to, local newspapers, trade journals, and publications targeted to reach the minority, women and emerging small business enterprise audiences.

(A) A Contracting Agency shall publish the advertisement within a reasonable time before the deadline for the Proposal submission or response to the RFQ or RFP, but in any event no fewer than fourteen (14) calendar days before the closing date set forth in the RFQ or RFP.

(B) A Contracting Agency shall include a brief description of the following items in the advertisement:

(i) The Project;

(ii) A description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services the Contracting Agency seeks;

(iii) How and where Consultants may obtain a copy of the RFQ or RFP; and

(iv) The deadline for submitting a Proposal or response to the RFQ or RFP.

(b) In the alternative to advertising in a newspaper as described in subsection (2)(a) of this rule, the Contracting Agency shall publish each RFP and RFQ by one or more of the electronic methods identified in OAR 137-046-0110(14). The Contracting Agency shall comply with subsections (2)(a)(A) and (2)(a)(B) of this rule when publishing advertisements by electronic methods.

(c) A Contracting Agency may send notice of the RFP or RFQ directly to all Consultants on the Contracting Agency's list of Consultants that is created and maintained under OAR 137-048-0120 (List of Interested Consultants; Performance Record).

(3) Request for Qualifications Procedure. Contracting Agencies may use the RFQ procedure to evaluate potential Consultants and establish a short list of qualified Consultants to whom the Contracting Agency may issue an RFP for some or all of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ.

(a) A Contracting Agency shall include the following, at a minimum, in each RFQ:

(A) A brief description of the Project for which the Contracting Agency is seeking a Consultant;

(B) A description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services the Contracting Agency seeks for the Project;

(C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including but not limited to construction services;

(D) The deadline for submitting a response to the RFQ;

(E) A description of required Consultant qualifications for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services the Contracting Agency seeks;

(F) The RFQ evaluation criteria, including weights, points or other classifications applicable to each criterion;

(G) A statement whether or not the Contracting Agency will hold a pre-qualification meeting for all interested Consultants to discuss the Project and the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ and if a pre-qualification meeting will be held, the location of the meeting and whether or not attendance is mandatory; and

(H) A Statement that Consultants responding to the RFQ do so solely at their expense, and that the Contracting Agency is not responsible for any Consultant expenses associated with the RFQ.

(b) A Contracting Agency may include a request for any or all of the following in each RFQ:

(A) A statement describing Consultants' general qualifications and related performance information;

(B) A description of Consultants' specific qualifications to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ including Consultants' committed resources and recent, current and projected workloads;

(C) A list of similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services and references concerning past performance, including but not limited to price and cost data from previous projects, quality of work, ability to meet schedules, cost control and contract administration;

(D) A copy of all records, if any, of Consultants' performance under Contracts with any other Contracting Agency;

(E) The number of Consultants' experienced staff committed to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ, including such personnel's specific qualifications and experience and an estimate of the proportion of time that such personnel would spend on those services;

(F) Consultants' approaches to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ and design philosophy, if applicable;

(G) Consultants' geographic proximity to and familiarity with the physical location of the Project;

(H) Consultants' Ownership status and employment practices regarding women, minorities and emerging small businesses or historically underutilized businesses;

(I) If the Contracting Agency is selecting a Consultant to provide Related Services, Consultants' pricing policies and pricing Proposals or other pricing information, including the number of hours estimated for the services required, expenses, hourly rates and overhead;

(J) Consultants' ability to assist a State Contracting Agency in complying with art acquisition requirements, pursuant to ORS 276.073 through 276.090;

(K) Consultants' ability to assist a State Contracting Agency in complying with State of Oregon energy efficient design requirements, pursuant to ORS 276.900 through 276.915;

(L) Consultants' ability to assist a Contracting Agency in complying with the energy technology requirements of ORS 279C.527 and 279C.528; and

(M) Any other information the Contracting Agency deems reasonably necessary to evaluate Consultants' qualifications.

(c) RFQ Evaluation Committee. The Contracting Agency shall establish an RFQ evaluation committee of at least two (2) individuals to review, score and rank the responding Consultants according to the evaluation criteria. The Contracting Agency may appoint to the evaluation committee Contracting Agency employees or employees of other public agencies with experience in Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, Related Services, construction services or Public Contracting. If the Contracting Agency procedure permits, the Contracting Agency may include on the evaluation committee private practitioners of architecture, engineering, photogrammetry, transportation planning, land surveying or related professions. The Contracting Agency shall designate one member of the evaluation committee as the evaluation committee chairperson.

(d) A Contracting Agency may use any reasonable screening or evaluation method to establish a short list of qualified Consultants, including but not limited to, the following:

(A) Requiring Consultants responding to an RFQ to achieve a threshold score before qualifying for placement on the short list;

(B) Placing a pre-determined number of the highest scoring Consultants on a short list;

(C) Placing on a short list only those Consultants with certain essential qualifications or experience, whose practice is limited to a particular subject area, or who practice in a particular geographic locale or region, provided that such factors are material, would not unduly restrict competition, and were announced as dispositive in the RFQ.

(e) After the evaluation committee reviews, scores and ranks the responding Consultants, the Contracting Agency shall establish a short list of at least three qualified Consultants, if feasible; provided however, if four or fewer Consultants responded to the RFQ or if fewer than three Consultants fail to meet the Contracting Agency's minimum requirements, then:

(A) The Contracting Agency may establish a short list of fewer than three qualified Consultants; or

(B) The Contracting Agency may cancel the RFQ and issue an RFP.

(f) No Consultant will be eligible for placement on a Contracting Agency's short list established under subsection (3)(d) of this rule if Consultant or any of Consultant's principals, partners or associates are members of the Contracting Agency's RFQ evaluation committee.

(g) Except when the RFQ is cancelled, a Contracting Agency shall provide a copy of the subsequent RFP to each Consultant on the short list.

(4) Formal Selection of Consultants Through Request for Proposals. Contracting Agencies shall use the procedure described in section (4) of this rule when issuing an RFP for a Contract described in section (1) of this rule.

(a) RFP Required Contents. Contracting Agencies using the formal selection procedure shall include at least the following in each RFP, whether or not the RFP is preceded by an RFQ:

(A) General background information, including a description of the Project and the specific Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services sought for the Project, the estimated Project cost, the estimated time period during which the Project is to be completed, and the estimated time period in which the specific Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services sought will be performed;

(B) The RFP evaluation process and the criteria which will be used to select the most qualified Proposer, including the weights, points or other classifications applicable to each criterion. If the Contracting Agency does not indicate the applicable number of points, weights or other classifications, then each criterion is of equal value. Evaluation criteria may include, but are not limited to, the following:

(i) Proposers' availability and capability to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP;

(ii) Experience of Proposers' key staff persons in providing similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services on comparable projects;

(iii) The amount and type of resources, and number of experienced staff persons Proposers have committed to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP;

(iv) The recent, current and projected workloads of the staff and resources referenced in section (4)(a)(B)(iii), above;

(v) The proportion of time Proposers estimate that the staff referenced in section (4)(a)(B)(iii), above, would spend on the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP;

(vi) Proposers' demonstrated ability to complete successfully similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services on time and within budget, including whether or not there is a record of satisfactory performance under OAR 137-048-0120 (List of Interested Consultants; Performance Record);

(vii) References and recommendations from past clients;

(viii) Proposers' performance history in meeting deadlines, submitting accurate estimates, producing high quality work, meeting financial obligations, price and cost data from previous projects, cost controls and contract administration;

(ix) Status and quality of any required license or certification;

(x) Proposers' knowledge and understanding of the Project and Architectural, Engineering and Land Surveying Services or Related Services described in the RFP as shown in Proposers' approaches to staffing and scheduling needs for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services and proposed solutions to any perceived design and constructability issues;

(xi) Results from interviews, if conducted;

(xii) Design philosophy, if applicable, and approach to the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP;

(xiii) If the Contracting Agency is selecting a Consultant to provide Related Services, pricing policies and pricing Proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead; and

(xiv) Any other criteria that the Contracting Agency deems relevant to the Project and the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP, including, where the nature and budget of the Project so warrant, a design competition between competing Proposers. Provided, however, these additional criteria cannot include pricing policies, pricing Proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead, when the sole purpose or predominant purpose of the RFP is to obtain Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services.

(C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including but not limited to construction services;

(D) Whether interviews are possible and if so, the weight, points or other classifications applicable to the potential interview;

(E) The date and time Proposals are due, and the delivery location for Proposals;

(F) Reservation of the right to seek clarifications of each Proposal;

(G) Reservation of the right to negotiate a final Contract that is in the best interest of the Contracting Agency;

(H) Reservation of the right to reject any or all Proposals and reservation of the right to cancel the RFP at any time if doing either would be in the public interest as determined by the Contracting Agency;

(I) A Statement that Proposers responding to the RFP do so solely at their expense, and Contracting Agency is not responsible for any Proposer expenses associated with the RFP;

(J) A statement directing Proposers to the protest procedures set forth in these division 48 rules;

(K) Special Contract requirements, including but not limited to disadvantaged business enterprise ("DBE"), minority business enterprise ("MBE"), women business enterprise ("WBE") and emerging small business enterprise ("ESB") participation goals or good faith efforts with respect to DBE, MBE, WBE and ESB participation, and federal requirements when federal funds are involved;

(L) A statement whether or not the Contracting Agency will hold a pre-Proposal meeting for all interested Consultants to discuss the Project and the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP and if a pre- Proposal meeting will be held, the location of the meeting and whether or not attendance is mandatory;

(M) A request for any information the Contracting Agency deems reasonably necessary to permit the Contracting Agency to evaluate, rank and select the most qualified Proposer to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP; and

(N) A sample form of the Contract.

(b) RFP Contents for Related Services Selections Based on Price Only. Contracting Agencies using the formal selection procedure shall include at least the following in each RFP, whether or not the RFP is preceded by an RFQ, when the formal selection procedure is for Related Services selected on the basis of price Proposals and other pricing information only:

(A) General background information, including a description of the Project and the specific Related Services sought for the Project, the estimated Project cost, the estimated time period during which the Project is to be completed, and the estimated time period in which the specific Related Services sought will be performed;

(B) The RFP evaluation process and the price criteria which will be used to select the highest ranked Proposer, including the weights, points or other classifications applicable to each criterion. If the Contracting Agency does not indicate the applicable number of points, weights or other classifications, then each criterion is of equal value. Evaluation price criteria may include, but are not limited to, the total price for the Related Services described in the RFP, Consultant pricing policies, and other pricing information such as the Consultant's estimated number of staff hours needed to perform the Related Services described in the RFP, expenses, hourly rates and overhead;

(C) Any minimum or pass-fail qualifications that the Proposers must meet, including but not limited to any such qualifications in the subject matter areas described in section (4)(a)(B)(i) through section (4)(a)(B)(xii) of this rule; and

(D) The information listed in section (4)(a)(C) through section (4)(a)(N) of this rule pertaining to the Related Services described in the RFP.

(c) RFP Evaluation Committee. The Contracting Agency shall establish a committee of at least three individuals to review, score and rank Proposals according to the evaluation criteria set forth in the RFP. If the RFP has followed an RFQ, the Contracting Agency may include the same members who served on the RFQ evaluation committee. The Contracting Agency may appoint to the evaluation committee Contracting Agency employees or employees of other public agencies with experience in Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying, Related Services, construction services or Public Contracting. At least one member of the evaluation committee must be a Contracting Agency employee. If the Contracting Agency procedure permits, the Contracting Agency may include on the evaluation committee private practitioners of architecture, engineering, land surveying or related professions. The Contracting Agency shall designate one of its employees who also is a member of the evaluation committee as the evaluation committee chairperson.

(A) No Proposer will be eligible for award of the Contract under the RFP if Proposer or any of Proposer's principals, partners or associates are members of the Contracting Agency's RFP evaluation committee for the Contract;

(B) If the RFP provides for the possibility of Proposer interviews, the evaluation committee may elect to interview Proposers if the evaluation committee considers it necessary or desirable. If the evaluation committee conducts interviews, it shall award weights, points or other classifications indicated in the RFP for the anticipated interview; and

(C) The evaluation committee shall provide to the Contracting Agency the results of the scoring and ranking for each Proposer.

(d) If the Contracting Agency does not cancel the RFP after it receives the results of the scoring and ranking for each Proposer, the Contracting Agency will begin negotiating a Contract with the highest ranked Proposer. The Contracting Agency shall direct negotiations toward obtaining written agreement on:

(A) The Consultant's performance obligations and performance schedule;

(B) Payment methodology and a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the Contract that is fair and reasonable to the Contracting Agency as determined solely by the Contracting Agency, taking into account the value, scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services; and

(C) Any other provisions the Contracting Agency believes to be in the Contracting Agency's best interest to negotiate.

(e) The Contracting Agency shall, either orally or in writing, formally terminate negotiations with the highest ranked Proposer if the Contracting Agency and Proposer are unable for any reason to reach agreement on a Contract within a reasonable amount of time. The Contracting Agency may thereafter negotiate with the second ranked Proposer, and if necessary, with the third ranked Proposer, and so on, in accordance with section (4)(c) of this rule, until negotiations result in a Contract. If negotiations with any Proposer do not result in a Contract within a reasonable amount of time, the Contracting Agency may end the particular formal solicitation. Nothing in this rule precludes a Contracting Agency from proceeding with a new formal solicitation for the same Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP that failed to result in a Contract.

Stat. Auth.: ORS 279A.065, OL 2011, ch 458
Stats. Implemented: ORS 279C.110, 279C.527, OL 2011, ch 458
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12; DOJ 8-2012, f. 7-2-12, cert. ef. 8-1-12; DOJ 10-2014(Temp), f. & cert. ef. 7-1-14 thru 12-26-14; Administrative correction, 1-27-15; DOJ 2-2015, f. & cert. ef. 2-3-15

137-049-0100
Application

(1) These division 49 rules apply to Public Improvement Contracts as well as Public Contracts for ordinary construction Services that are not Public Improvements. Model Rules that apply specifically to Public Improvement Contracts are so identified. These division 49 rules apply to Contracts for Construction Manager/General Contractor Services, whether the initial Contract between the parties includes both pre-construction services and construction services, or only contains pre-construction services, since the underlying procurement for Construction Manager/General Contractor Services authorizes Contracting Agencies to enter into Contracts for both pre-construction and construction services.

(2) These division 49 rules address matters covered in ORS Chapter 279C (with the exception of Architectural, Engineering, Land Surveying and Related Services, all of which are addressed in division 48 of the Model Rules).

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 10-2014(Temp), f. & cert. ef. 7-1-14 thru 12-26-14; Administrative correction, 1-27-15; DOJ 2-2015, f. & cert. ef. 2-3-15

137-049-0120
Definitions

(1) "Conduct Disqualification" means a Disqualification pursuant to ORS 279C.440.

(2) "Disqualification" means the preclusion of a Person from contracting with a Contracting Agency for a period of time in accordance with OAR 137-049-0370. Disqualification may be a Conduct Disqualification or DBE Disqualification.

(3) "Foreign Contractor" means a Contractor that is not domiciled in or registered to do business in the State of Oregon. See OAR 137-049-0480.

(4) "Notice" means any of the alternative forms of public announcement of Procurements, as described in OAR 137-049-0210.

(5) "Work" means the furnishing of all services, materials, equipment, labor and incidentals necessary to successfully complete any individual item or the entire Contract and the carrying out and completion of all duties and obligations imposed by the Contract.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 10-2014(Temp), f. & cert. ef. 7-1-14 thru 12-26-14; Administrative correction, 1-27-15; DOJ 2-2015, f. & cert. ef. 2-3-15

137-049-0130
Competitive Bidding Requirement

A Contracting Agency shall solicit Bids for Public Improvement Contracts by Invitation to Bid ("ITB"), except as otherwise allowed or required pursuant to ORS 279C.335 on competitive bidding exceptions and exemptions, 279A.030 on federal law overrides or 279A.100 on affirmative action. Also see OAR 137-049-0600 to 137-049-0690 regarding the use of Alternative Contracting Methods, use of Alternative Contracting Methods for projects which are excepted or exempt from the competitive bidding process, use of Alternative Contracting Methods within the competitive bidding process and the process for obtaining an exemption from competitive bidding requirements.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.335
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 10-2014(Temp), f. & cert. ef. 7-1-14 thru 12-26-14; Administrative correction, 1-27-15; DOJ 2-2015, f. & cert. ef. 2-3-15

137-049-0380
Bid or Proposal Evaluation Criteria

(1) General. A Public Improvement Contract, if Awarded, must be Awarded to the Responsible Bidder submitting the lowest Responsive Bid, or to the Responsible Proposer submitting the best Responsive Proposal. (See OAR 137-049-0390, and Rules for Alternative Contracting Methods at 137-049-0600 to 137-049-0690.)

(2) Bid Evaluation Criteria. Invitations to Bid may solicit lump-sum Offers, unit-price Offers or a combination of the two.

(a) Lump Sum. If the ITB requires a lump-sum Bid, without additive or deductive alternates, or if the Contracting Agency elects not to award additive or deductive alternates, Bids must be compared on the basis of lump-sum prices, or lump-sum base Bid prices, as applicable. If the ITB calls for a lump-sum base Bid, plus additive or deductive alternates, the total Bid price must be calculated by adding to or deducting from the base Bid those alternates selected by the Contracting Agency, for the purpose of comparing Bids.

(b) Unit Price. If the Bid includes unit pricing for estimated quantities, the total Bid price must be calculated by multiplying the estimated quantities by the unit prices submitted by the Bidder, and adjusting for any additive or deductive alternates selected by the Contracting Agency, for the purpose of comparing Bids. Contracting Agencies shall specify within the Solicitation Document the estimated quantity of the procurement to be used for determination of the low Bidder. In the event of mathematical discrepancies between unit price and any extended price calculations submitted by the Bidder, the unit price governs. (See OAR 137-049-0350(2)(b).)

(3) Proposal Evaluation Criteria. If the Contracting Agency's Contract Review Authority has exempted the Procurement of a Public Improvement from the competitive bidding requirements of ORS 279C.335(1), and has directed the Contracting Agency to use an Alternative Contracting Method under 279C.335(4), the Contracting Agency shall set forth the evaluation criteria in the Solicitation Documents. (See OAR 137-049-0640, 137-049-0650, 137-049-0670, 137-049-0690, ORS 279C.335 and 279C.405.)

Stat. Auth.: ORS 279A.065, OL 2011, ch 458
Stats. Implemented: ORS 279C.335, OL 2011, ch 458
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12; DOJ 10-2014(Temp), f. & cert. ef. 7-1-14 thru 12-26-14; Administrative correction, 1-27-15; DOJ 2-2015, f. & cert. ef. 2-3-15

137-049-0600
Purpose

OAR 137-049-0600 to 137-049-0690 are intended to provide guidance to Contracting Agencies regarding the use of Alternative Contracting Methods for Public Improvement Contracts, as may be directed by a Contracting Agency's Contract Review Authority under ORS 279C.335. These Alternative Contracting Methods include, but are not limited to, the following forms of contracting: Design-Build, Energy Savings Performance Contract and the Construction Manager/General Contractor Method. To the extent any such Alternative Contracting Methods are utilized within the competitive bidding process set forth in 279C.335(1), these OAR 137-049-0600 to 137-049-0690 rules are advisory only and may be used or referred to by a Contracting Agency in whole, in part or not at all, within the discretion of the Contracting Agency. As to ESPC contracting, these 137-049-0600 to 137-049-0690 rules implement the requirements of ORS 279C.335 pertaining to the adoption of Model Rules appropriate for use by all Contracting Agencies to govern the procedures for entering into ESPCs. As to contracting for Construction Manager/General Contractor Services requiring an exemption from competitive bidding under 279C.335(2) , OAR 137-049-0600 to 137-049-0690 include mandatory and optional provisions pertaining to the procurement of Construction Manager/General Contractor Services, pursuant to the requirements of ORS 279C.337.

Stat. Auth.: ORS 279C.335, 279A.065 & 351.086
Stats. Implemented: ORS 279C.335, 279C.337, 279A.065 & 351.086
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 10-2014(Temp), f. & cert. ef. 7-1-14 thru 12-26-14; Administrative correction, 1-27-15; DOJ 2-2015, f. & cert. ef. 2-3-15

137-049-0610
Definitions for Alternative Contracting Methods

The following definitions shall apply to these OAR 137-049-0600 to 137-049-0690 rules, unless the context requires otherwise:

(1) Affiliate has the meaning set forth in ORS 279C.332(1).

(2) Alternative Contracting Methods means innovative techniques for procuring or performing Public Improvement Contracts, utilizing processes other than the traditional methods involved in the design-bid-build construction contracting method (with Award of a Public Improvement Contract based solely on price, in which a final design is issued with formal Bid documents, construction Work is obtained by sealed Bid Awarded to the Responsible Bidder submitting the lowest Responsive Bid, and the project is built in accordance with those documents). In industry practice, such methods commonly include variations of Design-Build contracting, CM/GC forms of contracting and ESPCs, which are specifically addressed in these OAR 137-049-0600 to 137-049-0690 rules. These methods also include other developing techniques, which include but are not limited to general "performance contracting," "cost plus time" contracting (as more particularly described in ORS 279C.332(3)(b)(D)(iii)(I)) and "qualifications plus project approach" contracting (as more particularly described in ORS 279C.332(3)(b)(D)(iii)(II)). Procedural requirements for these methods are identified in these OAR 137-049-0600 to 137-049-0690 rules, when a Contracting Agency uses an Alternative Contracting Method in a procurement that requires an exemption from competitive bidding under ORS 279C.335(2) or in an ESPC procurement that is excepted from competitive bidding under ORS 279.335(1).

(3) Construction Manager/General Contractor (or "CM/GC") has the meaning set forth in ORS 279C.332(2).

(4) Construction Manager/General Contractor Method (or "CM/GC Method") means the Alternative Contracting Method which involves a Contracting Agency's selection of a CM/GC to perform CM/GC Services for a project or projects.

(5) Construction Manager/General Contractor Services (or "CM/GC Services") has the meaning set forth in ORS 279C.332(3).

(6) Design-Build means a form of Procurement that results in a Public Improvement Contract in which the construction Contractor also provides or obtains specified design services, participates on the project team with the Contracting Agency, and manages both design and construction. In this form of Contract, a single Person provides the Contracting Agency with all of the Personal Services and construction Work necessary to both design and construct the project.

(7) Early Work means construction services, construction materials and other Work authorized by the parties to be performed under the CM/GC Contract in advance of the establishment of the GMP, fixed price or other maximum, not-to-exceed price for the project. Permissible Early Work shall be limited to early procurement of materials and supplies, early release of bid or proposal packages for site development and related activities, and any other advance Work related to important components of the project for

which performance prior to establishment of the GMP will materially and positively affect the development or completion of the project.

(8) Energy Conservation Measures (or "ECMs") (also known as "energy efficiency measures") means, as used in ESPC Procurement, any equipment, fixture or furnishing to be added to or used in an existing building or structure, and any repair, alteration or improvement to an existing building or structure that is designed to reduce energy consumption and related costs, including those costs related to electrical energy, thermal energy, water consumption, waste disposal, and future contract-labor costs and materials costs associated with maintenance of the building or structure. For purposes of these OAR 137-049-0600 to 137-049-0690 rules, use of either or both of the terms "building" or "structure" shall be deemed to include existing energy, water and waste disposal systems connected or related to or otherwise used for the building or structure when such system(s) are included in the project, either as part of the project together with the building or structure, or when such system(s) are the focus of the project. Maintenance services are not Energy Conservation Measures, for purposes of these 137-049-0600 to 137-049-0690 rules.

(9) Energy Savings Guarantee means the energy savings and performance guarantee provided by the ESCO under an ESPC Procurement, which guarantees to the Contracting Agency that certain energy savings and performance will be achieved for the project covered by the RFP, through the installation and implementation of the agreed-upon ECMs for the project. The Energy Savings Guarantee shall include, but shall not be limited to, the specific energy savings and performance levels and amounts that will be guaranteed, provisions related to the financial remedies available to the Contracting Agency in the event the guaranteed savings and performance are not achieved, the specific conditions under which the ESCO will guarantee energy savings and performance (including the specific responsibilities of the Contracting Agency after final completion of the design and construction phase), and the term of the energy savings and performance guarantee.

(10) Energy Savings Performance Contract (or "ESPC") means a Public Improvement Contract between a Contracting 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.

(11) General Conditions Work (or "GC Work") means a general grouping of project Work required to support construction operations on the project that is not included within the Contractor's overhead or fee.

(12) Guaranteed Maximum Price (or "GMP") has the meaning set forth in ORS 279C.332(4), pertaining to procurements for CM/GC Services. For Alternative Contracting Methods other than the CM/GC Method, "Guaranteed Maximum Price" or "GMP" means the total maximum price provided to the Contracting Agency by the Contractor and accepted by the Contracting Agency that includes all reimbursable costs and fees for completion of the Contract Work and any particularly identified contingency amounts, as defined by the Public Improvement Contract.

(13) Measurement and Verification (or "M & V") means, as used in ESPC Procurement, the examination of installed ECMs using the International Performance Measurement and Verification Protocol ("IPMVP"), or any other comparable protocol or process, to monitor and verify the operation of energy-using systems pre-installation and post-installation.

(14) Project Development Plan means a secondary phase of Personal Services and Work performed by an ESCO in an ESPC Procurement when the ESCO performs more extensive design of the agreed-upon ECMs for the project, provides the detailed provisions of the ESCO's Energy Savings Guarantee that the fully installed and commissioned ECMs will achieve a particular energy savings level for the building or structure, and prepares an overall report or plan summarizing the ESCO's Work during this secondary phase of the Work and otherwise explaining how the agreed-upon ECMs will be implemented during the design and construction phase of the Work; The term "Project Development Plan" can also refer to the report or plan provided by the ESCO at the conclusion of this phase of the Work.

(15) Qualified Energy Service Company (or "ESCO") means, as used in ESPC Procurement, a company, firm or other legal Person with the following characteristics: demonstrated technical, operational, financial and managerial capabilities to design, install, construct, commission, manage, measure and verify, and otherwise implement Energy Conservation Measures and other Work on building systems or building components that are directly related to the ECMs in existing buildings and structures; a prior record of successfully performing ESPCs on projects involving existing buildings and structures that are comparable to the project under consideration by the Contracting Agency; and the financial strength to effectively guarantee energy savings and performance under the ESPC for the project in question, or the ability to secure necessary financial measures to effectively guarantee energy savings under an ESPC for that project.

(16) Savings has the meaning set forth in ORS 279C.337(4), pertaining to CM/GC Services procurements. For other Alternative Contracting Methods, "Savings" means a positive difference between a Guaranteed Maximum Price or other maximum not-to-exceed price set forth in a Public Improvement Contract and the actual cost of the Contractor's performance of the Contract Work payable by the Contracting Agency under the terms of the Contract, including costs for which a Contracting Agency reimburses a Contractor and fees, profits or other payments the Contractor earns.

(17) Technical Energy Audit means, as used in ESPC Procurement, the initial phase of Personal Services to be performed by an ESCO that includes a detailed evaluation of an existing building or structure, an evaluation of the potential ECMs that could be effectively utilized at the facility, and preparation of a report to the Contracting Agency of the ESCO's Findings during this initial phase of the Work; the term "Technical Energy Audit" can also refer to the report provided by the ESCO at the conclusion of this phase of the Work.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.332, 279C.335 & 279A.065
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 10-2014(Temp), f. & cert. ef. 7-1-14 thru 12-26-14; Administrative correction, 1-27-15; DOJ 2-2015, f. & cert. ef. 2-3-15

137-049-0620
Use of Alternative Contracting Methods

(1) Competitive Bidding Exemptions. ORS Chapter 279C requires a competitive bidding process for Public Improvement Contracts, unless a statutory exception applies, a class of Contracts has been exempted from the competitive bidding process, or an individual Contract has been exempted from the competitive bidding process, in accordance with 279C.335 and any applicable Contracting Agency administrative rules. Use of Alternative Contracting Methods may be directed by the Contracting Agency if that use is within the competitive bidding process, if feasible, or through an available statutory exception to the competitive bidding process. Use of Alternative Contracting Methods must be directed through a Contracting Agency's Contract Review Authority, however, when use of the Alternative Contracting Method requires an exemption to the prescribed competitive bidding requirement of 279C.335. In any of these circumstances, use of Alternative Contracting Methods must be justified in accordance with any applicable Code and Contracting Agency requirements and, if required, these OAR 137-049-0600 to 137-049-0690 rules. See 137-049-0630 regarding required Findings and restrictions on exemptions from the competitive bidding requirement under ORS 279C.335.

(2) Energy Savings Performance Contracts. ESPCs are excepted from the competitive bidding requirements for Public Improvement Contracts pursuant to ORS 279C.335(1)(f), if the Contracting Agency complies with the procedures set forth in OAR 137-049-0600 to 137-049-0690 or parallel administrative rules meeting the requirements of ORS 279A.065 related to the solicitation, negotiation and contracting for ESPC Work. If those procedures are not followed, an ESPC procurement may still be exempted from competitive bidding requirements by following the general exemption procedures within 279C.335.

(3) Post-Project Evaluation. ORS 279C.355 requires that the Contracting Agency prepare a formal post-project evaluation of Public Improvement projects in excess of $100,000 when the Contracting Agency does not use the competitive bidding process required by 279C.335. The purpose of this evaluation is to determine whether it was actually in the Contracting Agency's best interest to use an Alternative Contracting Method outside the competitive bidding process. The evaluation must be delivered to the Contracting Agency's Contract Review Authority within 30 Days of the date the Contracting Agency "accepts" the Public Improvement project, which event is typically defined in the Contract. In the absence of such definition, acceptance of the Project occurs on the later of the date of final payment or the date of final completion of the Contract Work. ORS 279C.355 describes the timing and content of this evaluation, with three required elements:

(a) Financial information, consisting of cost estimates, any Guaranteed Maximum Price, changes and actual costs;

(b) A narrative description of successes and failures during design, engineering and construction; and

(c) An objective assessment of the use of the Alternative Contracting Method as compared to the exemption Findings.

Stat. Auth.: ORS 279C.335 & 279A.065
Stats. Implemented: ORS 279C.335, 279A.065, 279C.355 & 351.086

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 10-2014(Temp), f. & cert. ef. 7-1-14 thru 12-26-14; Administrative correction, 1-27-15; DOJ 2-2015, f. & cert. ef. 2-3-15

137-049-0630
Findings, Notice and Hearing

(1) Cost Savings and Other Substantial Benefits Factors. When Findings are required under ORS 279C.335 to exempt a Contract or class of Contracts from the competitive bidding requirements, the "substantial cost savings and other substantial benefits" criteria at 279C.335(2)(b) require consideration of the type, cost and amount of the Contract and, to the extent applicable, the other factors set forth in 279C.335(2)(b). If a particular factor has no application whatsoever to the particular Public Improvement Contract or class of Public Improvement Contracts, the Director of the Oregon Department of Administrative Services, the Director of Transportation or the local contract review board does not need to consider that factor, and the Contracting Agency is not required to address the factor, other than to explain why the factor has no application whatsoever to the particular Public Improvement Contract or class of Public Improvement Contracts..

(2) Required Information. The statutory definition of "Findings" at ORS 279C.330(2), which applies to exemptions from competitive bidding under ORS 279C.335, means the justification for a Contracting Agency or State Agency conclusion regarding the factors listed in both ORS 279C.335(2)(a) and 279C.335(2)(b) or, in the alternative, both 279C.335(2)(a) and 279C.335(2)(c). For an exemption granted by the Director of the Oregon Department of Administrative Services or the Director of Transportation under ORS 279C.350 by order, however, the order must also include the findings listed in ORS 279C.330(1).

(3) Addressing Cost Savings. Accordingly, when the Contract or class of Contracts under consideration for an exemption contemplates the use of Alternative Contracting Methods, the "substantial cost savings and other substantial benefits" requirement may be addressed by a combination of:

(a) Specified Findings that address the factors and other information specifically identified by statute, including, but not limited to, an analysis or reasonable forecast of present and future cost savings and other substantial benefits; and

(b) Additional Findings that address industry practices, surveys, trends, past experiences, evaluations of completed projects required by ORS 279C.355 and related information regarding the expected benefits and drawbacks of particular Alternative Contracting Methods. To the extent practicable, such Findings shall relate back to the specific characteristics of the project or projects at issue in the exemption request.

(c) As an alternative to the "substantial cost savings and other substantial benefits" requirement in ORS 279C.335(2)(b), if an Alternative Contracting Method has not been previously used, the Contracting Agency or State Agency may make a Finding that identifies the project as a "pilot project" under ORS 279C.335(2)(c). Nevertheless, the Contracting Agency or State Agency must still make the findings required in ORS 279C.335(2)(a).

(4) Favoritism and Competition. The criteria at ORS 279C.335(2)(a) that the exemption "is unlikely to encourage favoritism" or "substantially diminish competition" may be addressed in contemplating the use of Alternative Contracting Methods by specifying the manner in which an RFP process will be utilized, that the Procurement will be formally advertised with public notice and disclosure of the planned Alternative Contracting Method, competition will be encouraged, Award made based upon identified selection criteria and an opportunity to protest that Award.

(5) Descriptions. Findings supporting a competitive bidding exemption must describe with specificity any Alternative Contracting Method to be used in lieu of competitive bidding, including, but not limited to, whether a one-step (request for Proposals), two-step (beginning with a Request for Qualifications, followed by a request for Proposals) or other solicitation process will be utilized. The Findings may also describe anticipated characteristics or features of the resulting Public Improvement Contract. However, the purpose of an exemption from competitive bidding is limited to a determination of the Procurement method. Any unnecessary or incidental descriptions of the specific details of the anticipated Contract within the supporting Findings are not binding upon the Contracting Agency. The parameters of the Public Improvement Contract are those characteristics or specifics that are announced in the Solicitation Document.

(6) Class Exemptions. In making the findings supporting a class exemption the Contracting Agency shall clearly identify the "class" with respect to its defining characteristics, pursuant to the requirements of ORS 279C.335(3). The class must meet the following requirements:

(a) The class cannot be based on a single characteristic or factor, so that an Agency directly or indirectly creates a class whereby the Agency uses, for example, the CM/GC Method for all Agency construction projects or all Agency construction projects over a particular dollar amount, unidentified future Agency construction projects of a particular work category, or all Agency construction projects from a particular funding source such as the sale of bonds; and

(b) The class must include a combination of factors, be defined by the Agency through characteristics that reasonably relate to the exemption criteria set forth in ORS 279C.335(2) and must reflect a detailed evaluation of those characteristics so that the class is defined in a limited way that effectively meets the Agency's objectives while allowing for impartial and open competition, and protecting the integrity of the exemption process. An example of a class that might be permitted under the statute is a series of projects, such as a specific group of building renovation projects, that

(A) Involve renovations for a common purpose;

(B) Require completion on a related schedule in order to avoid unnecessary disruption of Contracting Agency operations;

(C) Share common characteristics, such as historic building considerations, the presence of asbestos or other hazardous substances, or the presence of agency staff during construction;

(D) Otherwise possess characteristics that meet the requirements of ORS 279C.335(2); and

(E) Otherwise meet the requirements of the Director of the Oregon Department of Administrative Services, the Director of Transportation or the local contract review board, as applicable.

(7) Public Hearing. Before final adoption of Findings exempting a Public Improvement Contract or class of Contracts from the requirement of competitive bidding, a Contracting Agency or State Agency shall give notice and hold a public hearing as required by ORS 279C.335(5). The hearing shall be for the purpose of receiving public comment on the Contracting Agency's or State Agency's draft Findings.

(8) Prior Review of Draft Findings. State Contracting Agencies shall submit draft Findings to their Contract Review Authority for review and concurrence prior to advertising the public hearing required by ORS 279C.335(5). State Contracting Agencies shall also submit draft Findings to the Department of Justice for review and comment prior to advertising the public hearing.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.335 & 279A.065
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 10-2014(Temp), f. & cert. ef. 7-1-14 thru 12-26-14; Administrative correction, 1-27-15; DOJ 2-2015, f. & cert. ef. 2-3-15

137-049-0640
Competitive Proposals; Procedure

Contracting Agencies may utilize the following RFP process for Public Improvement Contracts, allowing flexibility in both Proposal evaluation and Contract negotiation, only in accordance with ORS 279C.330 to 279C.337, 279C.400 to 279C.410 and OAR 137-049-0600 to 137-049-0690, unless other applicable statutes control a Contracting Agency's use of competitive Proposals for Public Improvement Contracts. Also see the subdivision of rules in this division 49 entitled "Formal Procurement Rules," 137-049-0200 to 137-049-0480, and RFP related rules under the Alternative Contracting Methods subdivision at 137-049-0640 to 137-049-0660. For ESPCs, the following RFP process as further specified in 137-049-0645, 137-049-0650, 137-049-0660 and 137-049-0680 shall be utilized, if a Contracting Agency desires the Procurement process to be exempt from the competitive bidding requirements of ORS 279C.335. The RFP process for the Alternative Contracting Methods identified in OAR 137-049-0600 to 137-049-0690 includes the following steps:

(1) Proposal Evaluation. Factors in addition to price may be considered in the selection process, but only as set forth in the RFP. Proposal evaluation shall be as objective as possible. Evaluation factors need not be precise predictors of future costs and performance, but to the extent possible such evaluation factors shall:

(a) Be reasonable estimates based on information available to the Contracting Agency;

(b) Treat all Proposals equitably; and

(c) Recognize that public policy requires that Public Improvements be constructed at the least overall cost to the Contracting Agency. See ORS 279C.305. For ESPC Proposal evaluations, the Contracting Agency may provide in the RFP that qualifications-based evaluation factors will outweigh the Contracting Agency's consideration of price-related factors, due to the fact that prices for the major components of the Work to be performed during the ESPC process contemplated by the RFP will likely not be determinable at the time of Proposal evaluation. For CM/GC Services

Proposal evaluations, the Contracting Agency must comply with ORS 279C.337.

(2) Evaluation Factors.

(a) In basic negotiated construction contracting, where the only reason for an RFP is to consider factors other than price, those factors may consist of firm and personnel experience on similar projects, adequacy of equipment and physical plant, sources of supply, availability of key personnel, financial capacity, past performance, safety records, project understanding, proposed methods of construction, proposed milestone dates, references, service, and related matters that could affect the cost or quality of the Work.

(b) In CM/GC contracting, in addition to (a) above, those factors may also include the ability to respond to the technical complexity or unique character of the project, analyze and propose solutions or approaches to complex project problems, analyze and propose value engineering options, analyze and propose energy efficiency measures or alternative energy options, coordinate multiple disciplines on the project, effectively utilize the time available to commence and complete the improvement, and related matters that could affect the cost or quality of the Work.

(c) In Design-Build contracting, in addition to (a) and (b) above, those factors may also include design professional qualifications, specialized experience, preliminary design submittals, technical merit, design-builder team experience and related matters that could affect the cost or quality of the Work.

(d) In ESPC contracting, in addition to the factors set forth in subsections (a), (b) and (c) above, those factors may also include sample Technical Energy Audits from similar projects, sample M & V reports, financial statements and related information of the ESCO for a time period established in the RFP, financial statements and related information of joint venturers comprising the ESCO, the ESCO's capabilities and experience in performing energy baseline studies for facilities (independently or in cooperation with an independent third-party energy baseline consultant), past performance of the ESCO in meeting energy guarantee Contract levels, the specific Person that will provide the Energy Savings Guarantee to be offered by the ESCO, the ESCO's management plan for the project, information on the specific methods, techniques and equipment that the ESCO will use in the performance of the Work under the ESPC, the ESCO's team members and consultants to be assigned to the project, the ESCO's experience in the Energy Savings Performance Contracting field, the ESCO's experience acting as the prime contractor on previous ESPC projects (as opposed to a subcontractor or consultant to a prime ESCO), the ESCO's vendor and product neutrality related to the development of ECMs, the ESCO's project history related to removal from an ESPC project or the inability or unwillingness of the ESCO to complete an ESPC project, the ESCO's M & V capabilities and experience (independently or in cooperation with an independent third-party M & V consultant), the ESCO's ability to explain the unique risks associated with ESPC projects and the assignment of risk in the particular project between the Contracting Agency and the ESCO, the ESCO's equipment performance guarantee policies and procedures, the ESCO's energy savings and cost savings guarantee policies and procedures, the ESCO's project cost guarantee policies and procedures, the ESCO's pricing methodologies, the price that the ESCO will charge for the Technical Energy Audit phase of the Work and the ESCO's fee structure for all phases of the ESPC.

(3) Contract Negotiations. Contract terms may be negotiated to the extent allowed by the RFP and OAR 137-049-0600 to 137-049-0690, provided that the general Work scope remains the same and that the field of competition does not change as a result of material changes to the requirements stated in the Solicitation Document. See 137-049-0650. Terms that may be negotiated consist of details of Contract performance, methods of construction, timing, assignment of risk in specified areas, fee, and other matters that could affect the cost or quality of the Work. For the CM/GC Method, terms that may be negotiated also include the specific scope of pre-construction services, the GC Work, any Early Work and other construction Work to be performed by the CM/GC, and any other terms that the Contracting Agency has identified as being subject to negotiation, consistent with the requirements of OAR 137-049-0690. In ESPC contracting, terms that may be negotiated also include the scope of preliminary design of ECMs to be evaluated by the parties during the Technical Energy Audit phase of the Work, the scope of Personal Services and Work to be performed by the ESCO during the Project Development Plan phase of the Work, the detailed provisions of the Energy Savings Guarantee to be provided by the ESCO and scope of Work, methodologies and compensation terms and conditions during the design and construction phase and M & V phase of the Work, consistent with the requirements of OAR 137-049-0680.

Stat. Auth.: ORS 279C.335 & 279A.065

Stats. Implemented: ORS 279C.335, 279A.065 & 351.086

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 10-2014(Temp), f. & cert. ef. 7-1-14 thru 12-26-14; Administrative correction, 1-27-15; DOJ 2-2015, f. & cert. ef. 2-3-15

137-049-0650
Requests for Proposals (RFP)

(1) Generally. The use of competitive Proposals must be specially authorized for a Public Improvement Contract under the competitive bidding exception and exemption requirements of ORS 279C.335, OAR 137-049-0130 and 137-049-0600 to 137-049-0690. Also see ORS 279C.337 and 279C.400 to 279C.410 for statutory requirements regarding competitive Proposals and OAR 137-049-0640 regarding competitive Proposal procedures.

(2) Solicitation Documents. In addition to the Solicitation Document requirements of OAR 137-049-0200, this rule applies to the requirements for RFPs. RFP Solicitation Documents shall conform to the following standards:

(a) The Contracting Agency shall set forth selection criteria in the Solicitation Document. Examples of evaluation criteria include price or cost, quality of a product or service, past performance, management, capability, personnel qualification, prior experience, compatibility, reliability, operating efficiency, expansion potential, experience of key personnel, adequacy of equipment or physical plant, financial wherewithal, sources of supply, references and warranty provisions. See OAR 137-049-0640 regarding Proposal evaluation and evaluation factors. Evaluation factors need not be precise predictors of actual future costs and performance, but to the extent possible, such factors must be reasonable estimates based on information available to the Contracting Agency. Subject to ORS 279C.410(4), the Solicitation Document may provide for discussions with Proposers to be conducted for the purpose of Proposal evaluation prior to award or prior to establishing any Competitive Range;

(b) When the Contracting Agency is willing to negotiate terms and conditions of the Contract or allow submission of revised Proposals following discussions, the Contracting Agency shall identify the specific terms and conditions in or provisions of the Solicitation Document that are subject to negotiation or discussion and authorize Offerors to propose certain alternative terms and conditions in lieu of the terms and conditions the Contracting Agency has identified as authorized for negotiation. The Contracting Agency shall describe the evaluation, discussion and negotiation processes, including how the Contracting Agency will establish the Competitive Range, if any;

(c) The anticipated size of any Competitive Range must be stated in the Solicitation Document, but may be decreased if the number of Proposers that submit responsive Proposals is less that the specified number, or may be increased as provided in OAR 137-049-0650(4)(a)(B);

(d) When the Contracting Agency intends to Award Contracts to more than one Proposer, the Contracting Agency shall identify in the Solicitation Document the manner in which it will determine the number of Contracts it will Award. The Contracting Agency shall also include the criteria it will use to determine how the Contracting Agency will endeavor to achieve optimal value, utility and substantial fairness when selecting a particular Contractor to provide Personal Services or Work from those Contractors Awarded Contracts.

(3) Evaluation of Proposals.

(a) Evaluation. The Contracting Agency shall evaluate Proposals only in accordance with criteria set forth in the RFP and applicable law. The Contracting Agency shall evaluate Proposals to determine the Responsible Proposer or Proposers submitting the best Responsive Proposal or Proposals.

(A) Clarifications. In evaluating Proposals, a Contracting Agency may seek information from a Proposer to clarify the Proposer's Proposal. A Proposer shall submit Written and Signed clarifications and such clarifications shall become part of the Proposer's Proposal.

(B) Limited Negotiation. If the Contracting Agency did not permit negotiation in its RFP, the Contracting Agency may, nonetheless, negotiate with the highest-ranked Proposer, but may then only negotiate the:

(i) Statement of Work; and

(ii) Contract Price as it is affected by negotiating the statement of Work. The process for discussions or negotiations that is outlined and explained in subsections (5)(b) and (6) of this rule does not apply to this limited negotiation.

(b) Discussions; Negotiations. If the Contracting Agency permitted discussions or negotiations in the RFP, the Contracting Agency shall evaluate Proposals and establish the Competitive Range, and may then conduct discussions and negotiations in accordance with this rule.

(A) If the Solicitation Document provided that discussions or negotiations may occur at Contracting Agency's discretion, the Contracting Agency may forego discussions and negotiations and evaluate all Proposals in accordance with this rule.

(B) If the Contracting Agency proceeds with discussions or negotiations, the Contracting Agency shall establish a negotiation team tailored for the acquisition. The Contracting Agency's team may include legal, technical, auditing and negotiating personnel.

(c) Cancellation. Nothing in this rule shall restrict or prohibit the Contracting Agency from canceling the solicitation at any time.

(4) Competitive Range; Protest; Award.

(a) Determining Competitive Range.

(A) If the Contracting Agency does not cancel the solicitation, after the Opening the Contracting Agency will evaluate all Proposals in accordance with the evaluation criteria set forth in the RFP. After evaluation of all Proposals in accordance with the criteria set forth in the RFP, the Contracting Agency will rank the Proposers based on the Contracting Agency's scoring and determine the Competitive Range.

(B) The Contracting Agency may increase the number of Proposers in the Competitive Range if the Contracting Agency's evaluation of Proposals establishes a natural break in the scores of Proposers indicating a number of Proposers greater than the initial Competitive Range are closely competitive, or have a reasonable chance of being determined the best Proposer after the Contracting Agency's evaluation of revised Proposals submitted in accordance with the process described in this rule.

(b) Protesting Competitive Range. The Contracting Agency shall provide Written notice to all Proposers identifying Proposers in the Competitive Range. A Proposer that is not within the Competitive Range may protest the Contracting Agency's evaluation and determination of the Competitive Range in accordance with OAR 137-049-0450.

(c) Intent to Award; Discuss or Negotiate. After the protest period provided in accordance with these rules expires, or after the Contracting Agency has provided a final response to any protest, whichever date is later, the Contracting Agency may either:

(A) Provide Written notice to all Proposers in the Competitive Range of its intent to Award the Contract to the highest-ranked Proposer in the Competitive Range.

(i) An unsuccessful Proposer may protest the Contracting Agency's intent to Award in accordance with OAR 137-049-0450.

(ii) After the protest period provided in accordance with OAR 137-049-0450 expires, or after the Contracting Agency has provided a final response to any protest, whichever date is later, the Contracting Agency shall commence final Contract negotiations with the highest-ranked Proposer in the Competitive Range; or

(B) Engage in discussions with Proposers in the Competitive Range and accept revised Proposals from them, and, following such discussions and receipt and evaluation of revised Proposals, conduct negotiations with the Proposers in the Competitive Range.

(5) Discussions; Revised Proposals. If the Contracting Agency chooses to enter into discussions with and receive revised Proposals from the Proposers in the Competitive Range, the Contracting Agency shall proceed as follows:

(a) Initiating Discussions. The Contracting Agency shall initiate oral or Written discussions with all of the Proposers in the Competitive Range regarding their Proposals with respect to the provisions of the RFP that the Contracting Agency identified in the RFP as the subject of discussions. The Contracting Agency may conduct discussions for the following purposes:

(A) Informing Proposers of deficiencies in their initial Proposals;

(B) Notifying Proposers of parts of their Proposals for which the Contracting Agency would like additional information; and

(C) Otherwise allowing Proposers to develop revised Proposals that will allow the Contracting Agency to obtain the best Proposal based on the requirements and evaluation criteria set forth in the RFP.

(b) Conducting Discussions. The Contracting Agency may conduct discussions with each Proposer in the Competitive Range necessary to fulfill the purposes of this section, but need not conduct the same amount of discussions with each Proposer. The Contracting Agency may terminate discussions with any Proposer in the Competitive Range at any time. However, the Contracting Agency shall offer all Proposers in the Competitive Range the opportunity to discuss their Proposals with Contracting Agency before the Contracting Agency notifies Proposers of the date and time pursuant to this section that revised Proposals will be due.

(A) In conducting discussions, the Contracting Agency:

(i) Shall treat all Proposers fairly and shall not favor any Proposer over another;

(ii) Shall not discuss other Proposers' Proposals;

(iii) Shall not suggest specific revisions that a Proposer should make to its Proposal, and shall not otherwise direct the Proposer to make any specific revisions to its Proposal.

(B) At any time during the time allowed for discussions, the Contracting Agency may:

(i) Continue discussions with a particular Proposer;

(ii) Terminate discussions with a particular Proposer and continue discussions with other Proposers in the Competitive Range; or

(iii) Conclude discussions with all remaining Proposers in the Competitive Range and provide notice to the Proposers in the Competitive Range to submit revised Proposals.

(c) Revised Proposals. If the Contracting Agency does not cancel the solicitation at the conclusion of the Contracting Agency's discussions with all remaining Proposers in the Competitive Range, the Contracting Agency shall give all remaining Proposers in the Competitive Range notice of the date and time by which they must submit revised Proposals. This notice constitutes the Contracting Agency's termination of discussions, and Proposers must submit revised Proposals by the date and time set forth in the Contracting Agency's notice.

(A) Upon receipt of the revised Proposals, the Contracting Agency shall evaluate the revised Proposals based upon the evaluation criteria set forth in the RFP, and rank the revised Proposals based on the Contracting Agency's scoring.

(B) The Contracting Agency may conduct discussions with and accept only one revised Proposal from each Proposer in the Competitive Range unless otherwise set forth in the RFP.

(d) Intent to Award; Protest. The Contracting Agency shall provide Written notice to all Proposers in the Competitive Range of the Contracting Agency's intent to Award the Contract. An unsuccessful Proposer may protest the Contracting Agency's intent to Award in accordance with OAR 137-049-0450. After the protest period provided in accordance with that rule expires, or after the Contracting Agency has provided a final response to any protest, whichever date is later, the Contracting Agency shall commence final Contract negotiations.

(6) Negotiations.

(a) Initiating Negotiations. The Contracting Agency may determine to commence negotiations with the highest-ranked Proposer in the Competitive Range following the:

(A) Initial determination of the Competitive Range; or

(B) Conclusion of discussions with all Proposers in the Competitive Range and evaluation of revised Proposals.

(b) Conducting Negotiations. Scope. The Contracting Agency may negotiate:

(A) The statement of Work;

(B) The Contract Price as it is affected by negotiating the statement of Work; and

(C) Any other terms and conditions reasonably related to those expressly authorized for negotiation in the RFP. Accordingly, Proposers shall not submit, and Contracting Agency shall not accept, for negotiation any alternative terms and conditions that are not reasonably related to those expressly authorized for negotiation in the RFP.

(c) Continuing Negotiations. If the Contracting Agency terminates negotiations with a Proposer, the Contracting Agency may then commence negotiations with the next highest scoring Proposer in the Competitive Range, and continue the process described in this rule until the Contracting Agency has:

(A) Determined to Award the Contract to the Proposer with whom it is currently negotiating; or

(B) Completed one round of negotiations with all Proposers in the Competitive Range, unless the Contracting Agency provided for more than one round of discussions or negotiations in the RFP, in which case the Contracting Agency may proceed with any authorized further rounds of discussions or negotiations.

(7) Terminating Discussions or Negotiations. At any time during discussions or negotiations conducted in accordance with this rule, the Contracting Agency may terminate discussions or negotiations with the Proposer with whom it is currently conducting discussions or negotiations if the Contracting Agency reasonably believes that:

(a) The Proposer is not discussing or negotiating in good faith; or

(b) Further discussions or negotiations with the Proposer will not result in the parties agreeing to the terms and conditions of a final Contract in a timely manner.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 279C.400 - 279C.410

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12; DOJ 10-2014(Temp), f. & cert. ef. 7-1-14 thru 12-26-14; Administrative correction, 1-27-15; DOJ 2-2015, f. & cert. ef. 2-3-15

137-049-0660
RFP Pricing Mechanisms

(1) An RFP may result in a Contract with a lump-sum Contract Price or a fixed Contract Price, as in the case of competitive bidding. Alternatively, an RFP may result in a cost reimbursement Contract with a GMP or some other maximum price specified in the Contract.

(2) Economic incentives or disincentives may be included to reflect stated Contracting Agency purposes related to time of completion, safety or other Public Contracting objectives, including but not limited to total least cost mechanisms such as life cycle costing.

(3) A Guaranteed Maximum Price may be used as the pricing mechanism for CM/GC Services Contracts where a total Contract Price is provided in the design phase in order to assist the Contracting Agency in determining whether the project scope is within the Contracting Agency's budget, and allowing for design changes during preliminary design rather than after final design services have been completed.

(a) If the collaborative process described above in this section (3) is successful, the Contractor shall propose a final GMP, which may be accepted by the Contracting Agency and included within the Contract.

(b) If the collaborative process described above in this section (3) is not successful, and no mutually agreeable resolution on the GMP for the project construction Work can be achieved with the Contractor, then the Contracting Agency shall terminate the Contract. The public Contracting Agency may then proceed to negotiate a new Contract (and GMP) with the firm that was next ranked in the original selection process, or employ other means for continuing the project under ORS Chapter 279C.

(4) When cost reimbursement Contracts are utilized, regardless of whether a GMP is included, the Contracting Agency shall provide for audit controls that will effectively verify rates and ensure that costs are reasonable, allowable and properly allocated.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.335
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 10-2014(Temp), f. & cert. ef. 7-1-14 thru 12-26-14; Administrative correction, 1-27-15; DOJ 2-2015, f. & cert. ef. 2-3-15

137-049-0690
Construction Manager/General Contractor (CM/GC)

(1) General. The CM/GC Method is a technically complex project delivery system. Contracting Agencies shall use this contracting method only with the assistance of legal counsel with substantial experience and necessary expertise in using the CM/GC Method, as well as knowledgeable staff, consultants or both staff and consultants who have a demonstrated capability of managing the CM/GC process in the necessary disciplines of engineering, construction scheduling and cost control, accounting, legal, Public Contracting and project management. Unlike the Design-Build form of contracting, the CM/GC Method does not contemplate a "single point of responsibility" under which the CM/GC is responsible for successful completion of all Work related to a performance Specification. The CM/GC has defined contract obligations, including responsibilities as part of the project team along with the Contracting Agency and design professional, although with the CM/GC Method there is a separate contract between the Contracting Agency and design professional. In order to utilize the CM/GC Method, the Contracting Agency must be able to reasonably anticipate the following types of benefits:

(a) Time Savings. With the CM/GC Method, the Public Improvement has significant schedule ramifications, such that concurrent design and construction are necessary in order to meet critical deadlines and shorten the overall duration of construction. The Contracting Agency may consider operational and financial data that show significant savings or increased opportunities for generating revenue as a result of early completion, as well as less disruption to public facilities as a result of shortened construction periods;

(b) Cost Savings. With the CM/GC Method, early CM/GC input during the design process is expected to contribute to significant cost savings. The Contracting Agency may consider value engineering, building systems analysis, life cycle costing analysis and construction planning that lead to cost savings. The Contracting Agency shall specify any special factors influencing this analysis, including high rates of inflation, market uncertainty due to material and labor fluctuations or scarcities, and the need for specialized construction expertise due to technical challenges; or

(c) Technical Complexity. With the CM/GC Method, the Public Improvement presents significant technical complexities that are best addressed by a collaborative or team effort between the Contracting Agency, design professionals, any Contracting Agency project management or technical consultants and the CM/GC, in which the CM/GC will assist in addressing specific project challenges through pre-construction Personal Services. The Contracting Agency may consider the need for CM/GC input on issues such as operations of the facility during construction, tenant occupancy, public safety, delivery of an early budget or GMP, financing, historic preservation, difficult remodeling projects and projects requiring complex phasing or highly coordinated scheduling.

(2) Authority. Contracting Agencies shall use the CM/GC form of contracting only in accordance with the requirements of these division 49 Model Rules and ORS 279C.337, when a competitive bidding exemption is approved. See particularly OAR 137-049-0600 on "Purpose" and 137-049-0620 on "Use of Alternative Contracting Methods".

(3) Selection. CM/GC selection criteria may include those factors set forth above in OAR 137-049-0640(2)(b).

(4) Basis for Payment. The CM/GC process adds specified construction manager Personal Services to traditional design-bid-build general contractor Work, requiring full Contract performance within a negotiated GMP, fixed Contract Price or other maximum Contract Price. For a GMP pricing method, the basis for payment is reimbursable direct costs as defined under the Contract, plus a fee constituting full payment for construction Work and Personal Services rendered, which together shall not exceed the GMP. See GMP definition at OAR 137-049-0610 and Pricing Mechanisms at 137-049-0660.

(5) Contract Requirements. Contracting Agencies shall conform their CM/GC contracting practices to the following requirements:

(a) Nature of the Initial CM/GC Services Contract Document. A solicitation for CM/GC Services is a Procurement for a Public Improvement, since the scope of the Procurement includes not only pre-construction Personal Services to be performed by the CM/GC, but also construction Work that is expected to result in a completed Public Improvement. In the traditional CM/GC Services contracting approach, the text of the resulting CM/GC Services Contract will include comprehensive contract provisions that will not only fully govern the relationship between the Contracting Agency and the CM/GC for the pre-construction Personal Services, but will also include the general contract provisions that will control the CM/GC's providing of the construction Work necessary to complete the project (with any remaining necessary construction-related contract provisions being added through Early Work amendments to the Contract, the GMP amendment to the Contract or, if necessary, a conventional amendment to the Contract). The traditional CM/GC Services contracting approach, however, also contemplates that the Contracting Agency will only authorize the CM/GC to perform the pre-construction Personal Services when the Contract is first executed unless construction Work is specifically included in the initial CM/GC Contract. Under this approach, the construction phase or phases of the CM/GC Services project are not yet authorized and the Contract only becomes a Public Improvement Contract once the parties amend the Contract, through an Early Work or a GMP amendment, to authorize the construction of a portion of the project or the entire project. See also OAR 839-025-0020, regarding the Bureau of Labor and Industries' determination of when a Contract for CM/GC Services becomes a "public works" Contract for purposes of paying prevailing wage rates for construction Work under the CM/GC Contract.

(b) Setting the GMP, Fixed Contract Price or Other Maximum Contract Price. The GMP, fixed Contract Price or other maximum Contract Price shall be set at an identified time consistent with industry practice and project conditions and after supporting information reasonably considered necessary to its use has been developed, which will normally take place by the end of the design development phase of the project. The supporting information for the GMP must define with particularity both what Personal Services and construction Work are included and excluded from the GMP, fixed Contract Price or other maximum Contract Price. A set of project drawings and Specifications shall be produced establishing the scope of construction Work contemplated by the GMP, fixed Contract Price or other maximum Contract Price.

(c) Adjustments to the GMP, Fixed Contract Price or Other Maximum Contract Price. The Contract shall clearly identify the standards or factors under which changes or additional construction Work will be considered outside of the Work scope that warrants an increase in the GMP, fixed Contract Price or other maximum Contract Price, as well as criteria for decreasing the GMP, fixed Contract Price or other maximum Contract Price. The GMP, fixed Contract Price or other maximum Contract Price shall not be increased without a concomitant increase to the scope of the Work defined at the establishment of the GMP, fixed Contract Price or other

maximum Contract Price or most recent amendment to the GMP, fixed Contract Price or other maximum Contract Price. An increase to the scope of the Work may take the form of conventional additions to the project scope, as well as corrections to the Contract terms and conditions, additions to insurance coverage required by the Contracting Agency and other changes to the Work.

(d) Cost Savings. The Contract shall clearly identify the disposition of any Cost Savings resulting from completion of the Work below the GMP, fixed Contract Price or other maximum Contract Price; that is, under what circumstances, if any, the CM/GC might share in those Cost Savings, or whether the Cost Savings accrue only to the Contracting Agency's benefit. Unless there is a clearly articulated reason for sharing the Cost Savings set forth in the Contract, the Cost Savings must accrue to the Contracting Agency.

(e) Cost Reimbursement. The Contract shall clearly identify what items or categories of items are eligible for cost reimbursement within the GMP, fixed Contract Price or other maximum Contract Price, including any category of GC Work costs, and may also incorporate a mutually-agreeable cost-reimbursement standard.

(f) Audit. Cost reimbursements shall be made subject to final audit adjustment, and the Contract shall establish an audit process to ensure that Contract costs are allowable, properly allocated and reasonable.

(g) Fee. Compensation for the CM/GC's Personal Services and construction Work, where the Contract uses a GMP, shall include a fee that is inclusive of profit, overhead and all other indirect or non-reimbursable costs. Costs determined to be included within the fee shall be expressly defined in the Contract terms and conditions at the time the Contracting Agency selects the CM/GC. The fee, which may be expressed as either a fixed dollar amount or as a proposed percentage of all reimbursable costs, shall be identified during and become an element of the selection process. It shall subsequently be expressed as a fixed amount for particular construction Work authorized to be performed, when Early Work is added to the Contract through an amendment and when the GMP is established. The CM/GC fee does not include any fee paid to the CM/GC for performing pre-construction services during a separate pre-construction phase.

(h) Incentives. The Contract shall clearly identify any economic incentives, the specific criteria that apply and their relationship to other financial elements of the Contract (including the GMP, fixed Contract Price or other maximum Contract Price).

(i) Controlled Insurance Programs. For projects where an owner-controlled or contractor-controlled insurance program is permitted under ORS 737.602, the Contract shall clearly identify whether an owner-controlled or contractor-controlled insurance program is anticipated or allowable. If so, the Contract shall clearly identify (1) anticipated cost savings from reduced premiums, claims reductions and other factors, (2) the allocation of cost savings, and (3) safety responsibilities, incentives or both safety responsibilities and incentives.

(j) Early Work. The RFP shall clearly identify, whenever feasible, the circumstances under which any Early Work may be authorized and undertaken for compensation prior to establishing the GMP, fixed Contract Price or other maximum Contract Price.

(k) Subcontractor Selection. Subcontracts under the Contract are not Public Contracts within the meaning of the Code. However, the Contract must include provisions that clearly meet the requirements of ORS 279C.337(3) and other Contracting Agency requirements. Within the scope of 279C.337(3), the CM/GC's subcontractor selection process must meet the following parameters:

(A) Absent a written justification prepared by the CM/GC and approved by the Contracting Agency as more particularly provided for in this section, the CM/GC's Subcontractor selection process must be "competitive", meaning that the process should include publicly-advertised subcontractor solicitations and be based on a low-bid competitive method, a low-quote competitive method for contracts in a specified dollar range agreeable to the Contracting Agency, or a method whereby both price and qualifications of the subcontractors are evaluated in a competitive environment, consistent with the RFP and Contract requirements;

(B) When the Subcontractor selection process for a particular Work package will not be "competitive" as provided for in this section, the process must meet the following requirements:

(i) The CM/GC must prepare and submit a written justification to the Contracting Agency, explaining the project circumstances that support a non-competitive Subcontractor selection process for a particular Work package, including, but not limited to, Emergency circumstances, the CM/GC's need to utilize a key Subcontractor member of the CM/GC's project team consistent with the CM/GC's project Proposal, the need to meet other specified Contract requirements, the continuation or expansion of an existing Subcontractor agreement that was awarded through a "competitive process" along with facts supporting the continuation or expansion of the Subcontractor agreement, or a "sole source" justification;

(ii) For a "sole source" selection of a subcontractor to proceed, the Contracting Agency must evaluate the written justification provided by the CM/GC and must find that critical project efficiencies require utilization of labor, services or materials from one subcontractor; that technical compatibility issues on the project require labor, services or materials from one subcontractor; that particular labor, services or materials are needed as part of an experimental or pilot project or as part of an experimental or pilot aspect of the project; or that other project circumstances exist to support the conclusion that the labor, services or materials are available from only one subcontractor;

(iii) The CM/GC must provide an independent cost estimate for the Work package that will be subject to the non-competitive process, if required by the Contracting Agency;

(iv) The CM/GC must fully respond to any questions or comments submitted to the CM/GC by the Contracting Agency; and

(v) The Contracting Agency must approve the CM/GC's use of the non-competitive Subcontractor selection process prior to the CM/GC's pursuit of the non-competitive process.

(C) A competitive selection process may be preceded by a publicly advertised sub-contractor pre-qualification process, with only those subcontractors meeting the pre-qualification requirements being invited to participate in the later competitive process through which the CM/GC will select the subcontractor to perform the construction Work described in the selection process;

(D) If the CM/GC or an Affiliate or subsidiary of the CM/GC will be included in the subcontractor selection process to perform particular construction Work on the project, the CM/GC must disclose that fact in the selection process documents and announcements. The Contract must also identify the conditions, processes and procedures the CM/GC will utilize in that competitive process in order to make the process impartial, competitive and fair, including but not limited to objective, independent review and opening of bids or proposals for the elements of Work involved, by a representative of the Contracting Agency or another independent third party.

(l) Subcontractor Approvals and Protests. The Contract shall clearly establish whether the Contracting Agency must approve subcontract awards, and to what extent, if any, the Contracting Agency will resolve or be involved in the resolution of protests of the CM/GC's selection of subcontractors and suppliers. The procedures and reporting mechanisms related to the resolution of sub-contractor and supplier protests shall be established in the Contract with certainty, including the CM/GC's roles and responsibilities in this process and whether the CM/GC's subcontracting records are considered to be public records. In any event, the Contracting Agency must retain the right to monitor the subcontracting process in order to protect the Contracting Agency's interests and to confirm the CM/GC's compliance with the Contract and with applicable statutes, administrative rules and other legal requirements.

(m) CM/GC Self-Performance or Performance by CM/GC Affiliates or Subsidiaries Without Competition. Consistent with the requirements of ORS 279C.337(3)(c), the Contract must establish the conditions under which the CM/GC or an Affiliate or subsidiary of the CM/GC may perform elements of the construction Work without competition from subcontractors, including, for example, job-site GC Work. Other than for GC Work, in order for the CM/GC or an Affiliate or subsidiary of the CM/GC to perform elements of the construction Work without competition from subcontractors, the CM/GC must provide, or must have included in the CM/GC's RFP Proposal to perform CM/GC Services for the project, a detailed proposal for performance of the Work by the CM/GC or an Affiliate or subsidiary of the CM/GC. If required by the Contracting Agency, the CM/GC's proposal to perform the construction Work must be supported by at least one independent cost estimate prior to the Work being included in the Contract.

(n) Unsuccessful Subcontractor Briefing. ORS 279C.337(3)(e) is designed to allow a subcontractor who was not selected by the CM/GC to perform a particular element of the construction Work to obtain specific information from the CM/GC, and meet with the CM/GC to discuss the subcontractor qualification and selection process involved and the CM/GC's subcontractor selection decisions, in order to better understand why the subcontractor was not successful in being selected to perform the particular element of the Work and to improve the subcontractor's substantive qualifications or the subcontractor's methods in competing for elements of the Work for the particular project involved, or for future projects. The briefing meetings may be held with individual subcontractors or, if the

subcontractors agree, in groups of subcontractors, with those groups established by bid package or other designation agreed to by the contracting agency and the CM/GC. Nevertheless, the CM/GC is not obligated to provide this briefing opportunity unless the CM/GC receives a written request from a subcontractor to discuss the subcontractor qualification and selection process involved. Unless the Contracting Agency and the CM/GC agree on a different schedule, the CM/GC Contract should include provisions:

(A) Allowing a subcontractor 60 days from the CM/GC's notice of award of a subcontract for a particular Work package to request, in writing, a post-selection meeting with the CM/GC under this section; and

(B) Requiring the CM/GC to set a meeting with the subcontractor under this section within 45 days of the subcontractor's written request.

(o) Performance and Payment Bonds. Provided no construction Work is included with the pre-construction services to be performed under the initial form of the CM/GC Contract, no performance bond or payment bond is required to be provided by the CM/GC at the time of Contract signing, consistent with ORS 279C.380. Once construction Work is included in the Contract and authorized by the Contracting Agency to be performed by the CM/GC, however, the CM/GC must provide a performance bond and payment bond each in the full amount of any Early Work to be performed by the CM/GC, or the full amount of the GMP, fixed Contract Price or other maximum Contract Price, as applicable. Furthermore, in the event additional Early Work is added to the CM/GC Contract after the initial Early Work or in the event an amendment to the CM/GC Contract is made so that the GMP, fixed Contract Price or other maximum Contract Price must be increased, the performance bond and the payment bond must each be increased in an amount equal to the additional Early Work or the increased GMP, fixed Contract Price or other maximum Contract Price.

(p) Independent Review of CM/GC Performance; Conflicts of Interest. If a Contracting Agency requires independent review, monitoring, inspection or other oversight of a CM/GC's performance of pre-construction Personal Services, construction Work or both pre-construction Personal Services and construction Work, the Contracting Agency must obtain those independent review services from a Contractor independent of the CM/GC, the CM/GC's Affiliates and the CM/GC's Subcontractors, pursuant to the requirements of ORS 279C.307. However, ORS 279C.307 does not prohibit the following:

(A) The CM/GC's performance of both pre-construction Personal Services and construction Work that are included within the definition of CM/GC Services, consistent with ORS 279C.307(2); or

(B) The CM/GC's performance of internal quality control services, quality assurance services or other internal peer review of CM/GC work product that is intended to confirm the CM/GC's performance of the CM/GC Contract according to its terms.

(q) Socio-Economic Programs. The Contract shall clearly identify conditions relating to any required socio-economic programs (such as Affirmative Action or Prison Inmate Labor Programs), including the manner in which such programs affect the CM/GC's subcontracting requirements, the enforcement mechanisms available, and the respective responsibilities of the CM/GC and Contracting Agency.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.335, 279C.337 & 279C.380(2)
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 10-2014(Temp), f. & cert. ef. 7-1-14 thru 12-26-14; Administrative correction, 1-27-15; DOJ 2-2015, f. & cert. ef. 2-3-15

137-049-0820
Retainage

(1) Withholding of Retainage. A Contracting Agency shall not retain an amount in excess of five percent of the Contract Price for Work completed. If the Contractor has performed at least 50 percent of the Contract Work and is progressing satisfactorily, upon the Contractor's submission of Written application containing the surety's Written approval, the Contracting Agency may, in its discretion, reduce or eliminate retainage on any remaining progress payments. The Contracting Agency shall respond in Writing to all such applications within a reasonable time. When the Contract Work is 97-1/2 percent completed, the Contracting Agency may, at its discretion and without application by the Contractor, reduce the retained amount to 100 percent of the value of the remaining unperformed Contract Work. A Contracting Agency may at any time reinstate retainage. Retainage shall be included in the final payment of the Contract Price.

(2) Form of Retainage. Unless a Contracting Agency that reserves an amount as retainage finds in writing that accepting a bond or instrument described in part (a) or (b) of this section poses an extraordinary risk that is not typically associated with the bond or instrument, the Contracting Agency, in lieu of withholding moneys from payment, shall accept from the Contractor:

(a) Bonds, securities or other instruments that are deposited and accepted as provided in subsection (4)(a) of this rule; or

(b) A surety bond deposited as provided in subsection (4)(b) of this rule.

(3) Deposit in interest-bearing accounts. Upon request of the Contractor, a Contracting Agency shall deposit cash retainage in an interest-bearing account in a bank, savings bank, trust company, or savings association, for the benefit of the Contracting Agency. Earnings on such account shall accrue to the Contractor. State Contracting Agencies shall establish the account through the State Treasurer.

(4) Alternatives to cash retainage. In lieu of cash retainage to be held by a Contracting Agency, the Contractor may substitute one of the following:

(a) Deposit of bonds, securities or other instruments:

(A) The Contractor may deposit bonds, securities or other instruments with the Contracting Agency or in any bank or trust company to be held for the benefit of the Contracting Agency. If the Contracting Agency accepts the deposit, the Contracting Agency shall reduce the cash retainage by an amount equal to the value of the bonds and securities, and reimburse the excess to the Contractor.

(B) Bonds, securities or other instruments deposited or acquired in lieu of cash retainage must be of a character approved by the Oregon Department of Administrative Services, which may include, without limitation:

(i) Bills, certificates, notes or bonds of the United States.

(ii) Other obligations of the United States or agencies of the United States.

(iii) Obligations of a corporation wholly owned by the Federal Government.

(iv) Indebtedness of the Federal National Mortgage Association.

(v) General obligation bonds of the State of Oregon or a political subdivision of the State of Oregon.

(vii) Irrevocable letters of credit issued by an insured institution, as defined in ORS 706.008.

(C) Upon the Contracting Agency's determination that all requirements for the protection of the Contracting Agency's interests have been fulfilled, it shall release to the Contractor all bonds and securities deposited in lieu of retainage.

(b) Deposit of surety bond. A Contracting Agency, at its discretion, may allow the Contractor to deposit a surety bond in a form acceptable to the Contracting Agency in lieu of all or a portion of funds retained or to be retained. A Contractor depositing such a bond shall accept surety bonds from its subcontractors and suppliers in lieu of retainage. In such cases, retainage shall be reduced by an amount equal to the value of the bond, and the excess shall be reimbursed.

(5) Recovery of costs. A Contracting Agency may recover from the Contractor all costs incurred in the proper handling of retainage by reduction of the final payment.

(6) Additional Retainage When Certified Payroll Statements Not Filed. Pursuant to ORS 279C.845(7), if a Contractor is required to file certified payroll statements and fails to do so, the Contracting Agency shall retain 25 percent of any amount earned by the Contractor on a Public Works Contract until the Contractor has filed such statements with the Contracting Agency. The Contracting Agency shall pay the Contractor the amount retained under this provision within 14 days after the Contractor files the certified statements, regardless of whether a subcontractor has filed such statements (but see 279C.845(1) regarding the requirement for both contractors and subcontractors to file certified statements with the Contracting Agency). See BOLI rule at OAR 839-025-0010.

Stat. Auth.: ORS 279A.065 & 279C.845
Stats. Implemented: ORS 279C.560, 279C.570 & 701.420
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 10-2014(Temp), f. & cert. ef. 7-1-14 thru 12-26-14; Administrative correction, 1-27-15; DOJ 2-2015, f. & cert. ef. 2-3-15

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Rule Caption: Social Security and Veterans Benefits dollar for dollar reduction in support
Adm. Order No.: DOJ 3-2015(Temp)
Filed with Sec. of State: 2-4-2015
Certified to be Effective: 2-4-15 thru 8-2-15
Notice Publication Date:
Rules Amended: 137-050-0740

Subject: OAR 137-050-0740 is amended to emphasize the dollar for dollar reduction in support for Social Security and Veterans Benefits.
Rules Coordinator: Carol Riches—(503) 947-4700

137-050-0740
Social Security and Veterans Benefits; Dollar-for-Dollar Reduction in Support Obligation

(1) For the purposes of this rule:

(a) "Apportioned Veterans benefits" means the amount the U.S. Department of Veterans Affairs deducts from an obligated parent's Veterans benefits and disburses to the child or to the child's representative payee; and

(b) "Social Security benefits" refer to those benefits paid on behalf of a disabled or retired obligated parent to a child or a child's representative payee.

(2) The child support obligation may be reduced dollar for dollar in consideration of any Social Security or apportioned Veterans benefits; and

(3) The child support obligation must be reduced dollar for dollar in consideration of any Survivors' and Dependents' Educational Assistance (Veterans benefit) under 38 U.S.C. chapter 35.

(4) A parent is not entitled to a reduction in support for Veterans or Social Security benefits:

(a) That result from the child's own disability,

(b) For which the obligated parent is the representative payee, or

(c) That do not result from the obligated parent's own disability or retirement, or, in the case of subsection (3), from that parent's military service.

Stat. Auth: ORS 25.270 – 25.290 & 180.345
Stats. Implemented: ORS 25.270 – 25.290
Hist.: DOJ 16-2009, f. 12-1-09, cert. ef. 1-4-10; DOJ 3-2013, f. 5-15-13, cert. ef. 7-1-13; DOJ 8-2014, f. & cert. ef. 5-22-14; DOJ 3-2015(Temp), f. & cert. ef. 2-4-15 thru 8-2-15

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Department of State Lands
Chapter 141

Rule Caption: Adopt revised Essential Indigenous Anadromous Salmonid Habitat (ESH) maps based on current data and standards.
Adm. Order No.: DSL 1-2015
Filed with Sec. of State: 2-10-2015
Certified to be Effective: 3-1-15
Notice Publication Date: 9-1-2014
Rules Amended: 141-102-0020, 141-102-0030
Subject: Streams that are designated as ESH are those necessary to prevent the depletion of indigenous anadromous salmonid species during their life stages of spawning and rearing. ESH also includes off-channel rearing or high-flow refugia habitat with a permanent or seasonal surface water connection to an ESH stream. According to OAR 141-102-0040, the Department must consult annually with the Oregon Department of Fish and Wildlife (ODFW) on the accuracy of the ESH designations and revise the maps to reflect the best available data and the newest version of Fish Habitat Distribution Data Standard. This update resulted in addition of new stream reaches and deletion of others. There was a net increase of 500 stream miles (or roughly 3%) over the current 2010 ESH designation.
Rules Coordinator: Tiana Teeters—(503) 986-5239

141-102-0020
Definitions

(1) "Essential" means those portions of a stream reach that fill all or part of the basic or indispensable spawning or rearing needs of indigenous anadromous salmonids and are those areas necessary to prevent the depletion of indigenous anadromous salmonids. Such areas include "spawning habitat" and "rearing habitat" as defined below under sections (3) and (4) of this rule (Oregon Fish Habitat Distribution Data Standard, Version 2.0, February 2011: http://www.oregon.gov/DAS/CIO/GEO/standards/docs/oregonfishhabitatdistributiondatastandardv2.pdf).

(2) "Indigenous anadromous salmonid" means chum, sockeye, Chinook and Coho Salmon, and steelhead and cutthroat trout, that are members of the family of Salmonidae and are listed as sensitive, threatened or endangered by a state or federal authority.

(3) "Spawning Habitat" " includes areas where eggs are deposited and fertilized. For some species, including salmonids, this also includes areas where gravel emergence occurs and where at least some juvenile development occurs.

(4) "Rearing Habitat" includes areas outside primary spawning habitats where juvenile fish take up residence during some stage of juvenile development and use the area for feeding, shelter, and growth. Some migration also occurs as juvenile and adult fish move between the ocean and spawning grounds.

Stat. Auth.: ORS 196.810
Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925
Hist: LB 4-1995, f. 12-13-95, cert. ef. 1-1-96; DSL 8-1999, f. 3-9-99, cert. ef. 5-1-99; DSL 4-2001, f. & cert. ef. 4-18-01; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08; DSL 1-2010, f. 3-15-10, cert. ef. 4-1-10; DSL 1-2015, f. 2-10-15, cert. ef. 3-1-15

141-102-0030
Designation of Essential Salmon Habitat (ESH)

(1) Areas designated as ESH shall include the waters of this state as described in OAR 141-085, including streams and any adjacent off-channel rearing or high-flow refugia habitat with a permanent or seasonal surface water connection to the stream.

(2) The streams and stream segments designated as ESH are shown on maps that are incorporated by reference in this rule.

(3) The Department will make available detailed maps of ESH at cost and the maps are also available for downloading and viewing on the Department's website (http://www.oregon.gov/dsl/PERMITS/Pages/esshabitat.aspx).

Stat. Auth.: ORS 196.810
Stats. Implemented: ORS 196.800 - 196.990 & 390.805 - 390.925
Hist: LB 4-1995, f. 12-13-95, cert. ef. 1-1-96; DSL 8-1999, f. 3-9-99, cert. ef. 5-1-99; DSL 4-2001, f. & cert. ef. 4-18-01; DSL 1-2004, f. & cert. ef. 5-21-04; DSL 6-2007, f. 12-13-07, cert. ef. 1-1-08; DSL 1-2010, f. 3-15-10, cert. ef. 4-1-10; DSL 1-2015, f. 2-10-15, cert. ef. 3-1-15

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Department of State Police, Oregon State Athletic Commission
Chapter 230

Rule Caption: Amends OAR 230-030-0150 and 230-140-0030 regarding boxing and MMA weigh-ins and physical examinations
Adm. Order No.: SAC 1-2015
Filed with Sec. of State: 2-9-2015
Certified to be Effective: 2-9-15
Notice Publication Date: 2-1-2015
Rules Amended: 230-030-0150, 230-140-0030
Subject: The Rulemaking Action makes permanent portions of current Temporary Rule OAR 230-140-0030 (published in the Oregon Secretary of State Archives Division Oregon Bulletin on September 1, 2014), allowing mixed martial arts participants to weigh-in prior to having physical examinations and making other updates to the rule. This rule amendment also seeks to improve the organization, consistency, and clarity of the rules by consolidating provisions regarding mixed martial arts weigh-ins and pre and post-fight physical examinations in OAR 230-140-0030 with similar boxing provisions in OAR 230-030-0150. The amendment also streamlines and improves the clarity and

organization of the rule text and updates or eliminates outdated provisions relating to weigh-ins and pre - and post- fight examinations.
Rules Coordinator: Shannon Peterson—(503) 934-0183

230-030-0150
Weigh-In, Pre-fight Physical Examination and Post-fight Physical Examination

(1) No boxing or mixed martial arts competitor shall be weighed-in or administered a pre-fight physical examination unless the competitor is properly licensed by the Superintendent.

(2) Weigh-in. Boxing and mixed martial arts competitors shall be officially weighed within 24 hours prior to the commencement of the event.

(a) The weigh-in shall occur at a time and place designated or approved by the Director, and in the presence of the Director or the authorized representative of the Superintendent.

(b) Scales approved by the Director shall be utilized for the official weigh-in.

(c) Any boxing or mixed martial arts competitor who has been signed to a contract to compete at any boxing or mixed martial arts event may be ordered by the Superintendent or the Superintendent's representative to

appear at any time to be weighed by the Director or the authorized representative of the Superintendent.

(d) If a boxing or mixed martial arts competitor is late to the weigh-in or to the pre-fight physical examination, both the competitor and the competitor's manager may be subject to disciplinary action.

(e) If a boxing or mixed martial arts competitor appears at the weigh-in, and the competitor's body weight is 5% or more over the agreed upon weight, the competitor shall be disqualified from the bout, and the competitor and the competitor's manager may be subject to disciplinary action by the Superintendent.

(f) If in an attempt to make weight, the boxing or mixed martial arts competitor shows evidence of significant dehydration, of having taken diuretics or other drugs, or of having used any other harsh modality, the examining ringside physician or other medical personnel may refuse to medically certify the competitor to participate in an event and may recommend disciplinary action be imposed by the Superintendent.

(g) A professional boxing or mixed martial arts competitor who fails to make the weight contractually agreed upon in his or her bout agreement forfeits 20% of his or her purse to his or her opponent, if the competitor is unable to make the contractually agreed upon weight within two hours directly following the weigh-in, and the bout takes place. If the professional competitor is able to make the contractually agreed upon weight or weighs less than 1 pound outside the agreed limits, no forfeit may be imposed or fine assessed upon the competitor. All boxing or mixed martial arts competitors are permitted two hours directly following their weigh-in to make weight regardless of whether the competitor is competing in a professional or amateur bout.

(A) If a professional boxing or mixed martial arts competitor agrees to fight an opponent who has failed to make weight, the fight may take place, if approved by the Director or authorized representative of the Superintendent. The bout agreement shall be amended to reflect the agreed upon weight.

(B) The 1 pound allowance set forth in this section does not apply to championship or title bouts. In bouts deemed to be championship or title bouts, the competitors must be at or below the agreed upon weight.

(3) Pre-fight Physical Examination. Boxing and mixed martial arts competitors shall undergo a pre-fight physical examination within 24 hours prior to the commencement of the event.

(a) The pre-fight physical examination shall occur at a time and place designated or approved by the Director, and in the presence of the Director or the authorized representative of the Superintendent.

(b) The promoter shall provide a suitable room in which to conduct pre-fight physical examinations.

(c) Only the boxing or mixed martial arts competitor and an authorized representative of the Superintendent are allowed in the examination room while the pre-fight physical examination is being conducted unless the competitor and examining ringside physician or other medical personnel agrees otherwise.

(d) The ringside physician or other medical personnel conducting the pre-fight physical examination shall determine the fitness of the boxing or mixed martial arts competitor to compete in the event based on standards recommended by the Medical Advisory Committee and adopted by the Commission. Standards adopted by the Commission are found referenced on the "Pre/Post Fight Physical Examination Record" form and are available on the Commission website located at http://www.oregon.gov/osp/gaming/Pages/b_w_welcome.aspx.

(e) During the course of the administration of the pre-fight physical examination and the weigh-in, the boxer or mixed martial arts competitor and their manager must make full disclosure of all information required by the ringside physician or other medical personnel and the authorized representative of the Superintendent. Falsification of entries on the pre-fight physical examination form may result in disqualification, suspension or fine of both the competitor and their manager.

(f) The competitor and their manager shall conduct themselves in an appropriate manner and shall desist from unruly, boisterous, or disruptive behavior at all times.

(4) Should any competitor who has been examined and deemed medically unfit for competition or any referee deemed medically unfit for officiating by the ringside physician or other medical personnel, the competitor or referee shall be rejected and an immediate report of that fact shall be made to the Director or authorized representative of the Superintendent. This determination may be made during the pre-fight physical examination for a competitor or at the event for competitors or referees.

(5) Post-Fight Physical Examination. Immediately upon completion of the bout, boxing and mixed martial arts competitors must participate in a post-fight physical examination by the ringside physician or other medical personnel assigned to the event. The ringside physician or other medical personnel conducting the examination shall submit to the Director a report documenting each competitor's injuries and indicating any recommended medical waiting periods if deemed necessary. Medical waiting periods shall include limits on contact as well as participation in future competition. Medical waiting periods may also include any required tests or follow-up treatment recommended by the ringside physician or other medical personnel conducting the examination.

Stat. Auth.: ORS 463.113
Stats. Implemented: ORS 463.113 & 463.047
Hist.: BWC 1-1988, f. 3-22-88, cert. ef. 3-29-88; BWC 1-1991, f. & cert. ef. 9-20-91, Renumbered from 230-060-0250; BWC 1-1995, f. 10-10-95, cert. ef. 10-13-95; BWC 1-1996, f. & cert. ef. 4-8-96; BWC 1-2002(Temp), f. & cert. ef. 2-15-02 thru 8-13-02; BWC 2-2002, f. & cert. ef. 8-15-02; SAC 1-2015, f. & cert. ef. 2-9-15

230-140-0030
Second Requirements

Seconds. All seconds working in the corner of a professional mixed martial arts competitor must be licensed. Seconds working in the corner of an amateur mixed martial arts competitor may be licensed.

(1) The conduct and activities of licensed seconds shall be in accordance with standards issued by the Commission. All materials utilized in a corner of a mixed martial arts competition shall be inspected and approved by the Commission. Three seconds per fighter will be allowed in a non-championship bout. Four seconds will be allowed in a championship bout. No more than two seconds are allowed between rounds in a fenced area. One second is allowed between rounds in a ring.

(2) A license issued to a second can be immediately suspended by the Executive Director or the authorized representative of the Superintendent at the event.

(3) Licensed seconds shall comply with the direction of the Executive Director and other Commission officials appointed by the Commission.

(4) If, during a round, a second decides to stop a competition by corner submission, the second shall do so by stepping onto the apron of the ring or fenced area. A second shall not throw a towel or any other object into the ring or fenced area.

Stat. Auth.: ORS 463.113
Stats. Implemented: ORS 463.025 & 463.113
Hist.: SAC 1-2008(Temp), f. & cert. ef. 1-29-08 thru 6-30-08; SAC 5-2008, f. 6-12-08, cert. ef. 7-1-08; SAC 1-2014(Temp), f. & cert. ef. 8-14-14 thru 2-9-15; SAC 1-2015, f. & cert. ef. 2-9-15

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Rule Caption: Amends and updates procedural rules relating to notice, adoption of AG Model Rules and correspondence
Adm. Order No.: SAC 2-2015
Filed with Sec. of State: 2-9-2015
Certified to be Effective: 2-9-15
Notice Publication Date: 2-1-2015
Rules Amended: 230-001-0000, 230-001-0005, 230-001-0010
Subject: Amendments to OAR Chapter 230 Division 1 merely provide house-keeping changes. Currently OAR Chapter 230 Division 1 contains some outdated information. These amendments update this outdated information; adopt a more current version of the Attorney General's Model Rules of Procedure under the Administrative Procedures Act; and adds OAR 137-003-0580 to the Model Rules adopted. The rule amendments also conform language in notice rule to more closely resemble that of ORS 183.335.
Rules Coordinator: Shannon Peterson—(503) 934-0183

230-001-0000
Rules of Procedure and Notice of Proposed Rule

Before permanently adopting, amending, or repealing any rule, except the Attorney General's Model Rules, the Commission 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 intended action;

(2) By sending a copy of the notice to persons on the Commission mailing list established pursuant to ORS 183.335(8) at least 28 days before the effective date of the rule;

(3) By mailing or furnishing a copy of the notice to:

(a) The Associated Press;

(b) The Oregonian;

(c) Capitol Press Room.

Stat. Auth.: ORS 183.335
Stats. Implemented: ORS 183.335

Hist.: BWC 2-1987(Temp), f. 9-30-87, ef. 10-1-87; BWC 1-1988, f. 3-22-88, cert. ef. 3-29-88; BWC 1-1995, f. 10-10-95, cert. ef. 10-13-95; SAC 2-2008, f. 6-12-08, cert. ef. 7-1-08; SAC 2-2015, f. & cert. ef. 2-9-15

230-001-0005
Model Rules of Procedure

The Commission adopts the following Attorney General's Model Rules of Procedure under the Oregon Administrative Procedures Act in effect as of January 1, 2015:

(1) OAR chapter 137, division 1;

(2) OAR 137-003-0001 through 137-003-0092; 137-003-0580; and

(3) OAR chapter 137, division 4.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or the Oregon State Athletic Commission.]

Stat. Auth.: ORS 183.431
Stats. Implemented: ORS 183.431
Hist.: BWC 1-1987, f. 9-30-87, ef. 10-1-87; BWC 1-1988, f. 3-22-88, cert. ef. 3-29-88; BWC 1-1991, f. & cert. ef. 9-20-91; BWC 1-1995, f. 10-10-95, cert. ef. 10-13-95; SAC 2-2008, f. 6-12-08, cert. ef. 7-1-08; SAC 2-2015, f. & cert. ef. 2-9-15

230-001-0010
Filing of Documents

All correspondence relating to the activities of the Commission and all documents required to be filed with the Commission shall be directed to: Executive Director, Oregon State Athletic Commission, 4190 Aumsville Hwy SE, Salem, Oregon 97317.

Stat. Auth.: ORS 183.330
Stats. Implemented: ORS 183.330
Hist.: BWC 1-1995, f. 10-10-95, cert. ef. 10-13-95; BWC 1-2002(Temp), f. & cert. ef. 2-15-02 thru 8-13-02; BWC 2-2002, f. & cert. ef. 8-15-02; SAC 2-2008, f. 6-12-08, cert. ef. 7-1-08; SAC 2-2015, f. & cert. ef. 2-9-15

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Higher Education Coordinating Commission
Chapter 715

Rule Caption: Adopt procedural rules for rule making and contested case proceedings.
Adm. Order No.: HECC 1-2015
Filed with Sec. of State: 1-20-2015
Certified to be Effective: 1-20-15
Notice Publication Date: 7-1-2014
Rules Adopted: 715-001-0030, 715-001-0035
Subject: The Higher Education Coordinating Commission (the Commission) must "adopt rules of procedure to be utilized in the adoption of rules and conduct of proceedings in contested cases" (ORS 183.341(2)). The Commission is adopting a standard procedural rule for providing notice of proposed rulemaking, and is adopting by reference the Attorney General's Uniform Rules of procedure and Model Rules of procedure for rulemaking and contested case proceedings. The Commission must adopt rules of procedure in order to implement and administer the programs and duties it has been delegated by the Legislative Assembly, through rulemaking and contested case proceedings.
Rules Coordinator: Kelly Dickinson—(503) 378-5690

715-001-0030
Notice of Proposed Rulemaking

Effective August 19, 2014:

(1) Before permanently adopting, amending, or repealing any permanent rule, the Higher Education Coordinating Commission shall give notice of the proposed adoption, amendment, or repeal:

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

(b) By mailing or e-mailing, at least 28 days before the effective date of the rule, a copy of the notice to persons on the Commission's mailing and e-mailing lists established pursuant to ORS 183.335(8);

(c) By mailing or e-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; and,

(d) By mailing or e-mailing a copy of the notice to persons, organizations, and publications identified by the Commission and established educational, student, and parent organizations that have submitted mailing or e-mailing addresses to the Commission.

(2) Persons who wish to receive written or e-mailed copies of notices of proposed rulemaking from the Commission may write or e-mail the Commission and request that they be placed on the Commission's mailing or e-mailing lists.

(3) The Commission may update the mailing and e-mailing lists described in this rule annually by requesting persons to confirm that they wish to remain on the lists. If a person does not respond to a request for confirmation within 28 days of the date the Commission sends the request, the Commission will remove the person from the Commission's mailing and e-mailing lists. Any person removed from the mailing or e-mailing lists will be returned to the mailing or e-mailing list upon request, provided that the person provides a mailing address or e-mailing address to which notice may be sent.

Stat. Auth.: ORS 183.335, 183.341(4), & 351.728
Stats. Implemented: ORS 183.335
Hist.: HECC 1-2015, f. & cert. ef. 1-20-15

715-001-0035
Model Rules of Procedure

Effective August 19, 2014: Pursuant to the provisions of ORS 183.341, the Higher Education Coordinating Commission adopts the Attorney General's Model and Uniform Rules of Procedure under the Administrative Procedure Act in effect on January 1, 2012.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or the Higher Education Coordinating Commission.]

Stat. Auth.: ORS 183.341 & 351.728
Stats. Implemented: ORS 183.341
Hist.: HECC 1-2015, f. & cert. ef. 1-20-15

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Landscape Contractors Board
Chapter 808

Rule Caption: Clarifies scope of work, exam sections to pass to upgrade, and exam score transfer.
Adm. Order No.: LCB 1-2015
Filed with Sec. of State: 1-21-2015
Certified to be Effective: 2-1-15
Notice Publication Date: 11-1-2014
Rules Amended: 808-003-0040, 808-003-0045, 808-003-0065
Subject: Clarifies scope of work, exam sections to pass to upgrade, and exam score transfer.
Rules Coordinator: Kim Gladwill-Rowley—(503) 967-6291, ext. 223

808-003-0040
Scope of License; Sanctions for Claims Filed against Probationary License

(1) A licensed landscape contracting business may only advertise for or perform those phases of landscaping work for which its owners or employees hold a valid landscape construction professional license.

(2) The landscaping work a licensed landscape contracting business advertises for or performs shall be limited to the following:

(a) For an all phase license holder, all areas of landscaping work, plus the installation of backflow prevention assemblies unless, in lieu of Backflow Prevention, the landscape construction professional contractor has signed an agreement with the Board prior to April 30, 1996 stating that the landscape construction professional will not perform Backflow Prevention work;

(b) For an irrigation, no backflow limited license holder, irrigation functions, including the maintenance of irrigation systems with the use of compressed air;

(c) For a sod and seed limited license holder, grass seed planting or sod laying;

(d) For a tree limited license holder, install new or transplant trees;

(e) For a planting limited license holder, plan or install lawns, shrubs, vines, trees or nursery stock and perform grading and drainage services for the installation of lawns, shrubs, vines, trees or nursery stock. This also includes the preparation of the property on which the vegetation is to be installed as defined in OAR 808-002-0500. A planting limited licensing holder cannot perform low voltage work.

(f) For a standard limited license holder, all areas of landscaping work except irrigation functions and the installation of backflow assemblies;

(g) For an irrigation plus backflow license holder, irrigation functions, including the maintenance of irrigation systems with the use of compressed air and the installation of backflow assemblies.

(h) For a probationary All Phase Plus Backflow license holder, all areas of landscaping work, provided all landscaping work on any given landscape job as defined in OAR 808-002-0495 must not exceed a total contract amount of $15,000,

(3) A landscape contracting business may bid on a job or enter into a contract that includes the phase of landscaping work for which it is not licensed if that landscape contracting business:

(a) Upgrades the landscape contracting business license phase by employing a landscape construction professional licensed for that phase of landscaping work and notifies the board of this change in license prior to performing this landscaping work, or

(b) Subcontracts the landscaping work that is outside the phase of the license to another licensed landscape contracting business licensed for that phase of landscaping work and comply with the minimum standards for written contracts as required in OAR 808-002-0020(1)(k).

(4) If a landscape contracting business holds a probationary license and two or more claims are filed against the landscape contracting business within a 12 month period the owner or employee who holds the probationary landscape construction professional license and is providing supervision as described in ORS 671.540(1)(q) & (r) or 671.565(1)(b) may be required to take specific continuing education hours (CEH) or approved courses as required by the board that are related to the claim issues. Failure to complete the required CEH or courses within the specified time frame may result, in addition to any civil penalties, revocation, refusal to renew or suspension of the probationary license of the landscape construction professional.

Stat. Auth.: ORS 670.310 & 671.670
Stats. Implemented: ORS 447.060 & 671.560
Hist.: LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0021; LCB 2-1990, f. 7-27-90, cert. ef. 8-1-90; LCB 2-1992, f. 7-14-92, cert. ef. 7-15-92; LCB 2-1993, f. & cert. ef. 2-1-93; LSCB 2-1994, f. 11-8-94, cert. ef. 11-15-94; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 1-2001, f. 12-4-01, cert. ef. 1-1-02; LCB 1-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 7-2003(Temp), f. 11-28-03, cert. ef. 12-1-03 thru 5-29-04; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06; LCCB 3-2007, f. & cert. ef. 8-1-07; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08; LCB 9-2007, f. 12-24-07, cert. ef. 1-1-08; LCB 3-2008, f. & cert. ef. 4-11-08; LCB 10-2008, f. & cert. ef. 11-6-08; LCB 13-2009, f. 12-23-09, cert. ef. 1-1-10; LCB 7-2010, f. & cert. ef. 10-25-10; LCB 12-2011, f. 12-29-11, cert. ef. 1-1-12; LCB 2-2014, f. 2-20-14, cert. ef. 3-1-14; LCB 3-2014(Temp), f. 2-21-14, cert. ef. 3-1-14 thru 8-28-14; Administrative correction, 9-17-14; LCB 9-2014(Temp), f. & cert. ef. 9-25-14 thru 3-24-15; LCB 1-2015, f. 1-21-15, cert. ef. 2-1-15

808-003-0045
Change to Limited Licenses; Removal from Probationary Status

(1) Landscape construction professionals holding limited licenses may upgrade that phase of license by passing additional sections of the exam. Licensees shall submit the required fees and a written request to take the additional sections of the exam.

(2) The following sections must be passed to upgrade to a standard landscape license:

(a) Sod & Seed license holders must pass

(A) Plants and Turf,

(B) Design, Grading and Drainage, and

(C) Hardscaping.

(b) Tree license holders must pass

(A) Plants and Turf,

(B) Design, Grading and Drainage, and

(C) Hardscaping.

(c) Irrigation license holders must pass

(A) Plants and Turf,

(B) Design, Grading and Drainage, and

(C) Hardscaping.

(d) Planting license holders must pass Hardscaping.

(3) Holders of a Sod & Seed license or a Tree license must pass the Plants and Turf and Design, Grading and Drainage sections of the landscape examination to upgrade to a Planting license.

(4) Holders of a Standard license, Sod & Seed license, Planting license or a Tree license must pass the irrigation and Backflow Prevention sections of the landscape examination to upgrade that phase of license to include irrigation plus backflow

(5) If the phase of license for a landscape contracting business license changes, the landscape contracting business must immediately stop advertising for or performing those phases of landscaping work for which the business no longer holds a license.

(6) Probationary license holders may obtain removal from probationary status by:

(a) Demonstrating one or more of the following after the date of obtaining the probationary license:

(A) Completion of 24 months or more of employment with an actively licensed landscape contracting business under the direct supervision of a non-probationary licensed landscape construction professional,

(B) Completion of 24 months or more as an owner or employee of an actively licensed landscape contracting business providing supervision as described in ORS 671.540(1)(q) or 671.565(1)(b) for a period of 24 months where the landscaping work performed on any landscape job by the landscape contracting business did not exceed $15,000 and where the landscape contracting business filed and maintained with the board a bond, letter of credit or deposit in the amount of $15,000, or

(C) Completion of 24 months or more as an actively licensed construction contractor under ORS Chapter 701.

(b) Submitting a written request to the board for removal of the probationary status.

Stat. Auth.: ORS 183 & 671
Stats. Implemented: ORS 671.560
Hist.: LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. & ef. 2-1-88; Renumbered from 808-010-0022; LCB 1-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 4-2003, f. 5-27-03, cert. ef. 6-1-03; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08; LCB 9-2007, f. 12-24-07, cert. ef. 1-1-08; LCB 8-2008, f. & cert. ef. 9-5-08; LCB 9-2008, f. 9-29-08, cert. ef. 10-1-08; LCB 10-2008, f. & cert. ef. 11-6-08; LCB 4-2009, f. 6-1-09 cert. ef. 7-1-09; LCB 7-2010, f. & cert. ef. 10-25-10; LCB 2-2013, f. 5-31-13, cert. ef. 6-1-13; LCB 2-2014, f. 2-20-14, cert. ef. 3-1-14; LCB 3-2014(Temp), f. 2-21-14, cert. ef. 3-1-14 thru 8-28-14; Administrative correction, 9-17-14; LCB 9-2014(Temp), f. & cert. ef. 9-25-14 thru 3-24-15; LCB 1-2015, f. 1-21-15, cert. ef. 2-1-15

808-003-0065
Scoring; Exam Section Transfer March 1, 2014

(1) Each exam section shall be scored separately.

(2) Based on l00 percent, the passing score shall be 75 percent or higher for each section.

(3) Except as provided in subsection (4), a passing score shall be valid for one year from the date the exam section was taken. An applicant who fails to pass all the sections required for a particular license within one year of passing a section shall retake that section.

(4) A passing score for an applicant for a Probationary All Phase Plus Backflow license will expire upon expiration of the application as stated in OAR 808-003-0030(3).

(5) A passing score of the Laws, Rules, and Business Practice section will remain valid for any applicant that passed this section and has been the managing employee or managing owner of a licensed landscape contracting business within two years of the date of receipt of the license application; otherwise the scores will remain valid for up to one year from the date of the receipt of an application for licensing.

(6) Effective March 1, 2014 the following sections will transfer to the new exam sections as follows:

(a) Laws, Rules and Business Practice transfers into Laws, Rules and Business Practice;

(b) Plants and Turf transfers into the Plants and Turf Section;

(c) Grading and Drainage transfer into the Design, Grading and Drainage section;

(d) General Safety, estimating, soil science, chemicals and landscape design does not transfer into another exam section;

(e) Irrigation transfers into the Irrigation section; and

(f) Backflow Prevention transfers into Backflow Prevention.

Stat. Auth.: ORS 183.325 - 183.500, 670.310 & 671.670
Stats. Implemented: ORS 671.570
Hist.: LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0026; LSCB 2-1994, f. 11-8-94, cert. ef. 11-15-94; LCB 3-1998(Temp), f. & cert. ef. 11-16-98 thru 5-15-99; LCB 1-1999, f. & cert. ef. 2-11-99; LCB 1-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 15-2011, f. 12-29-11, cert. ef. 1-1-12; LCB 3-2014(Temp), f. 2-21-14, cert. ef. 3-1-14 thru 8-28-14; Administrative correction, 9-17-14; LCB 9-2014(Temp), f. & cert. ef. 9-25-14 thru 3-24-15; LCB 10-2014, f. & cert. ef. 12-1-14; LCB 1-2015, f. 1-21-15, cert. ef. 2-1-15

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Rule Caption: Allow managing owner to use Laws , Rules and Business Practices section for licensing
Adm. Order No.: LCB 2-2015(Temp)
Filed with Sec. of State: 2-12-2015
Certified to be Effective: 2-12-15 thru 8-10-15
Notice Publication Date:
Rules Amended: 808-003-0065
Subject: Allow managing owner to use Laws , Rules and Business Practices section for licensing
Rules Coordinator: Kim Gladwill-Rowley—(503) 967-6291, ext. 223

808-003-0065
Scoring; Exam Section Transfer March 1, 2014

(1) Each exam section shall be scored separately.

(2) Based on l00 percent, the passing score shall be 75 percent or higher for each section.

(3) Except as provided in subsection (4) and (5), a passing score shall be valid for one year from the date the exam section was taken. An applicant who fails to pass all the sections required for a particular license within one year of passing a section shall retake that section.

(4) A passing score for an applicant for a Probationary All Phase Plus Backflow license will expire upon expiration of the application as stated in OAR 808-003-0030(3).

(5) A passing score of the Laws, Rules and Business Practice section will remain valid for any applicant that passed this section and has been the managing employee or managing owner of a licensed landscape contracting business within two years; otherwise the scores will remain valid for up to one year from the date of the receipt of an application for licensing.

(6) Effective March 1, 2014 the following sections will transfer to the new exam sections as follows:

(a) Laws, Rules and Business Practice transfers into Laws, Rules and Business Practice;

(b) Plants and Turf transfers into the Plants and Turf Section;

(c) Grading and Drainage transfer into the Design, Grading and Drainage section;

(d) General Safety, estimating, soil science, chemicals and landscape design does not transfer into another exam section;

(e) Irrigation transfers into the Irrigation section; and

(f) Backflow Prevention transfers into Backflow Prevention.

Stat. Auth.: ORS 183.325 - 183.500, 670.310 & 671.670

Stats. Implemented: ORS 671.570

Hist.: LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0026; LSCB 2-1994, f. 11-8-94, cert. ef. 11-15-94; LCB 3-1998(Temp), f. & cert. ef. 11-16-98 thru 5-15-99; LCB 1-1999, f. & cert. ef. 2-11-99; LCB 1-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 15-2011, f. 12-29-11, cert. ef. 1-1-12; LCB 3-2014(Temp), f. 2-21-14, cert. ef. 3-1-14 thru 8-28-14; Administrative correction, 9-17-14; LCB 9-2014(Temp), f. & cert. ef. 9-25-14 thru 3-24-15; LCB 10-2014, f. & cert. ef. 12-1-14; LCB 1-2015, f. 1-21-15, cert. ef. 2-1-15; LCB 2-2015(Temp), f. & cert. ef. 2-12-15 thru 8-10-15

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Oregon Business Development Department
Chapter 123

Rule Caption: These rules relate to the Operation of the Credit Enhancement Fund.
Adm. Order No.: OBDD 1-2015(Temp)
Filed with Sec. of State: 1-26-2015
Certified to be Effective: 1-26-15 thru 7-24-15
Notice Publication Date:
Rules Amended: 123-021-0010, 123-021-0090, 123-021-0110
Subject: The changes to the CEF Evergreen Entrance and Evergreen Plus program options are to align and coordinate the two programs to have a common maximum coverage percentage and a common fee structure, in order to simplify the use of the programs by our lending partners. Premium rates for each program are available from the Department and shown in the application form available on the department web site.
Rules Coordinator: Mindee Sublette—(503) 986-0036

123-021-0010
Definitions

For the purposes of these rules, additional definitions may be found in OAR chapter 123, division 1. The following terms shall have the following definitions, unless the context clearly indicates otherwise:

(1) "Authorized loan amount" means the amount of a loan authorized by the Department to be under the CEF Program pursuant to a loan insurance authorization issued by the Department to the financial institution making the loan.

(2) "Brownfield" means any real property where expansion or redevelopment is complicated by actual or perceived environmental contamination.

(3) "CEF Program" means the Credit Enhancement Fund Insurance Program established under ORS 285B.200 to 285B.218.

(4) The "deficiency" of a loan means the amount of principal outstanding upon default, accrued interest and the financial institution's reasonable costs of collection, exclusive of costs attributable to environmental problems, remaining unpaid after liquidation of collateral and collection of guarantees.

(5) "Destination facilities other than retail or food service" means a qualified business which has a significant impact on the regional recreational or tourism economy. Incidental food service or retail facilities necessary to the operation of a destination facility are eligible. Sleeping accommodations without unique attraction capabilities are not qualified businesses.

(6) "Financial institution" has the meaning set forth in ORS 706.008.

(7) "Fund" means the Credit Enhancement Fund created by ORS 285B.215.

(8) "Loan insurance authorization" means a letter from the director or deputy director or designee to a financial institution agreeing to insure a loan to a borrower on the terms and conditions and subject to the requirements stated therein.

(9) "Loan insurance agreement" means the agreement between the financial institution and the Department required by OAR 123-021-0100.

(10) "Working capital loan" means any loan, the proceeds of which are to be used for operating, maintenance and other costs and expenses, or for purposes other than acquiring real property, production equipment, or other capital assets.

(11) "Principal" in regards to a borrower is defined as:

(a) If a sole proprietorship, the proprietor;

(b) If a partnership, each managing partner and each partner who is a natural person and holds a twenty percent (20%) or more ownership interest in the partnership; and,

(c) If a corporation, limited liability company, association or a development company, each director, each of the five most highly compensated executives or officers of the entity, and each natural person who is a direct or indirect holder of twenty percent (20%) or more of the ownership stock or stock equivalent of the entity.

(12) "Principal" in regards to a financial institution is defined as:

(a) If a sole proprietorship, the proprietor;

(b) If a partnership, each partner; and

(c) If a corporation, limited liability company, association or a development company, each director, each of the five most highly compensated executives, officers or employees of the entity, and each direct or indirect holder of twenty percent (20%) or more of the ownership stock or stock equivalent of the entity.

(13) "SSBCI Funds" means U.S. Treasury funds allocated to the Department under the State Small Business Credit Initiative Act of 2010 (title III of the Small Business Jobs Act of 2010, P.L. 111-240, 124 Stat. 2568, 2582).

Stat. Auth.: ORS 285A.075

Stats. Implemented: ORS 285B.200 - 285B.218

Hist.: EDD 5-1994(Temp), f. & cert. ef. 3-3-94; EDD 11-1994, f. & cert. ef. 7-29-94; EDD 12-1997(Temp), f. & cert. ef. 10-7-97; EDD 11-1998, f. & cert. ef. 5-22-98; EDD 8-1999, f. & cert. ef. 10-1-99; EDD 4-2007(Temp), f & cert. ef. 8-28-07 thru 2-22-08; EDD 5-2008(Temp), f. & cert. ef. 2-26-08 thru 8-1-08; EDD 24-2008, f. 7-31-08, cert. ef. 8-1-08; EDD 17-2009, f. 10-30-09, cert. ef. 11-1-09; OBDD 8-2011(Temp), f. & cert. ef. 12-8-11 thru 6-5-12; OBDD 7-2012, f. & cert. ef. 6-1-12; OBDD 18-2012(Temp), f. & cert. ef. 11-20-12 thru 5-17-13; OBDD 3-2013, f. & cert. ef. 5-23-13; OBDD 1-2015(Temp), f. & cert. ef. 1-26-15 thru 7-24-15

123-021-0090
Loan Insurance Programs

The Department shall offer the following insurance programs:

(1) Conventional Insurance, under which the Department may insure

(a) Up to 80 percent of a loan in which case the Department's maximum liability for any loss under the Conventional Insurance is the lesser of $2,000,000 or an amount equal to the insured percentage times the authorized loan amount, or

(b) Up to 90 percent of a loan in which case the Department's maximum liability for any loss under the Conventional Insurance is the lesser of $500,000 or an amount equal to the insured percentage times the authorized loan amount. Should a borrower which receives an insured loan default or otherwise be unable to make loan payments, the Department will pay the financial institution the deficiency of a loan times the insured percentage, subject to the limitation set forth above. The balance of any loss is absorbed by the financial institution. Loan payments, the proceeds of collateral (including collection of guarantees), and any recovery after payment of a deficiency are applied pro rata to the portion of a loan insured through Conventional Insurance and the uninsured portion of the loan.

(2)(a) Evergreen Entrants Insurance, under which the Department may insure up to 75 percent of a line of credit working capital loan. Should a borrower which receives an insured loan default or otherwise be unable to make loan payments, the Department will pay the financial institution the deficiency of the line of credit working capital loan times the insured percentage; provided that the Department's maximum liability for any deficiency under the Evergreen Entrants Insurance is the lesser of $1,500,000 or an amount equal to the insured percentage of the authorized loan amount. The balance of any loss is absorbed by the financial institution. Loan payments, the proceeds of collateral (including collection of guarantees), and

any recovery after payment of a deficiency are applied pro rata to the portion of a loan insured through Evergreen Entrants Insurance and the uninsured portion of the loan.

(b) Eligible borrowers include persons or enterprises without or about to be without existing line of credit working capital loans.

(c) To obtain Evergreen Entrants Insurance, a financial institution must have the capacity to service the loan effectively, including monitoring compliance with any audit and control procedures prescribed by the Department or comparable procedures of the financial institution approved by the Department and must have in place and operating a lending program specializing in line of credit loans secured by or with advances based upon eligible accounts receivable and inventory or other assets. The Department must be satisfied that the financial institution is sufficiently experienced and capable of operating such a lending program effectively.

(3) First Loss Insurance, under which the Department will pay 100 percent of the deficiency of a loan, but the Department's maximum liability under the First Loss Insurance shall be the lesser of (a) the insured percentage (which shall not exceed 25 percent) times the authorized loan amount, (b) the insured percentage (which shall not exceed 25 percent) times the outstanding balance of the loan, including accrued interest and reasonable costs and expenses of collection and liquidation of collateral exclusive of costs attributable to environmental problems, but not taking into account the proceeds of collateral liquidation and payments by guarantors, or (c) $500,000. Any recovery after payment of a deficiency is applied first to the uninsured portion of the loan and then to the portion of a loan insured through First Loss Insurance.

(4)(a) Evergreen Plus Insurance, under which the Department may insure up to 75 percent of a new increment of a line of credit; provided that the Department's maximum liability under the Evergreen Plus Insurance is $1,500,000. If a financial institution makes a payment request for any deficiency, the Department will pay to the financial institution the lesser of:

(A) A ratable share of the total default charges; or

(B) The deficiency times the insured percentage. The balance of any loss is absorbed by the financial institution. Loan payments, the proceeds of collateral (including collection of guarantees), and any recovery after payment of a deficiency are applied pro rata to the portion of a loan insured through Evergreen Plus Insurance and the uninsured portion of the loan.

(b) The formula for calculating the Department's ratable share of total default charges is:

$R = (G \div T)*P$

R represents the ratable share of total default charges.

G represents the amount of the new increment of the line of credit.

T represents the total credit facility made available.

P represents the principal outstanding upon default plus accrued unpaid interest and costs of collateral liquidation and collection of guarantees exclusive of costs attributable to environmental problems.

(c) To obtain the Evergreen Plus Insurance, a financial institution must have in place and operating a lending program specializing in line of credit loans secured by or with advances based upon eligible accounts receivable and inventory or other assets. The Department must be satisfied that the financial institution is sufficiently experienced and capable of operating such a lending program effectively.

(5) First Loss Collateral Support Insurance (aka Collateral Support Insurance), under which the Department will pay up to a maximum of 100 percent of the deficiency of a loan as follows. The Department's maximum liability under the Collateral Support Insurance per enrolled loan shall be the lesser of:

(a) The insured percentage times the authorized and enrolled loan amount;

(b) The insured percentage times the outstanding balance of the enrolled loan, including accrued interest and reasonable costs and expenses of collection and liquidation of collateral exclusive of costs attributable to environmental problems, after taking into account payments by guarantors but not taking into account the proceeds of collateral liquidation; or,

(c) 25% of the enrolled loan or $1,000,000. Collateral Support Insurance may not exceed a term of 5 years. Loan payments, the proceeds of collection of guarantees, and recovery after payment of a deficiency from any source other than liquidation of collateral are applied pro rata to the portion of a loan insured through Collateral Support Insurance and the uninsured portion of the loan; the proceeds of collateral are applied first to the uninsured portion of the loan and then to the portion of a loan insured through Collateral Support Insurance. Loans covered by Collateral Support Insurance must meet a participating Lender's credit underwriting criteria with the exception of loan collateral adequacy. Borrowers with loans covered by Collateral Support Insurance must:

(A) Demonstrate significant current and historical cash flow coverage,

(B) Demonstrate strong credit history,

(C) Provide personal guarantees of significant owners; and,

(D) Meet other criteria as determined by the Department.

(d) In contrast to First Loss Insurance, Collateral Support Insurance is only intended to mitigate a collateral shortfall and is not intended to mitigate other or additional credit deficiencies. Collateral Support Insurance will only be provided to the extent necessary to facilitate making a qualified loan, not on a maximum allowable basis for each loan. Loan proceeds may be used to pay off an existing loan where the collateral value is no longer adequate to secure the loan due to a decline in the value of the existing collateral (not due to the loan having been less than fully secured at inception). If any proceeds of the new insured loan are used to finance an existing loan of the lender making application for Collateral Support Insurance, to be eligible for Collateral Support Insurance the existing loan must have reached its maturity date and the new loan must also include new monies advanced to the borrower. Enrollment of the new loan in the Collateral Support Insurance will be limited to the amount of the collateral shortfall or the decline in the collateral value, from the date of the existing loan if proceeds are applied to an existing loan secured by the collateral, whichever is less. For the Collateral Support Insurance, the maximum insured percentage for insurance up to $500,000 shall be 25% of the loan. For insurance above $500,000 and up to $1,000,000 the maximum insured percentage shall be 20% of the loan.

(6) The Conventional Insurance, First Loss Insurance, and Collateral Support Insurance are available for all types of non-revolving loans with regular periodic payments of principal and interest no less often than annually for eligible purposes, including working capital loans that are secured by fixed assets or other collateral determined to be sufficient by the Department.

Stat. Auth.: ORS 285A.075 & 285B.200 - 285B.218

Stats. Implemented: ORS 285B.200 - 285B.218

Hist.: EDD 5-1994(Temp), f. & cert. ef. 3-3-94; EDD 11-1994, f. & cert. ef. 7-29-94; EDD 13-2002(Temp), f. & cert. ef. 6-18-02 thru 12-13-02; Administrative correction 4-15-03; EDD 6-2005(Temp), f. & cert. ef. 8-5-05 thru 1-31-06; EDD 1-2006, f. & cert. ef. 2-10-06; EDD 5-2008(Temp), f. & cert. ef. 2-26-08 thru 8-1-08; EDD 24-2008, f. 7-31-08, cert. ef. 8-1-08; EDD 17-2009, f. 10-30-09, cert. ef. 11-1-09; OBDD 8-2011(Temp), f. & cert. ef. 12-8-11 thru 6-5-12; OBDD 7-2012, f. & cert. ef. 6-1-12; OBDD 18-2012(Temp), f. & cert. ef. 11-20-12 thru 5-17-13; OBDD 3-2013, f. & cert. ef. 5-23-13; OBDD 1-2015(Temp), f. & cert. ef. 1-26-15 thru 7-24-15

123-021-0110

Insurance Premiums

(1) The Department shall charge a one-time (up-front) insurance premium. Premiums are due at the time financial institutions originate loans and execute loan authorizations with the Department. The Department's insurance is not effective until premiums are paid. It is expected that financial institutions will pass along the cost of premiums to borrowers. Premiums, expressed as a percentage of the Department's maximum liability, shall be charged in accordance with the schedule for the programs available from the agency.

(2) For revolving lines of credit or evergreen facilities, the premium is based on the Department's maximum liability in regard to the credit facility made available to a borrower, regardless of whether or not the line of credit is fully drawn down. Examples:

(a) The premium due on a $200,000, five year loan with 80% Conventional Insurance would be $3,200 ($200,000 x .80 x .02);

(b) The premium for a $200,000 loan with 75% Evergreen Entrants Insurance is $2,625 ($200,000 x .75 x .0175); this amount would be due every year thereafter for up to four additional years, assuming the loan and amount is renewed each year for the maximum term permitted under the Evergreen Entrants program (5 years);

(c) The premium for a $200,000, eight year loan with 25% First Loss Insurance is $2,500 ($200,000 x .25 x .05);

(d) The premium for a $700,000 increment to the line of credit with 30% Evergreen Plus Insurance is $3,675 ($700,000 x .30 x .0175); this amount would be due every year thereafter for up to four additional years, assuming the loan and amount is renewed each year for the maximum term permitted under the program (5 years);

(e) The premium for a $1,000,000 five-year loan with a 15% Collateral Support Insurance is $5,250 ($1,000,000 x .15 x .035).

Stat. Auth.: ORS 285A.075 & 285B.200 - 285B.218

Stats. Implemented: ORS 285B.200 - 285B.218

Hist.: EDD 5-1994(Temp), f. & cert. ef. 3-3-94; EDD 11-1994, f. & cert. ef. 7-29-94; EDD 24-2008, f. 7-31-08, cert. ef. 8-1-08; EDD 17-2009, f. 10-30-09, cert. ef. 11-1-09; OBDD 8-2011(Temp), f. & cert. ef. 12-8-11 thru 6-5-12; OBDD 7-2012, f. & cert. ef. 6-1-12; OBDD 18-2012(Temp), f. & cert. ef. 11-20-12 thru 5-17-13; OBDD 3-2013, f. & cert. ef. 5-23-13; OBDD 1-2015(Temp), f. & cert. ef. 1-26-15 thru 7-24-15

Rule Caption: These rule amendments relate to the Oregon Low Income Community Jobs Initiative.
Adm. Order No.: OBDD 2-2015(Temp)
Filed with Sec. of State: 2-12-2015
Certified to be Effective: 2-12-15 thru 8-10-15
Notice Publication Date:
Rules Amended: 123-630-0000, 123-630-0030, 123-630-0050
Subject: In the 2013 Legislative session, HB 2763 raised the maximum amount of qualified low-income investments that can be made in a qualified low-income business from $4 million to $8 million. This rule amendment provides for clearer language around the additional use of the credit to a community development entity who has already received a credit of up to $4 million, allowing for the additional investments up to the allowable maximum of $8 million on or after January 1, 2014. The amended rule requires the community development entity to submit a new project summary. In addition, the rules have been amended to make necessary contact information for the investor who will be making the investments in the program.
Rules Coordinator: Mindee Sublette—(503) 986-0036

123-630-0000
Purpose

(1) This division of administrative rules specifies procedures and criteria necessary to administer processes under the Oregon Low Income Community Jobs Initiative for the certification of a qualified equity investment in order to receive a credit allowance for taxes otherwise due under ORS Chapter 316, 317 or 318.

(2) The changes to OAR 123-630-0030 made by temporary rule adopted effective February 12, 2015, apply to increased investments in qualified active low-income businesses made on or after January 1, 2014. The changes to 123-630-0050 made by temporary rule adopted effective February 12, 2015, apply to applications submitted to the department on or after the effective date of the temporary rule.

Stat. Auth.: ORS 285C.650-285C.656 and ORS 315.526 – 315.536
Stats. Implemented: ORS 285C.650-285C.656 and ORS 315.526 – 315.536
Hist.: OBDD 9-2012, f. & cert. ef. 6-1-12, OBDD 9-2013(Temp), f. & cert. ef. 10-15-13 thru 4-11-14; OBDD 6-2014, f. & cert. ef. 4-1-14; ODBB 2-2015(Temp), f. & cert. ef. 2-12-15 thru 8-10-15

123-630-0030
Eligibility

(1) The following conditions and/or criteria must exist for a taxpayer to be eligible for the credit:

(a) A qualified community development entity that issues a debt instrument may not make cash interest payments on the debt instrument during the period commencing with its issuance and ending on its final credit allowance date in excess of the sum of the cash interest payments and the cumulative operating income, as defined in the regulations promulgated under section 45D of the Internal Revenue Code, of the qualified community development entity for the same period. This limitation shall only apply to long-term debt securities issued by a qualified community development entity that are designated as qualified equity investments and shall not apply to other debt of the qualified community development entity. Neither this paragraph nor the definition of "long-term debt security" provided in ORS 315.529 in any way limits the holder's ability to accelerate payments on the debt instrument in situations where the qualified community development entity has defaulted on covenants designed to ensure compliance with this section or section 45D of the Internal Revenue Code.

(b) A business is considered a qualified active low-income community business for the duration of a qualified community development entity's investment in or loan to the business if it is reasonable to expect that at the time of the qualified community development entity's investment in or loan to a qualified active low-income community business, the business will continue throughout the duration of the investment in or loan to the business.

(c) A qualified equity investment must be designated a qualified equity investment by the qualified community development entity and be certified by the department.

(d) Prior to January 1, 2014, the maximum amount of qualified low-income community investments made in a qualified active low-income community business, together with all of its affiliates, that may count towards the requirement that a qualified community development entity invest substantially all of the qualified equity investment required by OAR 123-630-0010(7)(b) in qualified active low-income community businesses in this state is $4 million, whether made by one or several qualified community development entities.

(e) On or after January 1, 2014, the maximum amount of qualified low-income community investments made in a qualified active low-income community business, together with all of its affiliates, that may count towards the requirement that a qualified community development entity invest at least the percentage of the qualified equity investment required by OAR 123-630-0010(7)(b) in qualified active low-income community businesses in this state is $8 million, whether made by one or several qualified community development entities. Qualified active low-income community businesses that received qualified low-income investments of up to $4 million prior to January 1, 2014, may receive additional qualified low-income investments, up to a total of $8 million, on or after January 1, 2014, only if the community development entity first submits a project summary demonstrating that the additional investment complies with the requirements of the applicable statutes and rules.

(f) A qualified equity investment must be made before July 1, 2016. Nothing in this paragraph precludes an entity that makes a qualified equity investment prior to July 1, 2016, from claiming a tax credit relating to that qualified equity investment for each applicable credit allowance date.

(g) No more than 40% of the total project costs that are paid for by the qualified low-income community investment may be for working capital, financing and other fees and other soft costs.

(2) A taxpayer claiming a credit may not claim any other credit under ORS 315 or 285C during the same tax year based on activities related to the same qualified active low-income community business.

Stat. Auth.: ORS 285C.650-285C.656 & 315.526 – 315.536
Stats. Implemented: ORS 285C.650-285C.656 & 315.526 – 315.536
Hist.: OBDD 9-2012, f. & cert. ef. 6-1-12; OBDD 9-2013(Temp), f. & cert. ef. 10-15-13 thru 4-11-14; OBDD 6-2014, f. & cert. ef. 4-1-14; ODBB 2-2015(Temp), f. & cert. ef. 2-12-15 thru 8-10-15

123-630-0050
Application and Fees

(1) An applicant seeking to have an equity investment or long-term debt security certified as a qualified equity investment and eligible for a tax credit under ORS 285C.650 and OAR 123-630-0080 must submit an application to the department on a form that the department provides. A complete application must include all of the following:

(a) The entity's name, address, tax identification number and evidence of certification as a qualified community development entity.

(b) A copy of an allocation agreement executed by the entity, or its controlling entity, and the Community Development Financial Institutions Fund that includes the State of Oregon in its service area.

(c) A certificate executed by an executive officer of the entity attesting that the allocation agreement remains in effect and has not been revoked or canceled by the Community Development Financial Institutions Fund.

(d) A description of the proposed purchase price, structure and purchaser of the equity investment or long-term debt security.

(e) The name and tax identification number of any person eligible to claim a tax credit, under ORS 285C.650–285C.656, and ORS 315.526–315.536, allowed as a result of the certification of the qualified equity investment.

(f) Information regarding the proposed use of proceeds from the issuance of the qualified equity investment on a form provided by the department. If the information described in the previous sentence is not submitted with the application, the applicant shall, at least 20 days prior to the date of the applicant proposes to make a qualified low-income community investment, submit to the department for review and approval of the qualified low-income community investment, an updated qualified low-income community investment certification on a form provided by the department. The information will include but is not limited to the following for each proposed qualified low-income community investment:

(A) Location;
(B) Sources and uses of funds;
(C) Impacts to communities;
(D) Revenues;
(E) Number of jobs created and/or retained; and
(F) Economic impacts

(G) Name and contact information for: the investor making the qualified equity investment(s), the investor making the qualified low-income community investment(s), and all qualified active low-income community business receiving the qualified low-income community investment(s).

(g) A nonrefundable application fee of $20,000. This fee shall be paid to the department and shall be required for each application submitted.

(2) In addition to what is required by the application or in this division of administrative rules, the applicant will submit any information requested by the department for purposes of evaluating the application.

(3) A qualified community development entity submitting an application for certification of an additional equity investment or long-term debt security as a qualified equity investment and eligible for a tax credit under ORS 315.533, must demonstrate to the satisfaction of the department that all previous equity investments and long-term debt securities certified as qualified equity investments have been fully committed and used in compliance with the requirements of the Oregon Low Income Community Jobs Initiative.

(4) A qualified community development entity that is certified under ORS 285C.650 and OAR 123-630-0080 shall pay an annual evaluation fee of $1,000 to the department with the submission of each report described in OAR 123-630-0070.

(5) Applications will be processed on a first come, first serve basis.

(6) Supplemental documentation or attachments submitted to the department by the applicant along with the application form and required materials are not considered part of the application and will be considered to be separate and distinct information submitted to the department. The department will provide approval or consent only with regard to those submissions for which approval or consent is required from the department by statute or rule. If the department does not provide explicit approval in writing for any supplemental information or documentation submitted by the applicant, then the information or documentation is not approved.

Stat. Auth.: ORS 285C.650 & 315.526 – 315.536
Stats. Implemented: ORS 285C.650 & 315.526 – 315.536
Hist.: OBDD 9-2012, f. & cert. ef. 6-1-12; OBDD 9-2013(Temp), f. & cert. ef. 10-15-13 thru 4-11-14; OBDD 6-2014, f. & cert. ef. 4-1-14; ODBB 2-2015(Temp), f. & cert. ef. 2-12-15 thru 8-10-15

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Oregon Department of Education
Chapter 581

Rule Caption: Beginning Teacher and Administrator Support Program
Adm. Order No.: ODE 1-2015
Filed with Sec. of State: 1-26-2015
Certified to be Effective: 1-26-15
Notice Publication Date: 6-1-2014
Rules Ren. & Amend: 581-020-0065 to 581-018-0130, 581-020-0080 to 581-018-0148
Subject: Correction of filing dated 12/4/2014.

Defines mentoring and provides evidence-based best practices Mentoring Programs Standards for mentoring programs. Eliminates the specified amount of funding for each beginning teacher and administrator that meet mentoring requirements in alignment with revised statute. Renumbers rules so that they become part of the Network on Quality Teaching and Learning pursuant to HB 3233 (2013).
Rules Coordinator: Cindy Hunt—(503) 947-5651

581-018-0130
Definitions

The following definitions apply to Oregon Administrative Rules 581-018-0130 through 581-018-0151 unless the context requires otherwise:

(1) "Administrator's Present Position" means being assigned in the role as a principal or a superintendent.

(2) "Beginning Administrator" means a principal or superintendent who:

(a) Possesses an administrative license issued by the Teacher Standards and Practices Commission;

(b) Is employed as a principal or superintendent by a school district; and

(c) Has been assigned for fewer than two school years in the administrator's present position.

(3) "Beginning Teacher" means a teacher who:

(a) Possesses a teaching license issued by the Teacher Standards and Practices Commission;

(b) Is employed at least half time, primarily as a classroom teacher, by a school district; and

(c) Has taught fewer than two school years, as a licensed teacher in any public, private, or state-operated school.

(4) "Classroom Teachers" means all teachers who provide direct instruction to students.

(5) "District" means a school district, an education service district, a state-operated school, or any legally constituted combination of such districts.

(6) "Mentor " means an individual who:

(a) Is an acting or retired teacher, principal or superintendent;

(b) Has met established best practice and research-based criteria as defined by the State Board of Education by rule

(c) Possesses a teaching or administrative license issued by the Teacher Standards and Practices Commission;

(d) Has successfully served for five or more years as a licensed teacher, principal or superintendent in any public school; and

(e) Has been selected and trained as described in ORS 329.815.

(7) "Mentorship program" means a program provided by a mentor to a beginning teacher or administrator that includes, but is not limited to, direct classroom observation and consultation; assistance in instructional planning and preparation; support in implementation and delivery of classroom instruction; development of school leadership skills and other assistance intended to assist the beginning teacher or administrator to become a confident and competent professional educator who makes a positive impact on student learning.

(8) "Teacher" means a licensed employee of a common or union high school district, an employee of an education service district or a state-operated school who has direct responsibility for instruction, coordination of educational programs or supervision of teachers and who is compensated for services from public funds. "Teacher" does not include a school nurse as defined in ORS 342.455 or a person whose duties require an administrative certificate.

(9) "Mentoring" means a professional relationship between an educator and a skilled mentor. In a confidential and trusting partnership, the mentor supports the educator to transform practice through a process of reflection and inquiry. The goals of this collaborative and continuous work are: to accelerate instructional practice, ensure equitable learning for all students, retain effective educators, and empower educational leaders.

Stat. Auth.: ORS 326.051 & 329.795
Stats. Implemented: ORS 329.790 - 329.820
Hist.: EB 18-1988, f. & cert. ef. 3-16-88; EB 9-1990, f. & cert. ef. 1-30-90; ODE 2-2008, f. & cert. ef. 1-25-08; Renumbered from 581-020-0065 by ODE 43-2014, f. & cert. ef. 12-4-14; Renumbered from 581-020-0065 by ODE 1-2015, f. & cert. ef. 1-26-15

581-018-0148
Funding

(1) Subject to ORS 291.230 to 291.260, the Department of Education shall distribute grants-in-aid to qualifying school districts to offset the costs of beginning teacher and administrator mentorship programs. A qualifying district shall receive annually an amount that is aligned with evidence-based best practices for beginning teachers and administrators approved for support.

(2) If the funds are insufficient for all eligible proposals, the Department of Education shall award grants on a competitive basis taking into consideration geographic and demographic diversity.

Stat. Auth.: ORS 326.051 & 329.795
Stats. Implemented: ORS 329.790 - 329.820
Hist.: EB 18-1988, f. & cert. ef. 3-16-88; EB 36-1988, f. & cert. ef. 8-5-88; EB 9-1990, f. & cert. ef. 1-30-90; EB 25-1990(Temp), f. & cert. ef. 5-18-90; ODE 2-2008, f. & cert. ef. 1-25-08; Renumbered from 581-020-0080 by ODE 43-2014, f. & cert. ef. 12-4-14; Renumbered from 581-020-0080 by ODE 1-2015, f. & cert. ef. 1-26-15

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Rule Caption: Required Instructional Time
Adm. Order No.: ODE 2-2015
Filed with Sec. of State: 1-30-2015
Certified to be Effective: 7-1-15
Notice Publication Date: 12-1-2014
Rules Amended: 581-022-1620
Subject: The benchmarks for phasing in the instructional hours requirement (subsection 7) have been changed up to 80% in the first year and 85% in the second. An additional phase-in year has been added with a 92% instructional hour requirement. A requirement that individual schools must schedule 80% of students has been added.
Rules Coordinator: Cindy Hunt—(503) 947-5651

581-022-1620
Required Instructional Time

(1) Each school district shall ensure that at least 92% of all students in the district and at least 80% of all students at each school operated by the district are scheduled to receive annually the following minimum hours of instructional time:

(a) Grade 12 — 966 hours;

(b) Grades 9–11 — 990 hours; and

(c) Grades K–8 — 900 hours.

(2) If a school district chooses to offer less than 900 hours of instructional time for kindergarten students, the kindergarten program shall be considered a half-day program for purposes of ORS 327.006(1) and the school district shall ensure that every kindergarten student is scheduled to receive a minimum of 450 hours of instructional time per year.

(3) Upon approval by the local school board, a district may include in its calculation of instructional time required by subsection (1) of this rule the following:

(a) For kindergarten programs offering 900 hours or more of instructional time, up to 60 hours of recess;

(b) For kindergarten programs offering less than 900 hours of instructional time, up to 30 hours of recess;

(c) For grades 1–3, up to 60 hours of recess;

(d) Up to 30 hours for staff professional development;

(e) Up to 30 hours for parent teacher conferences; and

(f) For the 2015–16 school year, up to 14 hours for emergency school closures due to adverse weather conditions and facilities failure.

(4) For students participating in online instruction:

(a) Instructional time includes online instruction supported by a licensed or registered teacher through electronic means.

(b) For online instruction, up to one hour per course per day may be counted as instructional time where the following criteria are met:

(A) Every student has access to a licensed or registered teacher through in-person, telephone, or electronic means for each course taken; and

(B) Every student has regular contact with school personnel for the purpose of attendance and progress monitoring as outlined in the policies maintained by the Oregon Department of Education.

(c) Instructional time may not be claimed for weekends or holidays, per ORS 336.010 and 187.010, or any other day during which a licensed or registered teacher is not available to students.

(5) There shall be no fewer than 265 consecutive calendar days between the first and last instructional day of each school year at each grade level.

(6) No student shall be required to exceed the following number of instructional hours per day:

(a) Grades 9–12 — 8.5 hours;

(b) Grades K–8 — 8 hours.

(7) The minimum instructional hours requirement set forth in subsection (1) of this rule shall first apply to the 2015–16 school year but full compliance shall be phased in over a period of four school years. A school district will be in compliance with the requirements of subsection (1) of this rule if the following benchmarks are met:

(a) For the 2015–16 school year, at least 80% of all students in the district must be scheduled to receive the minimum hours of instructional time set forth in subsection (1) of this rule.

(b) For the 2016–17 school year, at least 85% of all students in the district must be scheduled to receive the minimum hours of instructional time set forth in subsection (1) of this rule.

(c) For the 2017–18 school year, at least 90% of all students in the district must be scheduled to receive the minimum hours of instructional time set forth in subsection (1) of this rule.

(d) For the 2018–19 school year, at least 92% of all students in the district and at least 80% of all students at each school operated by the district must be scheduled to receive the minimum hours of instructional time set forth in subsection (1) of this rule.

(8) The State Board of Education shall conduct a public hearing and board discussion relating to instructional time at the 2016, 2017 and 2018 January board meetings. The purpose of the public hearing will be to receive information about and consider the implementation and potential financial concerns relating to required instructional time, OAR 581-022-0102 (definition of instructional time) and 581-022-1131 (credit options).

Stat. Auth.: ORS 326.011 & 326.051

Stats. Implemented: ORS 326.051

Hist.: EB 18-1996, f. & cert. ef. 11-1-96; ODE 25-2008, f. & cert. ef. 9-26-08; ODE 2-2015, f. 1-30-15, cert. ef. 7-1-15

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Rule Caption: Credit Options
Adm. Order No.: ODE 3-2015
Filed with Sec. of State: 1-30-2015
Certified to be Effective: 7-1-15
Notice Publication Date: 12-1-2014
Rules Amended: 581-022-1131
Subject: This rule has required all school districts and public charter schools to offer students the option of obtaining credit towards high school graduation by completing 130 hours in a class. The rule still allows this as an option but does not require districts to do this.
Rules Coordinator: Cindy Hunt—(503) 947-5651

581-022-1131
Credit Options

(1) A school district or public charter school shall grant required and elective credit towards the diploma or a modified diploma, provided the method for accruing such credit is described in the student's personal education plan and the student earns the credit by meeting the requirements of one or more of the options described in this rule.

(2) A school district or charter school may grant credit to a student if the student demonstrates defined levels of proficiency or mastery of recognized standards (e.g., state academic content standards and essential skills, industry-based or other national or international standards) by any one or more of the following options:

(a) Successfully completing classroom or equivalent work (e.g., supervised independent study, career-related learning experiences, project based learning), which meets Common Curriculum Goals and academic content standards required by OAR 581-022-1210;

(b) Successfully completing classroom or equivalent work designed to measure proficiency or mastery of identified standards (knowledge and skills) in class or out of class, where hours of instruction may vary;

(c) Successfully passing an appropriate exam designed to measure proficiency or mastery of identified standards (knowledge and skills);

(d) Providing a collection of work or other assessment evidence which demonstrates proficiency or mastery of identified standards (knowledge and skills); or

(e) Providing documentation of prior learning activities or experiences which demonstrates proficiency or mastery of identified standards (knowledge and skills) (e.g., certification of training, letters, diplomas, awards, etc.).

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 326.051

Hist.: ODE 4-2003, f. & cert. ef. 3-14-03; ODE 2-2009, f. & cert. ef. 4-23-09; ODE 3-2015, f. 1-30-15, cert. ef. 7-1-15

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Rule Caption: Definitions of Instructional Time
Adm. Order No.: ODE 4-2015
Filed with Sec. of State: 1-30-2015
Certified to be Effective: 7-1-15
Notice Publication Date: 12-1-2014
Rules Amended: 581-022-0102
Subject: Prescribes definition of instructional time for purposes of placing requirements on districts and schools relating to minimum instructional time.
Rules Coordinator: Cindy Hunt—(503) 947-5651

581-022-0102
Definitions

The following definitions apply to Oregon Administrative Rules 581-022-0102 through 581-022-1940, unless otherwise indicated by context:

(1) "Assessment": Systematic gathering of data with the purpose of appraising and evaluating children's social, physical, emotional, and intellectual development. Activities may include testing to obtain and organize information on student performance in specific subject areas.

(2) Career and Technical Education: A sequence of organized educational activities that:

(a) Provides individuals with coherent and rigorous content aligned with challenging academic standards and relevant technical knowledge and skills needed to prepare for further education and careers;

(b) Provides technical skill proficiency and may provide an industry-recognized credential, a certificate or an advanced degree; and

(c) Includes applied learning that contributes to an individual's academic and technical knowledge, higher-order reasoning and problem-solving skills, work attitudes and general employability skills.

(3) "Career Development": The exploration of personal interests and abilities with regard to career selection, and the development of tentative career goals.

(4) "Career Education": A process for improving educational programs to enhance student understanding of and preparation for work and continuing career development.

(5) "Career-Related Learning Experiences": Structured student activities in the community, the workplace, or in school that connect academic content and career-related learning to real life applications. These experiences extend, reinforce and support classroom learning. They include, but are not limited to:

(a) Workplace mentoring;

(b) Workplace simulations;

(c) School-based enterprises;

(d) Structured work experiences;

(e) Cooperative work and study programs;

(f) On-the-job training;

(g) Apprenticeship programs;

(h) Service learning; and

(i) Field-based investigations.

(6) "Charter school": A public charter school as defined in ORS 338.005.

(7) "Child development specialist program": An optional elementary (grades K-8 or any configuration thereof) component of a district's comprehensive guidance and counseling program for grades K-12.

(8) "Collection of Evidence": The work of a student collected and evaluated together to measure the student's ability to apply what the student knows and can do in relation to a set of standards or criteria.

(9) "Common Curriculum Goals": The knowledge and skills expected of all students as a result of their educational experience; defined by the state as:

(a) The Essential Learning Skills which means essential skills as defined by this rule; and

(b) The Common Knowledge and Skills in instructional programs as adopted by the State Board of Education.

(10) "Common Knowledge and Skills in Instructional Programs": Facts, concepts, principles, rules, procedures and methods of inquiry associated with specific subject matter areas as adopted by the State Board of Education.

(11) "Common School District": A school district other than a union high school district formed primarily to provide education in all or part of grades K through 12 to pupils residing within the district (ORS 330.005(2)(b)). See section (20) of this rule.

(12) "Community Partnerships": Collaborations to network resources to assist students to meet state and local standards and prepare students for post high school transitions. These partnerships include parents, students, business, education, government and community-based organizations.

(13) "Compliance Indicator": Statement of the action taken by a local district which can be accepted as evidence that the district is in compliance with the intent of a particular state standard.

(14) "Comprehensive guidance and counseling program: A program that is integral to a district's total PreK through 12 educational program that is planned, proactive and preventative in design to address each student's academic, career, personal and social development and community involvement.

(15) "Conditionally Standard School": A school that fails to meet the standards but has submitted a plan of correction, approved by the district school board, to the State Superintendent.

(16) "Course Goals": Statements describing the knowledge and skills students are expected to acquire as a result of having completed a course, elementary unit, or grade level.

(17) "Diploma": The document issued by school districts and charter schools in accordance with OAR 581-022-1130 or 581-022-1134.

(18) "District": A common or union high school district (ORS 332.002(2)).

(19) "District Goals": Statements related to State Board of Education goals (OAR 581-022-1030) which describe the local district and community's expectations for student learning.

(20) "District School Board": The board of directors of a common school district or a union high school district (ORS 332.002(1)).

(21) "Education Plan": A formalized plan and process in which a student identifies their academic, personal and career interests which helps the student to connect school activities with their post-high school goals.

(22) "Education Profile": Documentation of a student's academic achievement and progress toward their graduation requirements, post-high school goals and other personal accomplishments identified in their education plan.

(23) "Education Record": has the same meaning as in OAR 581-021-0220.

(24) "Elementary School": Any combination of grades K through 8.

(25) "Essential Skills": Process skills that cross academic disciplines and are embedded in the content standards. The skills are not content specific and can be applied in a variety of courses, subjects, and settings. The essential skills include: Read and comprehend a variety of text; Write clearly and accurately; Listen actively and speak clearly and coherently; Apply mathematics in a variety of settings; Think critically and analytically; Use technology to learn, live, and work; Demonstrate civic and community engagement; Demonstrate global literacy; and Demonstrate personal management and teamwork skills.

(26) "Extended Application Standard": The application and extension of knowledge and skills in new and complex situations related to the student's personal and career interests and post-high school goals.

(27) "Global Studies": An area of study for learning about the people and cultures of the world through history, geography and other social studies disciplines.

(28) "High School": Any combination of grades 10 through 12 in districts providing a junior high school containing grade 9; any combination of grades 9 through 12 organized as a separate unit; grades 9 through 12 housed with grades K through 12; grades 7 or 8 through 12, if approved by the Oregon Department of Education.

(29) "Identification Team" referred to as the "Team": A team of at least two district staff who carry out district identification procedures and determine the identification of students under OAR 581-022-1310.

(30)(a)"Instructional time" means time during which students are engaged in regularly scheduled instruction, learning activities, or learning assessments that are designed to meet Common Curriculum Goals and academic content standards required by OAR 581-022-1210, and are working under the direction and supervision of a licensed or registered teacher, licensed CTE instructor, licensed practitioner, or Educational Assistant who is assigned instructionally related activities and is working under the supervision of a licensed or registered teacher as required by OAR 581-037-0015.

(b) Instructional time shall include:

(A) Time that a student spends traveling between the student's school and a CTE center, internship, work experience site, or post-secondary education facility; and

(B) Time that a student spends in statewide performance assessments.

(c) Instructional time shall not include time that a student spends passing between classes, at recess, in non-academic assemblies, on non-academic fieldtrips, participating in optional school programs, or in study periods or advisory periods where attendance is not required and no instructional assistance is provided.

(31) "Junior High School": A secondary school composed of one or more of grades 7, 8, and 9 organized separately from other grades and approved by the Oregon Department of Education.

(32) "Kindergarten": A planned program that provides activities designed to foster the physical, social, emotional, and cognitive development of young children (ORS 336.092 and 336.095).

(33) "Middle School": An organizational unit composed of any combination of grades 5, 6, 7, and 8 organized separately from other elementary grades and identified as a middle school with the Oregon Department of Education.

(34) "Next steps": The education and/or career choices students make after leaving high school, which may include the workforce, community colleges, four-year colleges and universities, private career schools, apprenticeships, and the military.

(35) "Nonstandard School": A school which fails to meet the standards, and which within ninety days of the State Superintendent's notification of deficiencies, fails to submit a plan of correction or adhere to a plan of correction approved by the State Superintendent (ORS 327.103).

(36) "Parent": Has the same definition as in Oregon Revised Statute 343.035.

(37) "Planned Course Statement": Course title, course overview, course goals (including essential learning skills, career-related goals and common curriculum goals as set forth in OARs 581-022-1210) and, where appropriate, graduation competence assigned to the course for verification.

(38) "Potential": As used in OAR 581-022-1310, the demonstrated capacity to perform at or above the 97th percentile as determined by the team.

(39) "Program": A planned series of interrelated activities or services contributing to the attainment of a goal or set of goals.

(40) "Program Evaluation": A process for making judgments about the philosophy, goals, methods, materials and outcomes of a program to guide program improvement.

(41) "Program Goals" (instructional): Statements describing what students are expected to learn in each district instructional program in any combination of grades K through 12.

(42) "Program Goals" (support): Statements describing program outcomes which support the entire learning system, or one or more of its components, usually stated in terms of services to be performed.

(43) "Program Needs Identification": Procedures, which specify and rank the differences between actual and desired outcomes leading to the consideration of program revision.

(44) "School District": A common or union high school district (ORS 332.002). For the purposes of OARs 581-022-0403, 581-022-1310, 581-022-1320 and 581-022 1330, school district has the same meaning as in Oregon Revised Statute 343.395.

(45) "Standard School": A school, which is in compliance with all of the standards.

(46) "State Standards": State Board division 22 Administrative Rules for public elementary and secondary schools.

(47) "Student Activity Funds": All money raised or collected by and/or for school-approved student groups, excluding money budgeted in the general fund.

(48) "Talented and Gifted Students": Those children defined in Oregon Revised Statute 343.395.

(49) "Union High School District": A school district, other than a common school district, formed in accordance with ORS 335.210 to 335.485 (330.005).

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

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 326.011

Hist.: 1EB 19-1980, f. 6-17-80, ef. 7-1-80; 1EB 4-1986, f. 1-23-86, ef. 2-1-86; EB 8-1989, f. & cert. ef. 1-27-89; EB 6-1995, f. & cert. ef. 1-24-95; ODE 7-1999, f. & cert. ef. 1-15-99; ODE 12-2002, f. & cert. ef. 4-15-02; ODE 4-2003, f. & cert. ef. 3-14-03; ODE 25-2008, f. & cert. ef. 9-26-08; ODE 4-2015, f. 1-30-15, cert. ef. 7-1-15

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Oregon Department of Education, Early Learning Division Chapter 414

Rule Caption: Certified Family Child Care Homes
Adm. Order No.: ELD 1-2015
Filed with Sec. of State: 2-3-2015
Certified to be Effective: 2-3-15
Notice Publication Date: 9-1-2014
Rules Amended: 414-350-0030, 414-350-0050, 414-350-0090
Subject: Prohibits issuance of certification to applicant who holds medical marijuana card. Prohibits issuance of certification to an applicant who grows or uses medical marijuana or distributes medical marijuana. Places other restrictions on growing or possessing medical marijuana on in family child care homes.

Clarifies inspection authority of Office of Child Care.

Allows Office of Child Care to require references, professional evaluations and other information if additional information is needed to assess person's ability to care for children.

Prohibits alcohol from being consumed or stored on the premises during the hours the child care business is conducted or when child care children are present. Prohibits anyone from being under the influence of alcohol during hours of child care business or when children are present.

Clarifies the prohibition on possession and use of illegal controlled substances.

Clarifies limitations on use of tobacco products, including smokeless tobacco and e-cigarettes.

Rules Coordinator: Cindy Hunt—(503) 947-5651

414-350-0030
Issuance of a Child Care Certificate

(1) A certificate shall not be issued by OCC to an applicant who holds a medical marijuana card. A certificate shall not be issued to an applicant who grows marijuana or distributes marijuana.

(2) A certificate shall be issued by OCC when it has been determined the home is in compliance with OAR 414-350-0000 through 414-350-0405. There are two types of certification. These are:

(a) A regular certificate which, except as provided in OAR 414-350-0020(4)(b)(A), is valid for no more than one year; and

(b) A temporary certificate. A certified family child care home may not operate under a temporary certificate for more than 180 days in any 12-month period. A temporary certificate is issued when:

(A) The home is in compliance with most requirements;

(B) There are no deficiencies identified by OCC that are hazardous to children; and

(C) The provider demonstrates an effort to be in full compliance.

(3) A certificate is not transferable to any other location or to another organization or individual.

(4) A certificate is granted in the name of the operator/provider. An operator/provider is limited to one certificate at one address.

(5) An owner can have multiple sites under the following conditions:

(a) If the owner is the provider/operator in one of the homes, the owner can have two certified family child care homes; or

(b) If the owner does not directly care for any children, the owner can have more than two certified family child care homes.

(c) If the owner is the provider/operator in a home certified for more than 12 children, the owner may be the provider for only that certified family child care home. The provider may be the owner of other facilities. See OAR 414-350-0100 (5).

(6) Any changes in the conditions of certificate shall be requested in writing to OCC and approved by OCC before the condition(s) of the current certificate may be changed. Changes include, but are not limited to, facility capacity, age range of children, or hours of operation.

Stat. Auth.: ORS 329A.260

Stats. Implemented: ORS 329A

Hist.: CSD 12-1988, f. 6-29-88, cert. ef. 7-1-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0715; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 6-2005(Temp), f. 12-29-05, cert. ef. 1-1-06 thru 6-29-06; CCD 3-2006, f. & cert. ef. 6-13-06; CCD 4-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 4-2010, f. 6-29-10, cert. ef. 7-1-10; CCD 9-2010, f. 12-29-10, cert. ef. 1-1-11; ELD 8-2014(Temp), f. & cert. ef. 8-7-14 thru 2-3-15; ELD 1-2015, f. & cert. ef. 2-3-15

414-350-0050
General Requirements

(1) The following items shall be posted in the certified family child care home where they may be viewed by parents:

(a) The child care certificate;

(b) Notification of a communicable disease outbreak at the home;

(c) The evacuation plan; and

(d) A notice that the following items are available for parents to review:

(A) The guidance/discipline policy;

(B) The current week's menus, with substitutions recorded;

(C) The description of the general routine;

(D) Information on how to report a complaint to OCC regarding certification requirements; and

(E) The most recent OCC and sanitation inspection reports and, if applicable, fire life safety self evaluation (or fire marshal inspection report if completed).

(2) The provider shall ensure that a copy of these administrative rules is available in the certified family child care home to all parents and staff.

(3) Caregivers shall report suspected child abuse or neglect immediately, as required by the Child Abuse Reporting Law (ORS 419B.005 through 419B.050) to the Department of Human Services Child Welfare (DHS) or to a law enforcement agency. By statute, this requirement applies 24 hours per day.

(4) The certified family child care home shall comply with state and federal laws related to child safety systems and seat belts in vehicles, bicycle safety, civil rights laws, and the Americans With Disabilities Act (ADA).

(5) Representatives of all agencies involved in certification shall have immediate access to all parts of the home whenever the provider is conducting the child care business:

(a) OCC staff shall have the right to inspect all areas of the facility that are accessible to child care children, and to conduct a health and safety review of other areas of the facility to ensure the health and safety of child care children. This includes access to all caregivers, records of children enrolled in the home, and all records and reports related to the child care operation regarding compliance with these rules; and

(b) Representatives of the Department of Human Services Child Welfare (DHS) and the State Fire Marshal have the right to enter and inspect the home when an inspection has been requested by OCC.

(6) Custodial parents of all children enrolled shall have access to the home during the hours their child(ren) are in care.

(7) The provider shall develop the following information in writing and shall make it available to OCC, to staff, and to parent(s) at the time of enrollment:

(a) Guidance and discipline policy;

(b) Information on transportation, when provided by the provider or other caregiver; and

(c) The plan for handling emergencies and/or evacuations, including, but not limited to, fire, acute illness of a child or staff, natural disasters, power outages, and situations which do not allow reentry to the home after evacuation.

(8) The provider shall comply with the Department of Human Services' administrative rules relating to:

(a) Immunization of children (OAR 333-019-0021 through 333-019-0090);

(b) Reporting communicable diseases (OAR 333-019-0215 through 333-019-0415); and

(c) Child care restrictable diseases (OAR 333-019-0010).

(9) The provider shall report to OCC:

(a) An accident at the home resulting in the death of a child, within 48 hours after the occurrence; and

(b) Injuries to a child at the certified family child care home which require attention from a licensed health care professional, such as a physician, EMT or nurse, within 7 days after the occurrence.

(10) Documentation of meals and snacks provided by the certified family child care home shall be made available to OCC upon request, if the home does not participate in the USDA Child and Adult Care Food Program. Documentation is limited to the three weeks prior to the request.

(11) The provider is responsible for compliance with these requirements (OAR 414-350-0000 through 414-350-0405).

(12) Parental request or permission to waive any of the rules for certified family child care homes does not give the provider permission to do so.

Stat. Auth.: ORS 657A.260

Stats. Implemented: ORS 657A.260, 657A.280, 657A.290, 657A.300, 657A.390 & 657A.400

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CSD 10-1990, f. & cert. ef. 4-23-90; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0720; CSD 9-1994, f. & cert. ef. 5-23-94; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 6-2005(Temp), f. 12-29-05, cert. ef. 1-1-06 thru 6-29-06; CCD 3-2006, f. & cert. ef. 6-13-06; CCD 5-2006(Temp), f. & cert. ef. 8-25-06 thru 2-21-07; CCD 6-2006, f. & cert .ef. 12-1-06; CCD 2-2007, f. & cert. ef. 7-13-07; CCD 4-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 4-2010, f. 6-29-10, cert. ef. 7-1-10; CCD 9-2010, f. 12-29-10, cert. ef. 1-1-11; ELD 1-2015, f. & cert. ef. 2-3-15

414-350-0090
General Requirements

(1) As required by Oregon civil rights law, ORS Chapter 659, the provider shall not discriminate in employment on the basis of race, color, gender, marital status, religion, national origin, age, or because of a mental or physical handicap unrelated to specific job performance.

(2) All caregivers, including the provider, shall:

(a) Have competence, sound judgment, and self-control in working with children;

(b) Be mentally, physically, and emotionally capable of performing duties related to child care; and

(c) Have the required training and/or experience for the positions they hold, as specified in OAR 414-350-0100 and 0110.

(3) If additional information is needed to assess a person's ability to care for children or to have access to children, OCC may require references, an evaluation by a physician, counselor, or other qualified person, or other information.

(4) No one shall have access to child care children who has demonstrated behavior that may have a detrimental effect on a child. Residents of the home are considered to have access to the child care children even if they are not generally at home during hours of operation. This does not apply to parents of children in care when they drop off and pick up their children.

(a) The owner, the provider, all caregivers and other residents of the home 18 years of age or older must be enrolled in OCC's Central Background Registry prior to the issuance of an initial or renewal certificate. Residents of the home who are under 18 years of age must be enrolled in the Registry by their 18th birthday. Certification may be denied, suspended, or revoked if the provider or other resident of the home has been removed or suspended from the Central Background Registry.

(b) Prior to any new caregiver caring for children or prior to an individual residing in the home, visiting the home on a regular basis, or substituting for or assisting the provider, the caregiver/individual shall be enrolled in the Central Background Registry and the provider shall receive verification from OCC of the enrollment. This does not apply to parents of children in care unless they are residing in the home or assisting in the provision of child care.

(c) When a provider is notified by OCC that a caregiver or other individual has been removed from the Central Background Registry, the provider shall not permit the caregiver or other individual to be in the home during hours the child care business is conducted or to have access to child care children.

(d) If any person listed in section (4)(a) & (b) of this rule has been charged with, arrested for, or a warrant is out for any of the crimes which OCC has determined indicate behavior which may have a detrimental effect on a child, with final disposition not yet reached, certification may be denied or suspended until the charge, arrest, or warrant has been resolved if the person continues to operate, be employed in or reside in the home, or have access to children in the home.

(e) If a criminal record check shows that a warrant has been issued for any person checked, OCC will inform the originating law enforcement agency of the person's name, employment address and telephone number.

(f) Any visitor to the home or other adult who is not enrolled in the Central Background Registry shall not have unsupervised access to children.

(5) Volunteers must meet the following requirements:

(a) If volunteers are counted in determining the staff/child ratios, they must meet the qualifications of the position they are filling and be enrolled in the Central Background Registry.

(b) If volunteers may have unsupervised access to children, they must be enrolled in the Central Background Registry.

(c) If volunteers do not have unsupervised access to children at any time, including during emergencies, the provider must have a written policy to this effect, the policy must be known to all caregivers and volunteers, and the volunteers do not have to be enrolled in the Central Background Registry.

(6) No person shall smoke or carry any lighted smoking instrument, including an e-cigarette or vaporizer in the certified family child care home or within ten feet of any entrance, exit, or window that opens or any ventilation intake that serves an enclosed area, during child care hours or when child care children are present. No person shall use smokeless tobacco in the certified family child care home during child care hours or when child care children are present. No person shall smoke, carry any lighted smoking instrument, including an e-cigarette or vaporizer or use smokeless tobacco in motor vehicles while child care children are passengers.

(7) No one shall consume alcohol on the certified family child care home premises during the hours the child care business is conducted or when child care children are present. No one shall be under the influence of alcohol on the family child care home premises during the hours the child care business is conducted or when child care children are present.

(8) Notwithstanding OAR 414-350-0000(6), no one shall possess, use or store illegal controlled substances on the certified family child care home premises. No one shall be under the influence of illegal controlled substances on the certified family child care home premises.

(9) Notwithstanding OAR 414-350-0000(6), no one shall grow or distribute marijuana on the premises of the certified family child care home. No adult shall use marijuana on the certified family child care home premises during child care hours or when child care children are present

(10) No adult under the influence of marijuana shall have contact with child care children.

(11) Secure Storage:

(a) All medical marijuana obtained from a dispensary must be kept in its original container and stored under child safety lock. All medical marijuana derivatives and associated paraphernalia must be stored under lock.

(b) Effective July 1, 2015 all marijuana, marijuana derivatives and associated paraphernalia must be stored under child safety lock.

(12) Notwithstanding OAR 414-350-0000(6), marijuana plants shall not be grown or kept on the certified family child care home premises.

Stat. Auth.: ORS 329A.260

Stats. Implemented: ORS 329A

Hist.: CSD 12-1988, f. 6-29-88, cert. ef. 7-1-88; CSD 10-1990, f. & cert. ef. 4-23-90; CSD 4-1991, f. & cert. ef. 3-7-91; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0730; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 4-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 4-2010, f. 6-29-10, cert. ef. 7-1-10; CCD 4-2010, f. 6-29-10, cert. ef. 7-1-10; CCD 9-2010, f. 12-29-10, cert. ef. 1-1-11; ELD 8-2014(Temp), f. & cert. ef. 8-7-14 thru 2-3-15; ELD 1-2015, f. & cert. ef. 2-3-15

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Rule Caption: Certified Child Care Centers
Adm. Order No.: ELD 2-2015
Filed with Sec. of State: 2-3-2015

Certified to be Effective: 2-3-15
Notice Publication Date: 9-1-2014
Rules Amended: 414-300-0005, 414-300-0015, 414-300-0070
Subject: Prohibits issuance of certification to applicant who holds medical marijuana card. Prohibits issuance of certification to an applicant who grows or uses medical marijuana or distributes medical marijuana. Places other restrictions on growing or possessing medical marijuana on child care center premises.

Allows Office of Child Care to require references, professional evaluations and other information if additional information is needed to assess person's ability to care for children.

Prohibits alcohol from being consumed or stored on the child care center premises during the hours the child care business is conducted or when child care children are present. Prohibits anyone from being under the influence of alcohol during hours of child care business or when children are present.

Clarifies the prohibition on possession and use of illegal controlled substances.

Clarifies limitations on use of tobacco products, including smokeless tobacco and e-cigarettes.
Rules Coordinator: Cindy Hunt—(503) 947-5651

414-300-0005
Definitions

The following words and terms, when used in OAR 414-300-0000 through 414-300-0415, have the following meanings:

(1) "Activity Area" means the area of the center that is available, during all the hours of operation, for the children's activities. This area excludes kitchens, hallways, toilet rooms, multi-purpose areas used by all children, lockers, office, storage areas, isolation quarters, staff room, furnace room, and that part of rooms occupied by heating stoves, or stationary equipment not used by children. Additional exclusions may apply for specific age groups.

(2) "Attendance" means children actually present in the center at any given time.

(3) "Capacity" means the total number of children allowed in the center at any one time, based on the available indoor and outdoor square footage, the number of toilets in the center and the number of qualified staff.

(4) "Caregiver" means any person in the child care center who works directly with the children, providing care, supervision, and guidance.

(5) "Central Background Registry" means OCC's Registry of individuals who have been approved to work in a child care facility in Oregon pursuant to ORS 657A.030 and OAR 414-061-0000 through 414-061-0120.

(6) "Certificate" means the document that is issued by OCC to a child care center pursuant to ORS 657A.280.

(7) "Child Care" means the care, supervision, and guidance on a regular basis of a child, unaccompanied by a parent, guardian, or custodian, during a part of the 24 hours of the day, with or without compensation. Child care does not include the care provided:

(a) In the home of the child;

(b) By the child's parent or guardian, or person acting in loco parentis;

(c) By a person related to the child by blood or marriage within the fourth degree as determined by civil law;

(d) On an occasional basis by a person, sponsor, or organization not ordinarily engaged in providing child care; or

(e) By providers of medical services.

(8) "Child Care Area" means that indoor and outdoor area specifically certified for use by the center and includes all activity areas and other areas of the facility used to provide child care, such as kitchen, toilet rooms, offices, storage areas, and rooms used solely for napping or eating. This may be a specific portion or portions of the building and grounds of a larger facility or one or more buildings at the same location.

(9) "Child Care Child" means any child six weeks of age or older and under 13 years of age, or a child with special needs under the age of 18 who requires a level of care over and above the norm for his/her age, for whom the child care center has supervisory responsibility in the temporary absence of the parent.

(10) "Child Care Center" or "Center" means a child care facility that is certified to care for thirteen 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.

(11) "Child with Special Needs" means a child under the age of 18 who requires a level of care over and above the norm for his/her age due to a physical, developmental, behavioral, mental or medical disability.

(12) "OCC" means the Office of Child Care of the Department of Education or the Administrator or staff of the Office of Child Care.

(13) "Child Care Facility" means any facility that provides child care to children, including a child care center, certified family child care home, and registered family child care home. It includes those known under a descriptive name, such as nursery school, preschool, kindergarten, child play school, before or after school care, or child development center, except those excluded under ORS 657A.250. This term applies to the total child care operation and includes the physical setting, administration, staff, equipment, program, and care of children.

(14) "Civil Penalty" means a fine imposed by OCC on a facility for violation of these rules.

(15) "Comparable group care program" means a program which has the following elements:

(a) Staff are supervised by knowledgeable professionals;

(b) Training of staff is provided or required annually;

(c) Group size is similar to a certified child care facility;

(d) Curriculum is age appropriate; and

(e) The program is not providing uncertified drop-in care.

(16) "Contracted services" means activities (e.g., tumbling, music) provided by an organization or program other than the center, where non-center staff come into the center or the children are transported to another location.

(17) "Director" means a person who is designated by the operator as director or administrator of the center and who meets the qualifications of director pursuant to OAR 414-300-0080.

(18) "Drop-in Care" means care provided on an unscheduled, irregular basis, any time of the day or night, exclusively for drop-in children in a child care center.

(19) "Enrollment" means all children registered to attend the center.

(20) "Group" means a specific number of children assigned to specific staff.

(21) "Guidance and discipline" means the on-going process of helping children develop self control and assume responsibility for their own acts.

(22) "Head Teacher" means the person(s) who is responsible for the development and implementation of the program of activities for each infant and toddler, preschool age, and school-age program in the center.

(23) "Infant" means a child who is a least six weeks of age but is not yet walking alone.

(24) "Infant and Toddler Age Program" means care and education provided in a center, or part of a center, to children between the ages of six weeks and thirty-six months.

(25) "Night Care" means care given to children who sleep at the child care center for all or part of the night.

(26) "Nonserious Violation" means OCC has made a valid finding when assessing a complaint alleging a violation not listed in OAR 414-300-0005(42)

(27) "Occasional" means infrequently or sporadically, including but not limited to care that is provided during summer or other holiday breaks when children are not attending school, but not to exceed 70 calendar days in a year.

(28) "Operator" means the person, group, corporation, partnership, governing body, association, or other public or private organization legally responsible for the overall operation of the center and who has the authority to perform the duties necessary to meet certification requirements. If the operator is other than the owner, an individual must be appointed as the operator by the owner.

(29) "Oregon Registry" means the voluntary registry at the Oregon Center for Career Development in Childhood Care and Education at Portland State University that documents the training, education and experience of individuals who work in childhood care and education.

(30) "Outbreak of a communicable disease" means two cases from separate households associated with a suspected common source.

(31) "Owner" means the person, group, corporation, partnership, governing body, association, or other public or private organization which holds the child care center as property and has a major financial stake in the operation of the center. The owner may or may not be active in the operation of the center; the owner may also be the operator.

(32) "Parent" means parent(s), custodian(s), or guardian(s), exercising physical care and legal custody of the child.

(33) "Parent cooperative" means a child care program in which:

(a) Care is provided by parents on a rotating basis;

(b) Membership in the cooperative includes parents;

(c) There are written policies and procedures; and

(d) A board of directors that includes parents of the children cared for by the cooperative controls the policies and procedures of the program.

(34) "Premises" means the structure that is identified on the application, including indoors and outdoors and space not directly used for child care under the direct control of the child care facility.

(35) "Preschool-Age Child" means a child who is 36 months of age to eligible to be enrolled in the first grade and, during the months of summer vacation from school, eligible to be enrolled in the first grade in the next school year. For purposes of these rules, children attending kindergarten may be considered school-age children.

(36) "Preschool-Age Program" means care and education provided in a center, or part of a center, to children 36 months of age to attending kindergarten.

(37) "Program" means all activities and care provided for the children during their hours of attendance at the center.

(38) "Qualifying Teaching Experience" means:

(a) For infant/toddler and preschool age groups, 1,500 hours, gained with a group of the same age children in at least three-hour blocks, within a 36-month period;

(b) For school-age groups, 600 hours, gained with a group of the same age children in at least three-hour blocks, within a 36-month period. Qualifying teaching experience must be documented. Time spent in a college practicum or practice teaching is considered qualifying teaching experience. The following does not constitute qualifying teaching experience: leader of a scout troop; Sunday school teacher; and coaching.

(39) "Sanitizing" means using a bactericidal treatment that provides enough heat or concentration of chemicals for enough time to reduce the bacterial count, including disease-producing organisms, to a safe level on utensils, equipment, and toys.

(40) "School-Age Child" means a child eligible to be enrolled in the first grade or above and, during the months of summer vacation from school, a child eligible to be enrolled in the first grade or above in the next school year, up to age 13. For purposes of these rules, children attending kindergarten may be considered school-age children.

(41) "School-Age Program" means care and education provided in a center, part of a center, school or other facility to children attending kindergarten or eligible to be enrolled in the first grade or above and, during the months of summer vacation from school, eligible to be enrolled in the first grade or above in the next school year.

(42) "Serious complaint" means a complaint filed against:

(a) A certified child care center by a person who has alleged that:

(A) Children are in imminent danger;

(B) There are more children in care than allowed by certified capacity;

(C) Corporal punishment is being used;

(D) Children are not being supervised;

(E) Multiple or serious fire, health or safety hazards are present in the center;

(F) Extreme unsanitary conditions are present in the center; or

(G) Adults are in the center who are not enrolled in the Central Background Registry; or

(b) A facility providing child care, as defined ORS 657A.250(3), which is not a certified child care center by a person who has alleged that there are more children in care than allowed by law.

(43) "Serious Violation" means OCC has made a valid finding when assessing a complaint that alleges:

(a) Children are in imminent danger;

(b) There are more children in care than allowed by law;

(c) Corporal punishment is being used;

(d) Children are not being supervised;

(e) Multiple or serious fire, health or safety hazards are present in the home;

(f) Extreme unsanitary conditions are present in the center;

(g) Adults are in the center who are not enrolled in the Central Background Registry; or

(h) A facility is providing child care as defined in ORS 657A.250(4) which is not a certified child care center, by a person who has alleged that there are more children in care than allowed by law.

(44) "Site Director/Supervisor" means the person in charge of the facility at a site which is part of a larger multi-site program.

(45) "Site Coordinator" means the person responsible for coordinating over-all management and operation of a number of sites in a multi-site program.

(46) "Staff" means an individual who is the director, an employee, or a volunteer who is in the center for more than a single activity.

(47) "Substitute Director" means the person in charge of the center during the hours of operation when the director is not on site.

(48) "Supervision" means the act of caring for a child or group of children. This includes awareness of and responsibility for the ongoing activity of each child. It requires physical presence, knowledge of program requirements and children's needs, and accountability for their care and well-being. Supervision also requires that staff be near and have ready access to children in order to intervene when needed.

(49) "Teacher" means a caregiver who plans and implements daily activities for a designated group of children and who meets the qualifications of teacher pursuant to OAR 414-300-0100.

(50) "Teacher Aide" means a caregiver who works under the direct supervision of a teacher and who meets the qualifications of Aide I or Aide II pursuant to OAR 414-300-0110.

(51) "Toddler" means a child who is able to walk alone but is under 36 months of age. "Younger toddler" means a child who is able to walk alone but is under 24 months of age; "older toddler" means a child who is 24 months of age but under 36 months of age.

(52) "Usable Exit" means an unobstructed door or window through which caregivers and children can evacuate the center in case of a fire or emergency. Doors must be able to be opened from the inside without a key, and window openings must be at least 20 inches wide and 22 inches in height, with a net clear opening of 5 square feet and a sill no more than 48 inches above the floor.

Stat. Auth.: ORS 329A.260

Stats. Implemented: ORS 329A

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0605; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 4-1999(Temp), f. 10-21-99, cert. ef. 10-23-99 thru 1-1-00; CCD 9-1999, f. 12-29-99, cert. ef. 1-1-00; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 6-2003, f. 12-23-03, cert. ef. 12-28-03; CCD 1-2007(Temp), f. & cert. ef. 3-20-07 thru 9-16-07; CCD 2-2007, f. & cert. ef. 7-13-07; CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 3-2010, f. 6-29-10, cert. ef. 7-1-10; CCD 8-2010, f. 12-29-10, cert. ef. 1-1-11; ELD 10-2014(Temp), f. & cert. ef. 8-7-14 thru 2-3-15; ELD 2-2015, f. & cert. ef. 2-3-15

414-300-0015
Issuance of a Child Care Certificate

(1) A certificate shall not be issued by OCC to an applicant who holds a medical marijuana card. A certificate shall not be issued to an applicant who grows marijuana or distributes marijuana.

(2) A certificate shall be issued by OCC when it has been determined the center is in compliance with OAR 414-300-0000 through 414-300-0415. There are two types of certifications. These are:

(a) A regular certificate, which, except as provided in OAR 414-300-0010(4)(b)(A), is valid for no more than one year; and

(b) A temporary certificate. A child care center may not operate under a temporary certification for more than 180 days in any 12-month period. A temporary certificate is issued when:

(A) The center is in compliance with most requirements;

(B) There are no deficiencies identified by OCC that are hazardous to children; and

(C) The operator demonstrates an effort to be in full compliance.

(3) A certificate is not transferable to any other location or to another organization or individual.

(4) Any changes in the conditions of certificate shall be requested in writing to OCC and approved by OCC before the condition(s) of the current certificate may be changed. Changes include, but are not limited to, facility capacity, age range of children, or hours of operation.

Stat. Auth.: ORS 329A.260

Stats. Implemented: ORS 329A

Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0615; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 3-2010, f. 6-29-10, cert. ef. 7-1-10; CCD 8-2010, f. 12-29-10, cert. ef. 1-1-11; ELD 10-2014(Temp), f. & cert. ef. 8-7-14 thru 2-3-15; ELD 2-2015, f. & cert. ef. 2-3-15

414-300-0070
General Requirements

(1) The operator shall establish a system of job descriptions, staff selection, and staff evaluation. All caregivers shall:

(a) Have competence, sound judgment, and self-control in working with children;

(b) Be mentally, physically, and emotionally capable of performing duties related to child care; and

(c) Have the required training and/or experience for the position for which they are hired.

(2) There shall be a person or persons on the staff who meet(s) the qualifications of director (OAR 414-300-0080) and head teacher (OAR 414-300-0090). A person assigned the duties of the position must meet the qualifications of the position.

(3) Notwithstanding OAR 414-300-0120(3), there shall be at least one person in the center at all times who has current certification in first aid and CPR.

(4) Any staff with evidence of a child care-restrictable disease, as defined in OAR 333-019-0010, symptom of physical illness, as defined in OAR 414-300-0220(1), or mental incapacity that poses a threat to the health or safety of children shall be relieved of his/her duties.

(5) If additional information is needed to assess a person's ability to care for children or to have access to children, OCC may require references, an evaluation by a physician, counselor, or other qualified person, or other information.

(6) No one shall have access to child care children or be in the center during child care hours who has demonstrated behavior that may have a detrimental effect on a child. This includes any individual in the center who has or may have unsupervised access, however brief, to child care children (i.e., the owner, the operator, all child care staff, maintenance staff who work on-site during hours of operation, volunteers who may be left alone with children, etc.). This does not apply to parents of children in care when they drop off and pick up their children:

(a) The operator, all child care staff and others as described in section (6) above 18 years of age or older shall be enrolled in OCC's Central Background Registry prior to the issuance of an initial or renewal certification;

(b) Prior to any new staff, including a director, or individual being on-site at the center during child care hours, the staff/individual shall be enrolled in the Central Background Registry and the center shall receive verification from OCC of the enrollment. This does not apply to parents of children in care unless they are assisting in the provision of child care. Volunteers may be exempt from this rule, as specified in OAR 414-300-0070(7);

(c) When a center is notified by OCC that a staff member or other individual has been removed from the Central Background Registry, the center shall not permit the staff member or other individual to have access to child care children;

(d) If any person listed in section (6) and section (6)(a) of this rule has been charged with, arrested for, or a warrant is out for any of the crimes which OCC has determined indicate behavior which may have a detrimental effect on a child, with final disposition not yet reached, certification will be denied or suspended until the charge, arrest, or warrant has been resolved if the person continues to operate, be employed in, or have access to children in the center;

(e) If a criminal record check shows that a warrant has been issued for any person checked, OCC will inform the originating law enforcement agency of the person's name, address, and telephone number.

(7) Alcohol shall not be consumed or stored on the child care center premises during the hours the child care business is conducted or when child care children are present. No one shall be under the influence of alcohol on the child care center premises during the hours the child care business is conducted or when child care children are present.

(8) No one shall possess, use or store illegal controlled substances on the child care center premises. No one shall be under the influence of illegal controlled substances on the child care center premises.

(9) No one shall grow or possess marijuana plants or distribute marijuana on the child care center premises. No one shall possess, use or store marijuana on the premises of the child care center unless medically necessary to treat a child care child. No adult shall use or be under the influence of marijuana on the child care center premises.

(10) Marijuana, derivatives and associated paraphernalia shall not be kept on the child care center premises unless medically necessary to treat a child care child. All associated medical marijuana must be kept in original container if purchased at a dispensary, and together with derivatives and related paraphernalia must be kept under child safety lock.

(11) Volunteers must meet the following requirements:

(a) If volunteers are counted in determining the staff/child ratios, they must meet the qualifications of the position they are filling and be enrolled in the Central Background Registry;

(b) If volunteers may have unsupervised access to children, they must be enrolled in the Central Background Registry;

(c) If volunteers do not have unsupervised access to children at any time, including during emergencies, the center must have a written policy to this effect, the policy must be known to all center staff and volunteers, and the volunteers do not have to be enrolled in the Central Background Registry.

(12) No person shall smoke or carry any lighted smoking instrument, including an e-cigarette or vaporizer in the certified center or within ten feet of any entrance, exit, or window that opens or any ventilation intake that serves an enclosed area, during child care hours or when child care children are present. No person shall use smokeless tobacco in the certified center during child care hours or when child care children are present. No person shall smoke, carry any lighted smoking instrument, including an e-cigarette or vaporizer or use smokeless tobacco in motor vehicles while child care children are passengers.

Stat. Auth.: ORS 329A.260
Stats. Implemented: ORS 329A
Hist.: CSD 21-1988, f. & cert. ef. 9-29-88; CSD 10-1990, f. & cert. ef. 4-23-90; CSD 4-1991, f. & cert. ef. 3-7-91; CSD 8-1991, f. & cert. ef. 7-1-91; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0630; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 4-2001, f. 7-13-01, cert. ef. 7-15-01; CCD 2-2007, f. & cert. ef. 7-13-07; CCD 3-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 3-2010, f. 6-29-10, cert. ef. 7-1-10; ELD 10-2014(Temp), f. & cert. ef. 8-7-14 thru 2-3-15; ELD 2-2015, f. & cert. ef. 2-3-15

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Rule Caption: Central Background Registry
Adm. Order No.: ELD 3-2015
Filed with Sec. of State: 2-3-2015
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Rules Amended: 414-061-0000, 414-061-0010, 414-061-0020, 414-061-0030, 414-061-0040, 414-061-0050, 414-061-0060, 414-061-0065, 414-061-0070, 414-061-0080, 414-061-0090, 414-061-0100, 414-061-0110, 414-061-0120
Subject: Implements the transfer of the Child Care Division from the Employment Department to the Department of Education. Also modifies the list of crimes that will be considered as part of a subject individual's history, allows consideration of patterns of behavior and modifies fees for background checks.
Rules Coordinator: Cindy Hunt—(503) 947-5651

414-061-0000
Purpose

(1) The Office of Child Care (OCC) will conduct criminal records checks and child protective services records checks on subject individuals, as defined in OAR 414-061-0030, for enrollment of subject individuals in the Central Background Registry.

(2) These rules provide guidelines on how OCC obtains criminal records and child protective services records on subject individuals, applies such information to its determination about the suitability of the subject individual, and enrolls approved subject individuals in the Central Background Registry.

Stat. Auth.: ORS 657A.030(7)
Stats. Implemented: ORS 657A.030
Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03; CCD 1-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 1-2010, f. 6-29-10, cert. ef. 7-1-10; ELD 3-2015, f. & cert. ef. 2-3-15

414-061-0010
Scope of Rules

(1) Consistent with the purposes of these rules, OCC will issue decisions about persons defined as subject individuals as to their suitability to be enrolled in the Central Background Registry and employed in programs defined as "Requesting Agencies" in OAR 414-061-0020(17).

(2) These rules (OAR 414-061-0000 through 414-061-0120) shall be construed and implemented consistent with the regulations governing:

(a) Child care licensing in OAR 414-205-0000 through 414-205-0170, 414-300-0000 through 414-300-0415, and 414-350-0000 through 414-350-0405;

(b) Pre-kindergarten programs in OAR 581-019-0005 through 581-019-0035;

(c) Parent-as-teacher programs in OAR 581-019-0050 through 581-019-0080; and

(d) Early childhood special education and early intervention programs in OAR 581-015-2700 through 581-015-2910.

Stat. Auth.: ORS 657A.030(7)
Stats. Implemented: ORS 657A.030

Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03; CCD 1-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 1-2010, f. 6-29-10, cert. ef. 7-1-10; ELD 3-2015, f. & cert. ef. 2-3-15

414-061-0020
Definitions

(1) "Agency Agreement" means the written agreement between the Oregon State Police and the Oregon Office of Child Care.

(2) "Child Protective Services Records" means information on child abuse and neglect cases.

(3) "Computerized Criminal History (CCH) System" means the on-line computer files of significant criminal offender information maintained by the Oregon State Police (OSP).

(4) "Conditional Enrollment" means temporary approval to be enrolled in the Central Background Registry following an OSP criminal records check and child protective services records check but prior to receipt by OCC of the results of a required FBI criminal records check.

(5) "Criminal Records" means information, including fingerprints and photographs, received, compiled, and disseminated by the Oregon State Police for purposes of identifying criminal offenders and alleged offenders and maintained as to such persons' records of arrest, the nature and disposition of criminal charges, sentencing, confinement, and release and includes the OSP Computerized Criminal History System.

(6) "Early Childhood Care and Education Program" means a regulated child care facility, federally-funded Head Start program, Oregon Department of Education funded pre-kindergarten program, parent-as-teacher program, or early childhood special education/early intervention program.

(7) "Employee" means any individual caring for, overseeing, or who has or may have access to children, who holds a paid position in a requesting agency.

(8) "Employee of the Early Learning Division" means any individual employed by the Early Learning Division.

(9) "Enrollment" means approval for a two-year period to be enrolled in the Central Background Registry following an OSP criminal records check, child protective services records check and, if required, an FBI records check.

(10) "Fee" means the charges assessed by the subject individual for processing each criminal records check and/or fingerprint-based criminal records check.

(11) "FBI" means the Federal Bureau of Investigation.

(12) "Fingerprint-Based Criminal Records" means criminal offender information compiled and maintained by the Federal Bureau of Investigation.

(13) "Incident" means the commission of a Category I or Category II crime or a child protective services case.

(14) "OCC" means the Office of Child Care of the Early Learning Division of the Department of Education.

(15) "OSP" means the Oregon State Police.

(16) "Reciprocal Agreement Program" includes:

(a) A metropolitan service district organized under ORS chapter 268; and

(b) A private agency or organization facilitating the provision of respite services, as defined in ORS 418.205, for parents pursuant to a properly executed power of attorney under ORS 109.056.

(17) "Requesting Agency" means a childhood care and education program or individual providing care to children that is:

(a) Regulated by OCC under ORS 329A.280 or 329A.330; or

(b) An early childhood care and education program.

(18) "Unsupervised Contact with Children" means contact with children that provides the person opportunity for personal communication or touch when not under the direct supervision of a child care provider or staff with supervisory authority.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 657A.030(7)
Stats. Implemented: ORS 657A.030
Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03; CCD 1-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 1-2010, f. 6-29-10, cert. ef. 7-1-10; ELD 3-2015, f. & cert. ef. 2-3-15

414-061-0030
Subject Individuals

(1) For purposes of criminal records checks, including fingerprint-based criminal records checks, and child protective services records checks, "Subject Individual" means a person who is or applies to be:

(a) The owner, operator or an employee or volunteer of a certified, registered or otherwise regulated facility caring for children that is subject to the jurisdiction of OCC;

(b) The operator or an employee of an Oregon pre-kindergarten program or parent-as-teacher program under ORS 329.170 to 329.200;

(c) The operator or an employee of a federal Head Start Program regulated by the United States Department of Health and Human Services;

(d) A designated employee or a contractor with the Early Learning Division;

(e) A contractor or an employee of the contractor who provides early childhood special education or early intervention services pursuant to ORS 343.455 to 343.534; or

(f) A child care provider who is required to be enrolled in the Central Background Registry by any state agency.

(g) A designated contractor, employee or volunteer of a Metro Service District.

(h) A provider of respite services as defined in ORS 418.205 for parents pursuant to a properly executed power of attorney under ORS 109.056.

(2) An individual in any of the above facilities or programs who may have unsupervised contact with children is also a subject individual. This includes but is not limited to permanent or temporary residents in the home or facility or persons visiting on a regular basis.

Stat. Auth.: ORS 657A.030(7)
Stats. Implemented: ORS 657A.030
Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03; CCD 1-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 1-2010, f. 6-29-10, cert. ef. 7-1-10; ELD 3-2015, f. & cert. ef. 2-3-15

414-061-0040
Limitations of Inquiries

(1) Only OCC employees who have been fingerprinted and cleared by the Oregon State Police shall access or have access to criminal records information pursuant to a valid agency agreement, as defined in OAR 414-061-0020(1). All such information shall be handled in compliance with the agency agreement and rules and procedures of the Oregon State Police relating to the criminal records information (OAR 257-015-0000 to 257-015-0100). It is the responsibility of OCC to assure strict compliance with federal and state laws, rules, and procedures regarding, access, dissemination, maintenance, and destruction of criminal records information.

(2) Criminal records information obtained from OSP and/or the FBI will not be used for any purpose other than that for which it was obtained nor given to unauthorized persons or agencies.

(3) Criminal records information, including fingerprint-based criminal records information, and child protective services information shall be obtained by OCC to determine whether a subject individual has criminal information or has child protective services history which is related to enrollment in the Central Background Registry.

(4) If a subject individual has been convicted of a crime which is related to enrollment in the Central Background Registry, the subject individual will be notified by OCC that he or she:

(a) Has a right to inspect and challenge the accuracy of his/her Oregon criminal records by contacting the Oregon State Police;

(b) May challenge the accuracy or completeness of any entry on the subject individual's criminal records provided by the FBI by filing a challenge with the FBI's CJIS Division; and

(c) May inspect his/her own OSP record, but not his/her FBI record, by requesting the opportunity from OCC in writing.

Stat. Auth.: ORS 657A.030(7)
Stats. Implemented: ORS 657A.030
Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03; CCD 1-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 1-2010, f. 6-29-10, cert. ef. 7-1-10; CCD 1-2010, f. 6-29-10, cert. ef. 7-1-10; ELD 3-2015, f. & cert. ef. 2-3-15

414-061-0050
History to be Considered

(1) OCC has determined that serious felonies and misdemeanors involving violence or unauthorized sexual conduct, especially with children or otherwise vulnerable persons, is fundamentally inconsistent with any responsibility for care of children. Conviction of crimes listed in Category I of this rule shall disqualify a subject individual from being enrolled in the Central Background Registry, unless the subject individual provides sufficient evidence of suitability as described in section (10) of this rule.

(a) OCC will consider conviction of the following crimes for 15 years or less prior to the date the subject individual signed the Application for Enrollment in OCC's Central Background Registry. The 15 years will run from the date of arrest, citation, charge, or conviction whichever is later.

(A) 163.165 Assault in the third degree.

(B) 163.515 Bigamy.

(C) 164.225 Burglary in the first degree.

(D) 163.275 Coercion.

(E) 163.200 Criminal mistreatment in the second degree.

(F) 163.555 Criminal nonsupport.
(G) 163.225 Kidnapping in the second degree.
(H) 166.270 Possession of weapons by certain felons.
(I) 166.720 Racketeering activity unlawful; penalties.
(J) 164.405 Robbery in the second degree.
(K) 164.395 Robbery in the third degree.
(L) 163.445 Sexual misconduct.
(M) 163.732 Stalking.
(N) 162.185 Supplying contraband.
(O) 166.220 Unlawful use of weapon.
(P) 163.257 Custodial interference in the first degree.

(b) OCC will consider conviction of the following crimes for 20 years or less prior to the date the subject individual signed the Application for Enrollment in OCC's Central Background Registry. The 20 years will run from the date of arrest, citation, charge, or conviction whichever is later.

(A) 166.087 Abuse of corpse in the first degree.
(B) 166.085 Abuse of corpse in the second degree.
(C) 167.262 Use of minor in controlled substance offense.
(D) 164.325 Arson in the first degree.
(E) 163.185 Assault in the first degree.
(F) 163.175 Assault in the second degree.
(G) 475.908 Causing another person to ingest a controlled substance.
(H) 167.017 Compelling prostitution.
(I) 163.205 Criminal mistreatment in the first degree.
(J) 163.145 Criminally negligent homicide.
(K) 162.165 Escape in the first degree.
(L) 163.693 Failure to report child pornography.
(M) 181.812 Failure to report as sex offender; defense.
(N) 166.429 Firearms used in felony.
(O) 163.525 Incest.
(P) 166.165 Intimidation in the first degree.
(Q) 166.155 Intimidation in the second degree.
(R) 163.235 Kidnapping in the first degree.
(S) 163.118 Manslaughter in the first degree.
(T) 163.125 Manslaughter in the second degree.
(U) 166.382 Possession of destructive device prohibited; exceptions.
(V) 166.275 Possession of weapons by inmates of institutions.
(W) 167.012 Promoting prostitution.
(X) 167.090 Publicly displaying nudity or sex for advertising purposes.
(Y) 163.355 Rape in the third degree.
(Z) 164.415 Robbery in the first degree.
(AA) 167.062 Sadomasochistic abuse or sexual conduct in live show.
(BB) 167.212 Tampering with drug records.
(CC) 164.075 Theft by extortion.
(DD) 163.479 Unlawful contact with a child.
(EE) 166.384 Unlawful manufacture of destructive device.
(FF) 166.660 Unlawful paramilitary activity.
(GG) 166.272 Unlawful possession of machine guns, certain short-barreled firearms and firearms silencers.
(HH) 163.212 Unlawful use of an electrical stun gun, tear gas or mace in the second degree.
(II) 163.476 Unlawfully being in a location where children regularly congregate.

(c) OCC will consider the following crimes regardless of the length of time since the conviction.

(A) 163.535 Abandonment of a child.
(B) 163.095 "Aggravated murder" defined.
(C) 163.149 Aggravated vehicular homicide.
(D) 163.537 Buying or selling a person under 18 years of age.
(E) 163.547 Child neglect in the first degree.
(F) 163.545 Child neglect in the second degree.
(G) 167.820 Concealing the birth of an infant.
(H) 163.435 Contributing to the sexual delinquency of a minor.
(I) 163.005 Criminal homicide.
(J) 163.452 Custodial sexual misconduct in the first degree.
(K) 163.454 Custodial sexual misconduct in the second degree.
(L) 167.080 Displaying obscene materials to minors.
(M) 163.684 Encouraging child sexual abuse in the first degree.
(N) 163.686 Encouraging child sexual abuse in the second degree.
(O) 163.687 Encouraging child sexual abuse in the third degree.
(P) 163.575 Endangering the welfare of a minor.
(Q) 167.075 Exhibiting an obscene performance to a minor.
(R) 163.207 Female genital mutilation.
(S) 167.057 Luring a minor.
(T) 163.115 Murder; affirmative defense to certain felony murders; sentence of life imprisonment required; minimum term.
(U) 163.433 Online sexual corruption of a child in the first degree.
(V) 163.432 Online sexual corruption of a child in the second degree.
(W) 166.370 Possession of firearm or dangerous weapon in public building or court facility exception; discharging a firearm in a school.
(X) 163.688 Possession of materials depicting sexually explicit conduct of a child in the first degree.
(Y) 163.689 Possession of materials depicting sexually explicit conduct of a child in the second degree.
(Z) 163.375 Rape in the first degree.
(AA) 163.365 Rape in the second degree.
(BB) 163.427 Sexual abuse in the first degree.
(CC) 163.425 Sexual abuse in the second degree.
(DD) 163.415 Sexual abuse in the third degree.
(EE) 167.333 Sexual assault of an animal.
(FF) 163.405 Sodomy in the first degree.
(GG) 163.395 Sodomy in the second degree.
(HH) 163.385 Sodomy in the third degree.
(II) 433.010 Spreading disease prohibited; health certificates to be issued by physicians; rules.
(JJ) 163.187 Strangulation.
(KK) 163.264 Subjecting another person to involuntary servitude in the first degree.
(LL) 163.263 Subjecting another person to involuntary servitude in the second degree.
(MM) 163.266 Trafficking in persons.
(NN) 163.670 Using child in display of sexually explicit conduct.
(OO) 163.411 Unlawful sexual penetration in the first degree.
(PP) 163.408 Unlawful sexual penetration in the second degree.
(QQ) 163.213 Unlawful use of an electrical stun gun, tear gas or mace in the first degree.

(2) OCC has further determined that felonies and misdemeanors involving theft, fraud, or deception, crimes against the state and public justice, and major traffic violations may substantially jeopardize the safety of children and are inconsistent with any position of unsupervised contact with children or otherwise vulnerable persons. If any subject individual was convicted of a crime listed in Category II of this rule, OCC will seek to obtain and review information on all intervening circumstances and other background information related to criminal activity, subject to section (10) of this rule. OCC will make a determination whether an individual is suitable for enrollment in the Central Background Registry based on all information available.

(a) OCC will consider conviction of the following crimes for 5 years or less prior to the date the subject individual signed the Application for Enrollment in OCC's Central Background Registry. The 5 years will run from the date of arrest, citation, charge, or conviction whichever is later.

(A) 162.015 Bribe giving.
(B) 162.025 Bribe receiving.
(C) 162.275 Bribe receiving by a witness.
(D) 162.265 Bribing a witness.
(E) 162.335 Compounding.
(F) 811.182 Criminal driving while suspended or revoked; penalties.
(G) 164.354 Criminal mischief in the second degree.
(H) 192.865 Criminal penalty (192.852 Prohibition on obtaining actual address or telephone number; prohibition on disclosure by employee of public body).
(I) 165.022 Criminal possession of a forged instrument in the first degree.
(J) 165.017 Criminal possession of a forged instrument in the second degree.
(K) 165.032 Criminal possession of a forgery device.
(L) 164.245 Criminal trespass in the second degree.
(M) 166.025 Disorderly conduct in the second degree.
(N) 830.475 Duties of operators and witnesses at accidents (failure to perform the duties of an operator of a boat).
(O) 162.145 Escape in the third degree.
(P) 162.205 Failure to appear in the first degree.
(Q) 162.195 Failure to appear in the second degree.
(R) 811.705 Failure to perform duties of driver to injured persons; penalty (hit and run, injury).
(S) 811.700 Failure to perform duties of driver when property is damaged; penalty (hit and run, property).
(T) 165.007 Forgery in the second degree.
(U) 418.630 Foster home must be certified as approved.

(V) 165.570 Improper use of emergency reporting system.
(W) 162.375 Initiating a false report.
(X) 165.572 Interference with making a report.
(Y) 162.257 Interfering with a firefighter or emergency medical services provider.
(Z) 162.247 Interfering with a peace officer or parole and probation officer.
(AA) 166.116 Interfering with public transportation.
(BB) 418.327 Licensing of certain schools and organizations offering residential programs; fees; rules.
(CC) 166.095 Misconduct with emergency telephone calls.
(DD) 162.425 Misuse of confidential information.
(EE) 166.450 Obliteration or change of identification number on firearms.
(FF) 162.235 Obstructing governmental or judicial administration.
(GG) 162.415 Official misconduct in the first degree.
(HH) 162.405 Official misconduct in the second degree.
(II) 830.325 Operating boat while under the influence of intoxicating liquor or controlled substance.
(JJ) 167.431 Participation in cockfighting.
(KK) 167.370 Participation in dogfighting.
(LL) 162.065 Perjury.
(MM) 165.070 Possessing fraudulent communications device.
(NN) 164.235 Possession of a burglary tool or theft device.
(OO) 164.335 Reckless burning.
(PP) 811.140 Reckless driving; penalty.
(QQ) 811.231 Reckless endangerment of highway workers; penalties.
(RR) 830.315 Reckless operation; speed (boat).
(SS) 162.315 Resisting arrest.
(TT) 165.090 Sports bribe receiving.
(UU) 165.085 Sports bribery.
(VV) 411.675 Submitting wrongful claim for payment of public assistance or medical assistance.
(WW) 162.295 Tampering with physical evidence.
(XX) 162.305 Tampering with public records.
(YY) 164.045 Theft in the second degree.
(ZZ) 166.649 Throwing an object off an overpass in the second degree.
(AAA) 033.045 Types of sanctions (Contempt of Court).
(BBB) 162.175 Unauthorized departure.
(CCC) 165.074 Unlawful factoring of payment card transaction.
(DDD) 165.810 Unlawful possession of a personal identification device.
(EEE) 165.813 Unlawful possession of fictitious identification.
(FFF) 411.840 Unlawfully obtaining or disposing of supplemental nutrition assistance.
(GGG) 411.630 Unlawfully obtaining public assistance or medical assistance.
(HHH) 811.060 Vehicular assault of bicyclist or pedestrian; penalty.
(III) 163.750 Violating a court's stalking protective order.

(b) OCC will consider conviction of the following crimes for 7 years or less prior to the date the subject individual signed the Application for Enrollment in OCC's Central Background Registry. The 7 years will run from the date of arrest, citation, charge, or conviction whichever is later.
(A) 163.196 Aggravate driving while suspended or revoked.
(B) 167.340 Animal abandonment.
(C) 167.330 Animal neglect in the first degree.
(D) 167.325 Animal neglect in the second degree.
(E) 166.240 Carrying of concealed weapons.
(F) 164.365 Criminal mischief in the first degree.
(G) 166.023 Disorderly conduct in the first degree.
(H) 813.010 Driving under the influence of intoxicants; penalty.
(I) 314.075 Evading requirements of law prohibited (tax evasion).
(J) 475.918 Falsifying drug test results.
(K) 811.540 Fleeing or attempting to elude police officer; penalty.
(L) 166.065 Harassment.
(M) 609.098 Maintaining dangerous dog.
(N) 830.325 Operating boat while under influence of intoxicating liquor or controlled substance.
(O) 163.195 Recklessly endangering another person.
(P) 162.285 Tampering with a witness.
(Q) 166.090 Telephonic harassment.
(R) 166.651 Throwing an object off an overpass in the first degree.
(S) 164.135 Unauthorized use of a vehicle.
(T) 166.250 Unlawful possession of firearms.
(U) 167.808 Unlawful possession of inhalants.
(V) 133.310 Authority of peace officer to arrest without warrant (Violation of restraining order).

(c) OCC will consider conviction of the following crimes for 10 years or less prior to the date the subject individual signed the Application for Enrollment in OCC's Central Background Registry. The 10 years will run from the date of arrest, citation, charge, or conviction whichever is later.
(A) 165.803 Aggravated identity theft.
(B) 167.315 Animal abuse in the second degree.
(C) 164.215 Burglary in the second degree.
(D) 165.581 Cellular counterfeiting in the first degree.
(E) 167.428 Cockfighting.
(F) 164.377 Computer crime.
(G) 162.365 Criminal impersonation.
(H) 162.367 Criminal impersonation of peace officer.
(I) 164.138 Criminal possession of a rented or leased motor vehicle.
(J) 164.255 Criminal trespass in the first degree.
(K) 164.265 Criminal trespass while in possession of a firearm.
(L) 163.245 Custodial interference in the second degree.
(M) 167.365 Dogfighting.
(N) 165.013 Forgery in the first degree.
(O) 165.055 Fraudulent use of a credit card.
(P) 165.800 Identity theft.
(Q) 167.355 Involvement in animal fighting.
(R) 166.470 Limitations and conditions for sales of firearms.
(S) 164.162 Mail theft or receipt of stolen mail.
(T) 163.190 Menacing.
(U) 164.098 Organized retail theft.
(V) 166.190 Pointing firearm at another; courts having jurisdiction over offense.
(W) 819.300 Possession of a stolen vehicle; penalty.
(X) 162.369 Possession of false law enforcement identification card.
(Y) 163.467 Private indecency.
(Z) 685.990 Penalties (pertaining to naturopathic medicine).
(AA) 677.080 Prohibited acts (regarding the practice of medicine).
(BB) 471.410 Providing liquor to person under 21 or to intoxicated person; allowing consumption by minor on property; mandatory minimum penalties.
(CC) 689.527 Prohibited practices; rules (pertaining to pharmacy technicians and practitioners).
(DD) 166.480 Sale or gift of explosives to children.
(EE) 164.085 Theft by deception.
(FF) 164.095 Theft by receiving.
(GG) 164.055 Theft in the first degree.
(HH) 164.125 Theft of services.
(II) 164.272 Unlawful entry into a motor vehicle.

(d) OCC will consider conviction of the following crimes for 15 years or less prior to the date the subject individual signed the Application for Enrollment in OCC's Central Background Registry. The 15 years will run from the date of arrest, citation, charge, or conviction whichever is later.
(A) 167.322 Aggravated animal abuse in the first degree.
(B) 166.070 Aggravated harassment.
(C) 164.057 Aggravated theft in the first degree.
(D) 167.320 Animal abuse in the first degree.
(E) 164.315 Arson in the second degree.
(F) 163.160 Assault in the fourth degree.
(G) 163.208 Assaulting a public safety officer.
(H) 167.339 Assaulting a law enforcement animal.
(I) 475.900 Crime category classification; proof of commercial drug offense.
(J) 475.962 Distribution of equipment, solvent, reagent, or precursor substance with intent to facilitate manufacture of controlled substance.
(K) 164.172 Engaging in a financial transaction in property derived from unlawful activity.
(L) 162.155 Escape in the second degree.
(M) 475.955 Failure to report missing precursor substances.
(N) 475.950 Failure to report precursor substance transaction.
(O) 167.222 Frequenting a place where controlled substances are used.
(P) 162.325 Hindering prosecution.
(Q) 475.960 Illegally selling drug equipment.
(R) 167.352 Interfering with an assistance, a search and rescue or a therapy animal.
(S) 167.337 Interfering with law enforcement animal.
(T) 163.700 Invasion of personal privacy.

(U) 164.170 Laundering a monetary instrument.

(V) 165.117 Metal property transaction records; prohibited conduct; commercial sellers; penalties.

(W) 166.180 Negligently wounding another.

(X) 475.967 Possession of precursor substance with intent to manufacture controlled substance.

(Y) 475.977 Possession or disposing of methamphetamine manufacturing waste.

(Z) 475.914 Prohibited acts for registrants; penalties.

(AA) 475.752 Prohibited acts generally; penalties; affirmative defense for certain peyote uses; causing death by Schedule IV substance.

(BB) 475.916 Prohibited acts involving records and fraud; penalties.

(CC) 167.007 Prostitution.

(DD) 475.965 Providing false information on precursor substance report or record.

(EE) 163.465 Public indecency.

(FF) 166.015 Riot.

(GG) 475.525 Sale of drug paraphernalia prohibited; definition of drug paraphernalia; exceptions.

(HH) 166.005 Treason.

(II) 475.870 Unlawful delivery of 3,4-methylenedioxy-methamphetamine.

(JJ) 475.880 Unlawful delivery of cocaine.

(KK) 475.850 Unlawful delivery of heroin.

(LL) 475.810 Unlawful delivery of hydrocodone.

(MM) 475.912 Unlawful delivery of imitation controlled substance.

(NN) 475.860 Unlawful delivery of marijuana.

(OO) 475.820 Unlawful delivery of methadone.

(PP) 475.890 Unlawful delivery of methamphetamine.

(QQ) 475.830 Unlawful delivery of oxycodone.

(RR) 475.866 Unlawful manufacture of 3,4-methylenedioxymethamphetamine.

(SS) 475.876 Unlawful manufacture of cocaine.

(TT) 475.846 Unlawful manufacture of heroin.

(UU) 475.806 Unlawful manufacture of hydrocodone.

(VV) 475.856 Unlawful manufacture of marijuana.

(WW) 475.816 Unlawful manufacture of methadone.

(XX) 475.886 Unlawful manufacture of methamphetamine.

(YY) 475.826 Unlawful manufacture of oxycodone.

(ZZ) 475.814 Unlawful possession of hydrocodone.

(AAA) 475.824 Unlawful possession of methadone.

(BBB) 475.834 Unlawful possession of oxycodone.

(CCC) 475.874 Unlawful possession of 3,4-methylenedioxymethamphetamine.

(DDD) 475.971 Unlawful possession of anhydrous ammonia.

(EEE) 475.884 Unlawful possession of cocaine.

(FFF) 475.854 Unlawful possession of heroin.

(GGG) 475.975 Unlawful possession of iodine in its elemental form; recording transfers; unlawful distribution of iodine in its elemental form.

(HHH) 475.976 Unlawful possession of iodine matrix; recording transfers; unlawful distribution of iodine matrix.

(III) 475.979 Unlawful possession of lithium metal or sodium metal.

(JJJ) 475.864 Unlawful possession of marijuana or marijuana product.

(KKK) 475.894 Unlawful possession of methamphetamine.

(LLL) 475.969 Unlawful possession of phosphorus.

(e) OCC will consider conviction of the following crimes for 20 years or less prior to the date the subject individual signed the Application for Enrollment in OCC's Central Background Registry. The 20 years will run from the date of arrest, citation, or conviction whichever is later.

(A) 475.910 Application of controlled substance to the body of another person; prohibition.

(B) 475.906 Penalties for unlawful delivery to minors.

(C) 475.744 Providing hypodermic device to minor prohibited; exception.

(D) 463.263 Subjecting another person to involuntary servitude in the second degree.

(E) 475.872 Unlawful delivery of 3,4-methylenedioxy- methamphetamine within 1,000 feet of school.

(F) 475.882 Unlawful delivery of cocaine within 1,000 feet of school.

(G) 475.852 Unlawful delivery of heroin within 1,000 feet of school.

(H) 475.812 Unlawful delivery of hydrocodone within 1,000 feet of school.

(I) 475.862 Unlawful delivery of marijuana within 1,000 feet of school.

(J) 475.822 Unlawful delivery of methadone within 1,000 feet of school.

(K) 475.892 Unlawful delivery of methamphetamine within 1,000 feet of school.

(L) 475.832 Unlawful delivery of oxycodone within 1,000 feet of school.

(M) 475.868 Unlawful manufacture of 3,4-methylene- dioxymethamphetamine within 1,000 feet of school.

(N) 475.878 Unlawful manufacture of cocaine within 1,000 feet of school.

(O) 475.848 Unlawful manufacture of heroin within 1,000 feet of school.

(P) 475.808 Unlawful manufacture of hydrocodone within 1,000 feet of school.

(Q) 475.858 Unlawful manufacture of marijuana within 1,000 feet of school.

(R) 475.818 Unlawful manufacture of methadone within 1,000 feet of school.

(S) 475.888 Unlawful manufacture of methamphetamine within 1,000 feet of school.

(T) 475.828 Unlawful manufacture of oxycodone within 1,000 feet of school.

(U) 475.904 Unlawful manufacture or delivery of controlled substance within 1,000 feet of school.

(3) These rules also apply to:

(a) A conviction of a crime in another jurisdiction which is the substantial equivalent of a crime listed in Category I and II;

(b) An adjudication of guilt by reason of insanity, of an act that is the substantial equivalent of a crime listed in Category I and II;

(c) An adjudication by a juvenile court that a youth has committed an act that is the substantial equivalent of a crime listed in Category I and II;

(d) Any attempts, conspiracies or solicitations to commit any Felony or Misdemeanor crime listed in Category I and II;

(e) A new crime, adopted by the legislature following the most recent amendment of these rules, which is the substantial equivalent of any crimes listed in Category I and II;

(f) Any crime that is no longer codified in Oregon, but which is the substantial equivalent of any of the crimes listed in Category I and II;

(g) Any felony in Oregon Revised Statutes not listed in Category I and II that is serious and indicates behavior that poses a threat or jeopardizes the safety of vulnerable persons, as determined by OCC;

(h) Any misdemeanor in Oregon Revised Statutes not listed in Category I and II that is serious and indicates behavior that poses a threat or jeopardizes the safety of vulnerable persons, as determined by OCC; and

(i) Evaluations of crimes shall be based on Oregon laws in effect at the time of conviction, regardless of the jurisdiction in which the conviction occurred.

(4) OCC has determined that a negative history involving a vulnerable population may substantially jeopardize the safety of children and is inconsistent with any position of unsupervised contact with children or otherwise vulnerable persons. If any subject individual has a child protective services history or a negative history involving other populations, OCC will seek to obtain and review information related to the history, subject to section (10) of this rule. Based on this information, OCC will make a decision whether or not to enroll, suspend or remove the subject individual in or from the Central Background Registry.

(5) The OCC has determined that firearm prohibition orders or guilt by the exception of insanity, may substantially jeopardize the safety of children and are inconsistent with any position of unsupervised contact with children or otherwise vulnerable persons. If any subject individual has an active firearm prohibition order or guilty by the exception of insanity, OCC will seek to obtain and review information related to the case, subject to section (10) of this rule. Based on this information, OCC will make a decision whether or not to enroll, suspend, or remove the subject individual in or from the Central Background Registry.

(6) If OCC determines a subject individual who has demonstrated behavior that may have a detrimental effect on a child or indicates behavior that may jeopardize the safety of a child, OCC will make a decision whether or not to enroll, suspend, or remove the subject individual in or from the Central Background Registry.

(7) If OCC determines a subject individual is a registered sex offender in Oregon or any other jurisdiction, OCC will make a decision whether or not to enroll, suspend, or remove the subject individual in or from the Central Background Registry.

(8) If a subject individual is in a diversion program or similar agreement for any Category I or Category II crime, the subject individual must provide written documentation of compliance with the terms of diversion or similar agreement. Based on all information obtained, OCC will make a decision whether or not to enroll, suspend or remove the subject individual in or from the Central Background Registry.

(9) If OCC determines that additional information is needed to assess a person's suitability to be enrolled or remain enrolled in the Central Background Registry, the subject individual shall provide the requested information within the required timeframes. The additional information may include, but is not limited to, an evaluation or assessment by a physician, counselor or other qualified person, documents to determine positive identification of the subject individual, and court documents.

(10) Factors to be considered in determining suitability, based on information available to OCC and information provided by the subject individual, include:

(a) Types and number of incidences;

(b) Passage of time since the incident occurred;

(c) Circumstances surrounding the incident;

(d) Intervening circumstances since the occurrence of the incident; and

(e) Relationship of the facts under subsections (a) through (d) of this section to the individual's suitability to work with children.

(11) OCC will not bar from enrollment in the Central Background Registry any subject individual because of the existence or contents of a juvenile record that has been expunged by the court.

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

Stat. Auth.: ORS 657A.030

Stats. Implemented: ORS 657A.030

Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03; CCD 3-2004, f. 7-30-04 cert. ef 8-1-04; CCD 1-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 1-2010, f. 6-29-10, cert. ef. 7-1-10; ELD 7-2014(Temp), f. & cert. ef. 8-7-14 thru 2-3-15; ELD 3-2015, f. & cert. ef. 2-3-15

414-061-0060

Requirements of Requesting Agencies

Requesting agencies, as defined in OAR 414-061-0020(17), must comply with the following requirements:

(1) A requesting agency's application forms must contain a notice that employees and other persons who are subject individuals must be enrolled in the Central Background Registry and that employment is subject to fingerprinting and criminal records checks.

(2) A requesting agency may hire a subject individual on a probationary basis if the subject individual is conditionally enrolled in the Central Background Registry. A requesting agency may hire a subject individual on a permanent basis if the subject individual is enrolled in the Central Background Registry.

(3) A requesting agency shall not hire or continue to employ on a probationary or permanent basis an individual if the individual is not enrolled in the Central Background Registry or has been removed from the Central Background Registry and has not been re-enrolled.

(4) A requesting agency may allow a subject individual who is not yet enrolled or conditionally enrolled in the Central Background Registry to participate in training, orientation and work activities if the training, orientation and work activities are at a location other than the child care facility or are conducted at the facility when children are not present and the subject individual is not in contact with any children.

Stat. Auth.: ORS 657A.030(7)

Stats. Implemented: ORS 657A.030

Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03; CCD 1-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 1-2010, f. 6-29-10, cert. ef. 7-1-10; ELD 3-2015, f. & cert. ef. 2-3-15

414-061-0065

Requirements for Reciprocal Agreement Programs

A reciprocal agreement program must enter into a reciprocal agreement with OCC that provides for sharing information on enrollment status of the individuals described in OAR 414-061-0020(16)(a) and (b) respectively, and for the recovery of administrative, including direct and indirect costs incurred by OCC from the participation in the agreement.

Stat. Auth.: ORS 657A.030(7)

Stats. Implemented: ORS 657A.030

Hist. : CCD 1-2010, f. 6-29-10, cert. ef. 7-1-10; ELD 3-2015, f. & cert. ef. 2-3-15

414-061-0070

Procedures for Conducting Oregon State Police Criminal Records Checks and Child Protective Services Record Checks

(1) Subject individuals shall consent to a criminal records check of the Oregon State Police Computerized Criminal History (CCH) System and a child protective services check at the time they request enrollment in the Central Background Registry.

(2) Central Background Registry enrollment forms shall contain notice that criminal records checks will be conducted as required by ORS 181.534 and 329A.030. The form shall also contain notice that child protective services checks will be conducted.

(3) Subject individuals shall provide all information required for a criminal records check and a child protective services check; including:

(a) A properly completed and signed Application for Enrollment in OCC's Central Background Registry;

(b) For a subject individual who acknowledges a prior criminal offense, as listed in OAR 414-061-0050, or a child protective services record, an explanation of the relationship of the facts that support the criminal offense or child protective services record and intervening circumstances. Upon request of OCC, the subject individual must authorize OCC to verify information provided by the individual; and

(c) Consent to the use of their social security numbers for criminal and child protective services records checks, for identifying enrollees in the Central Background Registry, for sharing information with other agencies to verify child care licensing status for child care payments, and for compiling statistical information for program planning and evaluation.

(4) OCC will review the criminal records information, child protective services information, and any additional information and will determine whether or not a subject individual may be enrolled in the Central Background Registry.

(5) Fees for each name checked through OSP CCH and child protective services systems are as follows:

(a) No charge for designated Early Learning Division employees; and

(b) OCC will charge the subject individual up to the amount equal to the cost incurred by OCC for criminal record checks and child protective services checks and enrollment in the Central Background Registry, to be paid at the time of the request.

[ED. NOTE: Forms referenced in this rule are available from the agency.]

Stat. Auth.: ORS 657A.030(7)

Stats. Implemented: ORS 657A.030

Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03; CCD 1-2006(Temp), f. & cert. ef. 3-16-06 thru 9-12-06; CCD 4-2006, f. 7-13-06, cert. ef. 7-14-06; CCD 1-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 1-2010, f. 6-29-10, cert. ef. 7-1-10; ELD 3-2015, f. & cert. ef. 2-3-15

414-061-0080

Procedures for Conducting FBI Criminal History Checks

(1) An FBI criminal records check will be done on a subject individual whose OSP CCH record shows multi-source offender status, who has lived in Oregon less than 18 months or when OCC has information that the individual has committed a crime in another state, or has committed a federal crime, or when OCC has reason to question the identity of the subject individual.

(2) The subject individual shall supply to OCC the following information:

(a) One properly completed FBI fingerprint card, with printing in the "reason fingerprinted" block that reads "License/Certificate/Permit ORS 181.534"; and

(b) A properly completed "Instructions to Authorized Fingerprinter" form; or

(c) Electronically submitted fingerprints through an OCC designated fingerprinter. The "reason fingerprinted" field must read "License/Certificate/Permit ORS 181.534"; and

(d) A properly completed " Verification form for Authorized Fingerprinter" form.

(3) OCC will review the criminal records information and any additional information and will determine whether or not a subject individual may be enrolled, suspended or removed in or from the Central Background Registry.

(4) OCC will charge the subject individual up to the amount equal to the cost incurred by OCC for an FBI records check, to be paid at the time of the request.

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

Stat. Auth.: ORS 657A.030(7)

Stats. Implemented: ORS 657A.030

Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98 ; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03; CCD 6-2004, f. & cert. ef 12-17-04; CCD 3-2005(Temp), f. & cert. ef. 8-16-05 thru 2-12-06; CCD 5-2005, f. 12-29-05, cert. ef. 1-1-06; CCD 1-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 1-2010, f. 6-29-10, cert. ef. 7-1-10; ELD 3-2015, f. & cert. ef. 2-3-15

414-061-0090

CCD Enrollment Procedures

(1) A subject individual shall be enrolled in the Central Background Registry if OCC has determined that the individual:

(a) Has provided all information and/or documents requested by OCC;

(b) Has no history as described in 414-061-0050 or has dealt with the issues and provided adequate evidence of suitability;

(c) Has paid the applicable fee; and

(d) Has complied with the rules of OCC adopted pursuant to the Central Background Registry (OAR 414-061-0000 through 414-061-0120).

(2) Enrollment in the Central Background Registry shall expire two years from the date of enrollment, unless suspended or removed sooner, and may be renewed upon application to OCC, payment of the required fee and compliance with the rules adopted by OCC pursuant to the Central Background Registry (OAR 414-061-0000 through 414-061-0120).

(3) A subject individual who has been enrolled in the Central Background Registry will be notified by OCC of his or her enrollment and the enrollment dates. Such notification will not be sufficient evidence of enrollment for employment by a requesting agency.

(4) A subject individual may be conditionally enrolled in the Central Background Registry pending the results of an FBI criminal records check if the individual has been determined to be suitable based on criminal records information and child protective services information.

(a) A conditionally enrolled subject individual who is subsequently determined to be suitable based on FBI criminal records information shall be enrolled in the Central Background Registry.

(b) The two-year enrollment period will include the time the subject individual was conditionally enrolled.

(c) A conditionally enrolled subject individual who has subsequently been determined not to be suitable based on FBI criminal records information shall be suspended or removed from the Central Background Registry, according to the provisions of OAR 414-061-0110.

(d) A conditional enrollment will expire if the subject individual has not been enrolled in the Registry within one year of the conditional enrollment.

(5) If an application for renewal and payment of required fee is received by OCC at least 14 days prior to the expiration date of the current enrollment, unless the individual is removed, remains in effect until OCC has acted on the application for renewal and has given notice of the action taken.

Stat. Auth.: ORS 657A.030(7)
Stats. Implemented: ORS 657A.030
Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03; CCD 1-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 1-2010, f. 6-29-10, cert. ef. 7-1-10; ELD 3-2015, f. & cert. ef. 2-3-15

414-061-0100
CCD Denial Procedures

(1) A subject individual shall be denied enrollment in the Central Background Registry if the individual:

(a) Has been determined not suitable;

(b) Has misrepresented information or failed to submit requested information or documentation;

(c) Has been charged with, arrested for, or a warrant for a Category I or Category II crime with final disposition not yet reached;

(d) Has an open protective services or law enforcement case with final disposition not yet reached; or

(e) Is in a diversion program or similar agreement and has failed to provide written documentation of compliance with the terms of diversion or the agreement.

(2) A subject individual may appeal OCC's determination not to enroll the subject individual in the Central Background Registry, pursuant to OAR 414-061-0120.

(3) A subject individual who has been denied enrollment in the Central Background Registry due to a determination of unsuitability shall not be eligible for enrollment in the Registry for 3 years from the date of denial.

Stat. Auth.: ORS 657A.030(7)
Stats. Implemented: ORS 657A.030
Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03; CCD 5-2004, f. & cert. ef. 11-16-04; CCD 1-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 1-2010, f. 6-29-10, cert. ef. 7-1-10; ELD 3-2015, f. & cert. ef. 2-3-15

414-061-0110
OCC Removal Procedures

(1) An individual enrolled in the Central Background Registry shall be removed or suspended from the Registry by OCC if, during the period of enrollment, the individual;

(a) Has been determined not suitable for enrollment in the Registry;

(b) Has misrepresented information or failed to submit requested information or documentation;

(c) Has been charged with, arrested for, or a warrant for a Category I or Category II crime with final disposition not yet reached;

(d) Has a founded protective services case or an open protective services or law enforcement case with final disposition not yet reached; or

(e) Is in a diversion program or similar agreement and has failed to provide written documentation of compliance with the terms of diversion or the agreement.

(2) OCC may immediately, and without prior hearing, remove or suspend a subject individual from the Central Background Registry when, in the opinion of OCC, such action is necessary to protect children from physical or mental abuse or a substantial threat to health and safety. Such action may be taken before an investigation is completed.

(3) OCC may reinstate a subject individual in the Central Background Registry if the condition(s) that resulted in the suspension is corrected.

(4) When a subject individual is removed or suspended from the Central Background Registry, OCC will notify the subject individual and the requesting agencies which have inquired about the subject individual's enrollment of the removal or suspension.

(5) A subject individual who has been removed from the Central Background Registry and has not subsequently been re-enrolled shall not be eligible for enrollment in the Registry for 3 years from the date of removal.

Stat. Auth.: ORS 657A.030(7)
Stats. Implemented: ORS 657A.030
Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03; CCD 5-2004, f. & cert. ef. 11-16-04; CCD 1-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 1-2010, f. 6-29-10, cert. ef. 7-1-10; ELD 3-2015, f. & cert. ef. 2-3-15

414-061-0120
Rights for Review and Contested Case Hearings

(1) OCC shall afford subject individuals the right to appeal a decision made by OCC that the subject individual is denied, suspended, or removed from enrollment from the Central Background Registry through a contested case hearing pursuant to ORS 183.413 through 183.470. Subject individuals must submit a request for a contested case hearing in writing in a timely manner.

(2) OCC has no jurisdiction in a contested case hearing over allegations that the criminal records information received from OSP or the FBI or child protective services information received from the Department of Human Services is inaccurate, incomplete or maintained in violation of any federal or state law. Therefore, a contested case hearing cannot be held by OCC for that purpose. Challenges to the accuracy or completeness of the information provided by the Department of State Police, the FBI and agencies reporting information to OCC must be made through those departments, bureaus or agencies and not through the contested case process.

(3) OCC is entitled to rely on the criminal records information supplied by OSP or the FBI or child protective services information supplied by the Department of Human Services until OSP, the FBI, or the Department of Human Services notifies OCC that information has been changed or corrected in a manner that would alter the OCC decision. If a subject individual has requested a contested case hearing, OCC will stay the hearing until the subject individual has been afforded a reasonable time to correct or complete the record or has declined to do so.

(4) To preserve the confidentiality of the records and the privacy of the subject individual, any contested case hearing will not be open to the public unless requested by the subject individual.

(5) A subject individual who is also an employee of the licensing unit of OCC and who is determined unsuitable for enrollment in the Central Background Registry may appeal the determination through either the contested case process or applicable personnel rules, policies and collective bargaining provisions. A subject individual's decision to appeal a determination through personnel rules, policies and collective bargaining provisions shall constitute an election of remedies as to the rights of the subject individual with respect to the disqualification determination and shall constitute waiver of the contested case process.

Stat. Auth.: ORS 657A.030(7)
Stats. Implemented: ORS 657A.030
Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03; CCD 1-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 1-2010, f. 6-29-10, cert. ef. 7-1-10; ELD 3-2015, f. & cert. ef. 2-3-15

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Rule Caption: Registered Family Child Care Homes
Adm. Order No.: ELD 4-2015
Filed with Sec. of State: 2-3-2015
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Rules Amended: 414-205-0000, 414-205-0010, 414-205-0020, 414-205-0035, 414-205-0040, 414-205-0055, 414-205-0065, 414-205-0075, 414-205-0085, 414-205-0090, 414-205-0100, 414-205-0110, 414-205-0120, 414-205-0130, 414-205-0140, 414-205-0150, 414-205-0160, 414-205-0170

Subject: Amends health and safety standards for registered family child care homes.

Rules Coordinator: Cindy Hunt—(503) 947-5651

414-205-0000
Purpose

(1) Oregon Administrative Rules (OAR) 414-205-0000 through 414-205-0170 are the Office of Child Care's (OCC) minimum requirements for registering family child care providers. The purpose of these rules is to protect the health, safety, and well-being of children when cared for outside their own homes.

(2) Registration is required for persons who provide child care:

(a) On other than an occasional basis; and

(b) To more than three children from more than one family at any one time, other than the person's children subject to the limits in OAR 414-205-0065; or

(c) To three or fewer children, even if from the same family if that person's enrollment in the Central Background Registry (CBR) has been denied or the person has been removed for cause, or suspended; or their child care facility certification or registration has been denied or revoked for cause, or suspended, or the person has voluntarily withdrawn their application or closed their registration or certification while under investigation by OCC; or

(d) Provide care that is primarily educational for four hours or less per day and where no preschool age child is present at the facility for more than four hours per day if that person's enrollment in the CBR has been denied or the person has been removed for cause, or suspended; or their child care facility certification or registration has been denied or revoked for cause, or suspended, or the person has voluntarily withdrawn their application or closed their registration or certification while under investigation by OCC; or

(e) On an occasional basis by a person not ordinarily engaged in providing child care if that person's enrollment in the CBR has been denied or the person has been removed for cause, or suspended; or their child care facility certification or registration has been denied or revoked for cause, or suspended, or the person has voluntarily withdrawn their application or closed their registration or certification while under investigation by OCC; or

(f) To children from only one family other than the person's own family if that person's enrollment in the CBR has been denied or the person has been removed for cause, or suspended; or their child care facility certification or registration has been denied or revoked for cause, or suspended, or the person has voluntarily withdrawn their application or closed their registration or certification while under investigation by OCC.

(3) These rules do not apply to care provided:

(a) In the home of the child;

(b) To three or fewer children, not including the provider's children subject to the limits in OAR 414-205-0065 except as provided in 414-205-0000(2)(c);

(c) To children from one family, not including the provider's children except as provided in 414-205-0000(2)(f);

(d) On an occasional basis by a person not ordinarily engaged in providing child care except as provided in 414-205-0000(2)(e);

(e) By the child's parent, legal guardian, or person acting in place of a parent;

(f) By a person related to the child care children by blood, marriage, or adoption; or

(g) By a person who is a member of the child's extended family, as determined by OCC on a case-by-case basis or;

(h) By a person providing care for preschool children that is primarily educational for four hours or less per day and where no preschool age child is present at the facility for more than four hours per day, except as provided in 414-205-0000(2)(d).

(4) Any family child care provider exempt from registration may apply for registration.

(5) These rules apply only during the hours the provider is conducting the child care business.

Stat. Auth.: ORS 657A
Stats. Implemented: ORS 657A.260 & 657A.330
Hist.: CCD 2-1994, f. 7-15-94, cert. ef. 8-15-94; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 2-1995(Temp), f. 12-28-95, cert. ef. 1-1-96; CCD 2-1996, f. 3-19-96, cert. ef. 4-1-96; CCD 1-2000, f. 3-31-00, cert. ef. 4-2-00; CCD 7-2003, f. 12-23-03, cert. ef. 12-28-03; CCD 2-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 2-2010, f. 6-29-10, cert. ef. 7-1-10; ELD 4-2015, f. & cert. ef. 2-3-15

414-205-0010
Definitions

(1) "Caregiver" means any person, including the provider, who cares for the children in the registered family child care home and works directly with the children, providing care, supervision and guidance.

(2) "Central Background Registry" means OCC's Registry of individuals who have been approved to be associated with a child care facility in Oregon pursuant to ORS 329A.030 and OAR 414-061-0000 through 414-061-0120.

(3) "Child Care" means the care, supervision and guidance on a regular basis of a child, unaccompanied by a parent, legal guardian or custodian, during a part of the 24 hours of the day, with or without compensation.

(4) "Child Care Child" means a child at least six weeks of age and under 13 years of age, or a child under 18 years of age with special needs. The child does not reside in the home and the provider has supervisory responsibility for the child in the temporary absence of the parent.

(5) "Child with Special Needs" means a child under 18 years of age who requires a level of care over and above the norm for their age due to a physical, developmental, behavioral, mental or medical disability.

(6) "Civil Penalty" means a fine imposed by OCC on a provider for violation on these rules.

(7) "Communicable Disease" means an illness caused by an infectious agent or its toxins.

(8) "Disinfecting" means using a process for destroying or irreversibly inactivating harmful organisms, including bacteria, viruses, germs and fungi.

(9) "Family" means a group of individuals related by blood, marriage or adoption, or individuals whose functional relationships are similar to those found in such associations.

(10) "Infant" means a child who is at least six weeks of age up to 12 months of age.

(11) "Kindergarten-Age Child" means a child eligible to attend kindergarten in a public school. A kindergarten-age child is considered a school-age child.

(12) "New Application" means a registration application that has been filed by an applicant who has never had an active registration.

(13) "Night Care" means care given to a child who sleeps at the family child care home for all or part of the night.

(14) "OCC" means the Office of Child Care, Early Learning Division of the Department of Education.

(15) "Occasional" means infrequently or intermittently, including but not limited to care that is provided during summer or other holiday breaks when children are not attending school, but not to exceed 70 calendar days in a year.

(16) "Oregon Registry" means the voluntary registry at the Oregon Center for Career Development in Childhood Care and Education at Portland State University that documents the training and education of individuals who work in childhood care and education.

(17) "Outbreak of Communicable Disease" means two cases from separate households associated with a suspected common source.

(18) "Premises" means the structure that is identified on the application, including indoors and outdoors and space not directly used for child care.

(19) "Preschool-Age Child" means a child who is 36 months of age up to eligible to attend kindergarten in a public school.

(20) "Provider" means a resident of the registered family child care home who is responsible for the children in care; is the children's primary caregiver; and the person whose name is on the certificate of registration.

(21) "Registered Family Child Care Home" means the residence of the provider, who has a current Family Child Care Registration at that address and who provides care in the family living quarters.

(22) "Registration" means the document a family child care provider is issued by OCC to operate a family child care home where care is provided in the family living quarters of the provider's home pursuant to ORS 329A.330 and OAR 414-205-0000 through 414-205-0170. Registration is limited to one provider at one address.

(23) "Renewal Application" means a registration application that has been filed by a currently registered family child care provider who wishes to continue registration.

(24) "Reopen Application" means a registration application that has been filed by an applicant whose registration is expired or closed, including those closures resulting from an address change.

(25) "Restrictable Disease" means an illness or infection that would prohibit the child from attending child care.

(26) "Sanitizing" means using a treatment that provides enough heat or concentration of chemicals for enough time to reduce the bacterial count, including disease producing organisms, to a safe level on utensils, equipment and toys.

(27) "School-Age Child" means a child eligible to attend kindergarten or above in public school. This does not include the months prior to the start of the kindergarten school year.

(28) "Serious Complaint" means a complaint filed against:

(a) A registered family child care provider by a person who alleges that:

(A) Children are in imminent danger;

(B) There are more children in care than allowed by law;

(C) Provider is engaging in behavior prohibited under OAR 414-205-0085(6);

(D) Children are not being supervised;

(E) Multiple or serious fire, health or safety hazards are present in the home;

(F) Extreme unsanitary conditions are present in the home; or

(G) Adults are in the home who are not enrolled in OCC's CBR; or

(b) An individual providing child care, as defined by ORS 329A.250(4), who is not a registered family child care provider by a person who has alleged that there are more children in care than allowed by law.

(29) "Serious Violation" means OCC has made a valid finding when assessing a serious complaint that alleges:

(a) Children are in imminent danger;

(b) There are more children in care than allowed by law;

(c) Provider is engaging in behavior prohibited under OAR 414-205-0085(6);

(d) Children are not being supervised;

(e) Multiple or serious fire, health or safety hazards are present in the home;

(f) Extreme unsanitary conditions are present in the home; or

(g) Adults are in the home who are not enrolled in OCC's CBR; or

(h) An individual is providing child care as defined by ORS 329A.250(4) without registering with the Office of Child Care of the Department of Education.

(30) "Substitute Provider" means a person who acts as the children's primary caregiver in the registered family child care home in the temporary absence of the provider.

(31) "Toddler" means a child who is at least 12 months of age but is not preschool-age.

(a) "Younger Toddler" means a child who is at least 12 months of age but is under 24 months of age.

(b) "Older toddler" means a child who is at least 24 months of age but is not yet preschool-age.

(32) "Useable Exit" means an unobstructed door or window through which the provider and the children can evacuate the home in case of a fire or emergency. Doors must be able to be opened from the inside without a key.

(a) For homes built before July 1, 2010, window openings must be at least 20 inches wide and at least 22 inches in height, with a net clear opening of five square feet (at least 720 square inches) and a sill no more than 48 inches above the floor.

(b) For homes built after July 1, 2010, window openings must be at least 20 inches wide and at least 24 inches in height, with a net clear opening of five square feet (at least 720 square inches) and a sill no more than 44 inches above the floor.

Stat. Auth.: ORS 329A.260

Stats. Implemented: ORS 329A

Hist.: CCD 2-1994, f. 7-15-94, cert. ef. 8-15-94; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 3-1999(Temp), f. 10-21-99, cert. ef. 10-23-99 thru 1-1-00; CCD 7-1999, f. 12-29-99, cert. ef. 1-1-00; CCD 1-2000, f. 3-31-00, cert. ef. 4-2-00; CCD 5-2001, f. 11-2-01, cert. ef. 11-4-01; CCD 1-2007(Temp), f. & cert. ef. 3-20-07 thru 9-16-07; CCD 2-2007, f. & cert. ef. 7-13-07; CCD 2-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 2-2010, f. 6-29-10, cert. ef. 7-1-10; ELD 9-2014(Temp), f. & cert. ef. 8-7-14 thru 2-3-15; ELD 4-2015, f. & cert. ef. 2-3-15

414-205-0020

Application for Registration

(1) The applicant must apply for registration on the form(s) supplied by OCC. The original form(s) must be submitted to OCC for processing.

(2) Persons submitting new applications must attend a family child care overview session prior to submitting their application to OCC.

(3) Persons interested in submitted an application must meet the training requirements outlined in OAR 414-205-0055.

(4) An application for registration is required:

(a) For a new registration;

(b) For renewing a registration; and

(c) For reopening a registration.

(5) There is a non-refundable filing fee of $30 for each application. If the provider submits documentation that the provider's family income is below 100% of the Federal Poverty Level, the fee may be reduced.

(6) All civil penalties must be paid in full.

(7) To determine if requirements are met, the applicant/provider may be required to supply additional information or permit OCC, a fire marshal, or a public health official to assess the home and/or review child care records.

(8) Providers must satisfactorily complete an on-site health and safety review conducted by OCC prior to issuance of a new, renewal or reopen registration. The review will ensure that the provider is in compliance with the rules related to health, safety and sanitation.

(9) If an application for renewal is received by OCC at least 30 days prior to the expiration date of the current registration, the current registration, unless officially revoked, remains in effect until OCC has acted on the application for renewal and has given notice of the action taken.

Stat. Auth. ORS 657A

Stats. Implemented: ORS 657A.260, 657A.330 & 657A.440

Hist.: CCD 2-1994, f. 7-15-94, cert. ef. 8-15-94; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 2-1995(Temp), f. 12-28-95, cert. ef. 1-1-96; CCD 2-1996, f. 3-19-96, cert. ef. 4-1-96; CCD 1-2000, f. 3-31-00, cert. ef. 4-2-00; CCD 5-2001, f. 11-2-01, cert. ef. 11-4-01; CCD 5-2001, f. 11-2-01, cert. ef. 11-4-01; CCD 1-2007(Temp), f. & cert. ef. 3-20-07 thru 9-16-07; CCD 2-2007, f. & cert. ef. 7-13-07; CCD 2-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 2-2010, f. 6-29-10, cert. ef. 7-1-10; ELD 4-2015, f. & cert. ef. 2-3-15

414-205-0035

General Requirements

(1) The home in which child care is provided must be the residence of the provider.

(2) The provider may not hold a medical marijuana card, grow marijuana, or be a distributor of marijuana.

(3) Registration is limited to one provider per household.

(4) A registration applies to only the person and address on the certificate of registration and is not transferable to another location or individual.

(5) The registration is valid for a maximum of two years. The registration period begins with the effective date shown on the certificate of registration. A provider may not care for more than three (3) children, other than the provider's own children, at any one time prior to receiving a certificate of registration from OCC.

(6) OCC registration records are open to the public on request. However, information protected by state or federal law will not be disclosed.

(7) The name, address, telephone number, and registration status of providers is public information. However, OCC may withhold from the public a provider's address and telephone number if the provider makes a written request documenting that disclosure of the address and/or telephone number would endanger him/her or a family member living in the home (OAR 137-004-0800). The request must be on a form supplied by OCC.

(8) The Certificate of Registration must be posted in the family child care home in an area where it can be viewed by parents.

(9) The provider shall have no other employment, either in or out of the home, during the hours children are in care.

(10) OCC staff may conduct an unannounced monitoring visit at least once during the license period.

(11) The provider or substitute must allow a representative from the Office of Child Care access to the home any time child care children are present.

(12) The provider shall allow an inspection of all areas of the facility that are accessible to child care children, and a health and safety review of other areas of the facility to ensure the health and safety of child care children.

(13) The provider must allow parents or legal guardians of child care children access to the home during the hours their child(ren) are in care.

(14) The provider must comply with local, state and federal laws related to immunizations, child care restrictable diseases, child safety systems and seat belts in vehicles, bicycle safety, civil rights laws, and the Americans with Disabilities Act.

(15) Any caregiver who has reason to believe that any child has suffered abuse (physical injury, mental injury, neglect that leads to physical harm, sexual abuse and/or exploitation, or threat of harm) must report the information to the Department of Human Services Child Welfare (DHS) or to a law enforcement agency. By statute, this requirement applies 24 hours per day.

(16) The provider must notify parents if there will be a substitute provider and the caregiver's name. In the event of an emergency, a good faith effort will be made to notify parents that a substitute will be caring for the children.

(17) The provider must notify parents if the children will be away from the home for any part of the day for visits, field trips or any other activity off the premises and the name of the caregiver.

(18) If an applicant or a provider wishes to provide child foster care, the provider must receive approval from OCC and DHS, prior to placement of the foster child(ren).

(19) Registered providers shall comply with all conditions placed on their license.

(20) Information provided to OCC on applications, in records or reports, or any other written or verbal communication, shall be current, complete and accurate.

Stat. Auth.: ORS 329A.260
Stats. Implemented: ORS 329A
Hist.: CCD 1-2000, f. 3-31-00, cert. ef. 4-2-00; CCD 1-2007(Temp), f. & cert. ef. 3-20-07 thru 9-16-07; CCD 2-2007, f. & cert. ef. 7-13-07; CCD 2-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; Administrative correction 7-27-10; ELD 9-2014(Temp), f. & cert. ef. 8-7-14 thru 2-3-15; ELD 4-2015, f. & cert. ef. 2-3-15

414-205-0040
The Provider and Other Persons in the Home

(1) The registered provider and any substitute provider shall:

(a) Be at least 18 years old,

(b) Have competence, sound judgment and self-control when working with children, and

(c) Be mentally, physically and emotionally capable of performing duties related to child care.

(2) No one shall have access to child care children who has demonstrated behavior that may have a detrimental effect on a child. Residents of the home are considered to have access to the child care children even if they are not generally at home during child care hours.

(3) The applicant and other residents of the home 18 years of age or older must be enrolled in OCC's CBR prior to the issuance of a registration. Residents of the home who are under 18 years of age must be enrolled in the Registry by their 18th birthday.

(4) The provider must verify with OCC that the individual is enrolled in the CBR prior to that individual moving into the home, residing on a temporary basis in the home, visiting the home on a regular basis (including overnight visits) or substituting for or assisting the provider. This does not apply to parents of children in care unless they are residing in the home or substituting or assisting the provider. The provider must keep a copy of OCC's confirmation letter for all adults enrolled in the CBR that may have contact with child care children.

(5) If additional information is needed to assess a person's ability to care for children or to have access to children, OCC may require references, an evaluation by a physician, counselor, or other qualified person, or other information.

(6) Any visitor to the home or other adult who is not enrolled in the CBR may not have unsupervised access to children.

(7) The provider, substitutes and other individuals that are required to be enrolled in the CBR must maintain current enrollment in the CBR at all times while the child care license is active.

(8) Prior to substituting for the provider, a caregiver must:

(a) Be familiar with the requirements for registration and agree to comply with them;

(b) Be enrolled in the CBR;

(c) Comply with all the requirements placed on the provider, except those in OAR 414-205-0055(1)(a)(b)(d)(e), (2), (3);

(d) Have current certification in first aid and infant and child cardiopulmonary resuscitation (CPR). The certifications must be current while the caregiver is substituting for the provider. CPR training must have practical hands-on instruction. CPR courses that involve an on-line component with hands-on instruction may be accepted. Strictly on-line CPR training is not acceptable; and

(e) Have current food handler's certification, if preparing or serving food to children.

Stat. Auth.: ORS 329A.260
Stats. Implemented: ORS 329A
Hist.: CCD 2-1994, f. 7-15-94, cert. ef. 8-15-94; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 1-2000, f. 3-31-00, cert. ef. 4-2-00; CCD 2-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 2-2010, f. 6-29-10, cert. ef. 7-1-10; ELD 9-2014(Temp), f. & cert. ef. 8-7-14 thru 2-3-15; ELD 4-2015, f. & cert. ef. 2-3-15

414-205-0055
Training Requirements

(1) When a person submits a new application for registration as a family child care provider, OCC shall, prior to approving the registration, receive evidence from the person that the person has:

(a) Completed the Family Child Care Overview session;

(b) A current certification in first aid and infant and child CPR. CPR training must have practical hands-on instruction. CPR courses that involve an on-line component with hands-on instruction may be accepted. Strictly on-line CPR training is not acceptable.

(c) A current food handler certification pursuant to ORS 624.570;

(d) Completed two hours of training on recognizing and reporting child abuse and neglect issues.

(A) Recognizing and reporting child abuse and neglect training must be based on Oregon law and practice so information is relevant to reporting in Oregon.

(B) Recognizing and reporting child abuse and neglect training must be two hours or more in duration to be accepted.

(e) Completed OCC approved health and safety training.

(2) When a registered family child care provider submits a renewal application, the OCC shall, prior to approving it, receive evidence from the provider that the provider has:

(a) A current certification in first aid and infant and child CPR. CPR training must have practical hands-on instruction. CPR courses that involve an on-line component with hands-on instruction may be accepted. Strictly on-line CPR training is not acceptable.

(b) A current food handler certification pursuant to ORS 624.570; and

(c) Completed a minimum of ten hours of training during the two years preceding the renewal date. The training must be related to the core knowledge categories in the Oregon Registry. At least six clock hours of the ten hours of training must be in child development or early childhood education. A training on recognizing and reporting child abuse and neglect will be accepted after five years (and every five years thereafter) as part of the ten clock hours of training required for licensing, but will not be accepted as part of the required child development training hours.

(A) OCC will accept duplicate training one additional time if it is a Set 2 (intermediate) or Set 3 (advanced) training or above as described by the Oregon Center for Career Development in Childhood Care and Education; and it is not taken within the same license period.

(B) The following core knowledge categories are accepted for the child development and early childhood education requirement: Diversity (D), Family and Community Systems (FCS), Human Growth and Development (HGD), Health Safety and Nutrition (HSN), Learning Environments and Curriculum (LEC), Observation and Assessment (OA), Special Needs (SN), and Understanding and Guiding Behavior (UGB).

(3) When a person submits a reopen application, the OCC shall, prior to approving it, receive evidence from the individual that the individual has:

(a) A current certification in first aid and infant and child CPR. CPR training must have practical hands-on instruction. CPR courses that involve an on-line component with hands-on instruction may be accepted. Strictly on-line CPR training is not acceptable.

(b) A current food handler certification pursuant to ORS 624.570; and

(c) Documentation that individual has ten hours of training related to the Oregon Registry core knowledge categories since the individual's last active child care license was issued. If the individual was previously licensed for less than two years, the training requirements will be prorated as follows: 2.5 hours of training for each six months of the previous license period. A training on recognizing and reporting child abuse and neglect will be accepted again after five years (and every five years thereafter) as part of the ten clock hours of training required for licensing, but will not be accepted as part of the required child development training hours.

(d) OCC will accept duplicate training one additional time if it is a Set 2 (intermediate) or Set 3 (advanced) training or above as described by the Oregon Center for Career Development in Childhood Care and Education; and it is not taken within the same license period.

(4) While the registered family child care license is active, the provider must maintain current certification in first aid, infant and child CPR and food handler training.

Stat. Auth.: ORS 657A.260
Stats. Implemented: ORS 657A.260
Hist.: CCD 1-2000, f. 3-31-00, cert. ef. 4-2-00; CCD 5-2001, f. 11-2-01, cert. ef. 11-4-01; CCD 3-2004, f. 7-30-04 cert. ef 8-1-04; CCD 1-2007(Temp), f. & cert. ef. 3-20-07 thru 9-16-07; CCD 2-2007, f. & cert. ef. 7-13-07; CCD 2-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; Administrative correction 7-27-10; CCD 7-2010, f. 12-29-10, cert. ef. 1-1-11; ELD 4-2015, f. & cert. ef. 2-3-15

414-205-0065
Children in Care

(1) A family child care provider may care for a maximum of 10 children under 13 years of age, or under age 18 if a child with special needs, at any one time. This includes the provider's own children, the child care children, foster children, and any other children for whom the provider is responsible.

(2) Of the 10 children under 13 years of age or under age 18 years of age with special needs, the provider may care for:

(a) A maximum of 6 children preschool age or younger, including the provider's children, of which only 2 children may be under 24 months of age.

(b) Four school-age children, in addition to the six children preschool-age or younger.

(c) More school-age children if there are fewer than 6 children preschool age or younger, as long as there are no more than 10 children in the home at any one time.

(3) Other children, including but not limited to relatives, neighborhood children or friends of the provider's children, are included in the maximum number of 10 children allowed in care if their parents or other adults responsible for supervising them are not present in the home or are not directly supervising their own child(ren).

(4) Visiting children and their parents or others directly supervising them can be in the family child care home only on an occasional basis.

(5) No child younger than 6 weeks of age can be in care in a family child care home. This does not include the provider's child(ren).

Stat. Auth.: ORS 657A.260
Stats. Implemented: ORS 657A.260
Hist.: CCD 1-2000, f. 3-31-00, cert. ef. 4-2-00; CCD 5-2001, f. 11-2-01, cert. ef. 11-4-01; CCD 2-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 2-2010, f. 6-29-10, cert. ef. 7-1-10; ELD 4-2015, f. & cert. ef. 2-3-15

414-205-0075
Supervision of Children

The provider or a substitute provider is responsible for the children in care. At all times the provider or substitute provider must:

(1) Be within sight or sound of all children;

(2) Be aware of what each child is doing;

(3) Be near enough to children to respond when needed;

(4) Be physically present when there are children under the age of 36 months playing outside; and

(5) Be physically present when kindergarten-age or younger children are playing outside, unless the outside play area is fully fenced and hazard free.

Stat. Auth.: ORS 657A.260
Stats. Implemented: ORS 657A.260
Hist.: CCD 1-2000, f. 3-31-00, cert. ef. 4-2-00; CCD 5-2001, f. 11-2-01, cert. ef. 11-4-01; CCD 2-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 2-2010, f. 6-29-10, cert. ef. 7-1-10; ELD 4-2015, f. & cert. ef. 2-3-15

414-205-0085
Guidance and Discipline

(1) The provider must have a written policy on guidance and discipline of child care children. The policy must be simple and understandable to the child, the parent(s) and to substitute providers.

(2) The written guidance and discipline policy must be given to all parents.

(3) The guidance and discipline policy shall:

(a) Provide for positive guidance, redirection and the setting of clear boundaries; and

(b) Be designed to help the child develop self-control, self-esteem and respect for others.

(4) Only providers and substitutes shall provide guidance or discipline to child care children.

(5) Guidance and discipline shall be fair, consistently applied, timely and appropriate to the behavior and age of the child. Positive statements or redirection of behaviors shall be used.

(6) The following behaviors by caregivers are prohibited:

(a) Using any form of corporal punishment, including, but not limited to: hitting, spanking, slapping, beating, shaking, pinching or other measures that produce physical pain, or threatening to use any form of corporal punishment;

(b) Using inappropriate forms of restraints, including, but not limited to, tying or binding;

(c) Using non-prescription chemicals for discipline or to control behavior;

(d) Yelling harshly or using profane or abusive language;

(e) Using mental or emotional punishment, including, but not limited to: name calling, ridicule or threats;

(f) Confining a child in an enclosed area (e.g. a locked or closed room, closet or box);

(g) Withdrawal or the threat of withdrawal of food, rest or bathroom opportunities;

(h) Punishing a child for toileting accidents or for refusing to eat food;

(i) Engaging in any form of public or private humiliation, rejecting, terrorizing, neglecting or corrupting a child or any form of emotional abuse; and

(j) Requiring a child to remain silent or inactive for excessive periods of time or removing a child from activities or the group for excessive periods of time.

(7) Parental request or permission to use any form of behavior listed in subsection (6) of this rule, does not give the provider or substitute provider permission to do so.

Stat. Auth.: ORS 657A.260
Stats. Implemented: ORS 657A.260
Hist.: CCD 1-2000, f. 3-31-00, cert. ef. 4-2-00; CCD 2-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; Administrative correction 7-27-10; ELD 4-2015, f. & cert. ef. 2-3-15

414-205-0090
Program of Activities

(1) The provider must give the children's needs first priority, assuring that they get adequate care and attention.

(2) Providers must make available activities, materials, and equipment for both indoor and outdoor play that provide a variety of experiences geared to the ages and abilities of the child(ren).

(3) The children's activities must allow choice and develop skills based on each child's age and abilities.

(4) A balance of active and quiet play must be provided, both indoors and outdoors.

(5) The provider must have routines for eating, napping, diapering and toileting, with flexibility to respond to the needs of each child.

(a) An individual bed, mat or cot with individual bedding appropriate to the season shall be provided at nap time for each toddler and preschool-age child in the home and for each school-age child who wants to rest.

(A) Family beds or sofas may be used with individual bedding appropriate to the season.

(B) If the parent(s) so request, siblings may share the same bed.

(C) The upper level of bunk beds shall not be used for children under ten years of age.

(D) The upper level of bunk beds may be used for children ten years or older if the bed rail and safety ladder are in place.

(b) Infants shall have a crib, portable crib or playpen with a clean, non-absorbent mattress. All cribs must comply with current Consumer Product Safety Commission (CPSC) standards. There shall be no items in the crib with the infant (e.g. toys, pillows or stuffed animals).

(c) If an infant uses a blanket, the blanket may not cover the infant's head or restrict the infant from moving.

(6) Child care children shall not be exposed to more than two hours of screen time per day. All media exposure must be developmentally and age appropriate.

Stat. Auth.: ORS 657A.260
Stats. Implemented: ORS 657A.260
Hist.: CCD 1-2000, f. 3-31-00, cert. ef. 4-2-00; CCD 2-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; Administrative correction 7-27-10; ELD 4-2015, f. & cert. ef. 2-3-15

414-205-0100
Health

(1) The home must be a healthy environment for children.

(a) No person shall smoke or carry any lighted smoking instrument, including an e-cigarette or vaporizer in the family child care home or within ten feet of any entrance, exit, or window that opens or any ventilation intake that serves an enclosed area, during child care hours or when child care children are present. No person shall use smokeless tobacco in the family child care home during child care hours or when child care children are present. No person shall smoke, carry any lighted smoking instrument, including an e-cigarette, or vaporizer or use smokeless tobacco in motor vehicles while child care children are passengers.

(b) No one shall consume alcohol on the family child care home premises during child care hours or when child care children are present. No one shall be under the influence of alcohol on the family child care home premises during child care hours or when child care children are present.

(c) Notwithstanding OAR 414-205-0000(5), no one shall possess, use or store illegal controlled substances on the family child care home prem-

ises. No one shall be under the influence of illegal controlled substances on the family child care home premises.

(d) Notwithstanding OAR 414-205-0000(5), no one shall grow or distribute marijuana on the premises of the registered family child care home. No adults shall use marijuana on the registered family child care home premises during child care hours or when child care children are present.

(e) No adult under the influence of marijuana shall have contact with child care children.

(f) Notwithstanding OAR 414-205-0000(5), marijuana plants shall not be grown or kept on the registered family child care home premises.

(g) All medical marijuana must be kept in its original container if purchased from a dispensary and stored under child safety lock. All medical marijuana derivatives and associated paraphernalia must be stored under child safety lock.

(h) Effective July 1, 2015, all marijuana, marijuana derivatives and associated paraphernalia must be stored under child safety lock.

(i) There must be at least one flush toilet and one hand-washing sink available to children. Steps or blocks must be available to ensure children can use the toilet and sink without assistance.

(j) The room temperature must be at least 68°F during the hours the child care business is conducted.

(k) Rooms occupied by children must have a combination of natural and artificial lighting.

(l) Floors must be free of splinters, large unsealed cracks, sliding rugs and other hazards.

(2) First aid supplies and a chart or handbook of first aid instructions shall be maintained in one identified place and kept out of reach of children.

(a) The first aid supplies shall include: band aids, adhesive tape, sterile gauze pads, soap or sealed antiseptic towelettes or solution to be used as a wound cleaning agent, scissors, disposable plastic gloves for handling blood spills, a solution for disinfecting after a blood spill, a sanitary temperature taking device and CPR mouth guards.

(b) A first aid kit and a copy of each child's emergency medical information including a medical release form shall be taken any time the caregiver is transporting child care children or taking child care children on field trips.

(3) Infants must be laid on their backs on a flat surface for sleeping.

(4) Illness:

(a) A provider shall not admit or retain in care, except with the written approval of the local health office, a child who:

(A) Is diagnosed as having or being a carrier of a child care restrictable disease, as defined in Oregon Health Authority administrative rule; or

(B) Has one of the following symptoms or combination of symptoms or illness;

(i) Fever over 100°F, taken under the arm;

(ii) Diarrhea (more than one abnormally loose, runny, watery or bloody stool);

(iii) Vomiting;

(iv) Nausea;

(v) Severe cough;

(vi) Unusual yellow color to skin or eyes;

(vii) Skin or eye lesions or rashes that are severe, weeping or pus-filled;

(viii) Stiff neck and headache with one or more of the symptoms listed above;

(ix) Difficulty breathing or abnormal wheezing;

(x) Complaints of severe pain.

(b) A child, who, after being admitted into child care, shows signs of illness, as defined in this rule, shall be separated from the other children, and the parent(s) notified and asked to remove the child from the provider's home as soon as possible.

(5) If a child has mild cold symptoms that do not impair his/her normal functioning, the child may remain in the provider's home and the parent(s) notified when they pick up their child.

(6) Parents must be notified if their child is exposed to an outbreak of a communicable disease.

(7) Prescription and non-prescription medication shall only be given to a child if the provider has written authorization from the parent, as required in OAR 414-205-0130(3).

(8) Prescription and non-prescription medications must be properly labeled and stored.

(a) Non-prescription medications or topical substances must be labeled with the child's name.

(b) Prescription medications must be in the original container and labeled with the child's name, the name of the drug, dosage, directions for administering, and the physician's name.

(c) Medication requiring refrigeration must be kept in a separate, tightly covered container, marked "medication," in the refrigerator.

(9) Sunscreen is considered a non-prescription medication and may be used for child care children under the following conditions:

(a) Providers must obtain written parental authorization prior to using sunscreen.

(b) One container of sunscreen may be used for child care children unless a parent supplies an individual container for their child. The sunscreen shall be applied in a manner that prevents contaminating the container.

(A) Parents must be informed of the type of product and the sun protective factor (SPF).

(B) Parents must be given the opportunity to inspect the product and active ingredients.

(c) If sunscreen is supplied for an individual child care child, the sunscreen must be labeled with the child's first and last name and must be used for only that child.

(d) Providers must reapply sunscreen every two hours while the child care children are exposed to the sun.

(e) Providers shall use a sunscreen with an SPF of 15 or higher and must be labeled as "Broad Spectrum".

(f) Providers shall not use aerosol sunscreens on child care children.

(g) Sunscreen shall not be used on child care children younger than six months.

(h) Child care children over six years of age may apply sunscreen to themselves under the direct supervision of the provider or staff member.

(10) Parents must be informed daily of any medications given to their child or any injuries their child has had.

(11) The provider must provide or ensure the availability of meals and snacks appropriate for the ages and needs of the children served.

(a) Meals and snacks must be based on the guidelines of the USDA Child Care Food Program.

(b) Foods must be stored and maintained at the proper temperature.

(c) Foods must be prepared and served according to the minimum standards for food handler certification.

(d) Infants must be held or sitting up for bottle feeding. Propping bottles is prohibited.

(e) Children shall not be laid down with a bottle for sleeping.

(12) Any animal at the family child care home shall be in good health and be a friendly companion for the children in care.

(a) Potentially aggressive animals must not be in the same physical space as the children.

(b) Dogs and cats must be vaccinated according to a licensed veterinarian's recommendations.

(c) Dogs and cats shall be kept free of fleas, ticks and worms.

(13) Animal litter boxes shall not be located in areas accessible to children or areas used for food storage or preparation.

(14) Caregivers must be physically present when children are interacting with animals.

(15) Exotic animals, including, but not limited to: reptiles (e.g. lizards, turtles, snakes) amphibians, monkeys, hook-beaked birds, baby chicks and ferrets are prohibited unless they are housed in and remain in a tank or other container which precludes any direct contact by children. Educational programs that include prohibited animals and are run by zoos, museums and other professional animal handlers are permitted.

(16) Parents must be made aware of the presence of any animals on the premises.

Stat. Auth.: ORS 329A.260
Stats. Implemented: ORS 329A
Hist.: CCD 1-2000, f. 3-31-00, cert. ef. 4-2-00; CCD 1-2008(Temp), f. & cert. ef. 8-6-08 thru 2-2-09; CCD 3-2008, f. & cert. ef. 10-2-08; CCD 2-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; Administrative correction 7-27-10; CCD 7-2010, f. 12-29-10, cert. ef. 1-1-11; CCD 1-2012(Temp), f. & cert. ef. 6-12-12 thru 11-6-12; CCD 2-2012, f. 9-28-12, cert. ef. 10-10-12; ELD 9-2014(Temp), f. & cert. ef. 8-7-14 thru 2-3-15; ELD 4-2015, f. & cert. ef. 2-3-15

414-205-0110
Safety

(1) Children shall be protected from fire and safety hazards. Providers must have the following protections in place:

(a) All exposed electrical outlets in rooms used by preschool or younger children must have hard-to-remove protective caps or safety devices installed when the outlet is not in use.

(b) Extension cords shall not be used as permanent wiring;

(c) All appliance cords must be in good condition;

(d) Multiple connectors for cords shall not be used;

(e) A grounded power strip outlet with a built-in over-current protection may be used;

(f) A stable barrier shall be installed to prevent children from falling into hazards, including, but not limited to: fireplaces, heaters and woodstoves that are in use when child care children are present;

(g) A secure barrier shall be placed at the top and/or bottom of all stairways accessible to infants and toddlers;

(h) A working smoke detector on each floor and in any area where children nap;

(i) A working fire extinguisher with a rating of at least 2-A:10-BC;

(j) Firearms, BB guns, pellet guns and ammunition kept under lock, with ammunition stored and locked separately. Firearms, BB guns and pellet guns must remain unloaded;

(k) Cleaning supplies, paints, matches, lighters, and plastic bags kept under child-safety lock;

(l) Other potentially dangerous items, such as medicine, drugs, sharp knives and poisonous and toxic materials kept under child-safety lock;

(m) If any preschool age or younger children are in care, poisonous plants must be kept out of the reach of children; and

(n) All clear glass panels in doors clearly marked at child level.

(2) All floor levels used by children must have access to two useable exits, as defined in OAR 414-205-0010(32), to the outdoors.

(a) If a basement is used for child care purposes, the requirement for two useable exits may be met by one of the following:

(A) A sliding glass door or swinging door to the outside and a window that meets the definition of a useable exit; or

(B) A window which meets the definition of a useable exit and an internal stairway to ground level that has unobstructed and direct access to the outdoors.

(b) If a window, which meets the definition of a useable exit, is used:

(A) Steps must be placed under the window to allow children to exit without assistance; and

(B) The window must be kept in good working condition.

(c) If a window used as an exit has a window well, a mechanism must be in place to allow children to exit the window well.

(3) Second floors (does not apply to providers registered continuously at the same address before 2009, unless the provider has moved the child care license to a new residence):

(a) Child care children shall not sleep on the second floor or above;

(b) Care shall not be provided for infants and toddlers on the second floor or above;

(c) Night care shall not be provided on the second floor or above;

(d) Children may be allowed on the second floor to use the bathroom if the only bathroom is on the second floor;

(e) Care can be provided for preschool and school-age children on the second floor or above, if:

(A) There are two staircases to the ground level and all children are mobile enough to exit safely; or

(B) The designated fire marshal has approved the use of the upper floor.

(4) The provider must have a written plan for evacuating and removing children to a safe location in an emergency. The plan must be posted in the home, familiar to the children and the caregivers, and practiced at least every other month and must include:

(a) Procedures for notifying parents or other adults responsible for the children, of the relocation;

(b) Procedures to address the needs of individual children, including those with special needs; and

(c) An acceptable method to ensure that all children in attendance are accounted for.

(5) A telephone in working condition must be in the family child care home.

(a) Parents must be given the telephone number so they can contact the provider if needed.

(b) Emergency telephone numbers for fire, ambulance, police and poison control and the provider's home address must be posted in a visible location.

(6) The building, grounds, water supply, and toys, equipment and furniture used by children must be maintained in a hazard-free condition.

(a) Broken toys, furniture and equipment must be removed from areas accessible to children.

(b) Both the exterior and interior of the home must be maintained in good repair.

(c) Painted surfaces must be in good condition, both inside and outside, to avoid exposing children to lead paint.

(d) The provider shall report to OCC any damage to the building that affects the provider's ability to comply with these requirements, within 48 hours after the occurrence.

(7) If a caregiver is transporting children, the caregiver must have a valid driver's license and proof of appropriate insurance.

(8) The number of children transported shall not exceed the number of seat belts or child safety systems available in the vehicle.

(9) Car seats are to be used for transportation only. Children who arrive at the provider's home asleep in a car seat may remain in the car seat until the child awakens.

(10) 15-passenger vans shall not be used to transport child care children after January 1, 2018.

Stat. Auth.: ORS 657A.260
Stats. Implemented: ORS 657A.260
Hist.: CCD 1-2000, f. 3-31-00, cert. ef. 4-2-00; CCD 2-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; Administrative correction 7-27-10; CCD 7-2010, f. 12-29-10, cert. ef. 1-1-11; ELD 4-2015, f. & cert. ef. 2-3-15

414-205-0120
Sanitation

(1) Pre-mixed sanitizers and disinfectants that are EPA registered and meet Oregon Health Authority criteria may be used in all areas of the home per manufacturer instructions.

(2) All caregivers and children must wash their hands with soap and warm, running water:

(a) Before handling food;

(b) Before assisting with feeding;

(c) Before and after eating;

(d) After diapering;

(e) After using the toilet;

(f) After assisting someone with toileting;

(g) After nose wiping;

(h) After playing outside; and

(i) After touching an animal or handling pet toys.

(3) Hand sanitizers shall not replace hand washing. If hand sanitizers are present in the home, they shall be kept out of children's reach and shall not be used on children.

(4) All toys, equipment and furniture used by children must be cleaned, rinsed and sanitized regularly and whenever soiled.

(5) Diaper changing surfaces must be either:

(a) Non-absorbent and easily disinfected;

(b) Disposed of after each use; or

(c) Laundered after each use.

(6) The diaper changing area shall be located so that hand washing can occur immediately after diapering without contacting other surfaces or children.

(7) The building and grounds must be maintained in a clean and sanitary manner.

(8) All garbage, solid waste, and refuse must be disposed of regularly, in a safe and sanitary manner.

(9) The home's water supply must be safe to drink.

(10) Wading pools are prohibited for wading.

Stat. Auth.: ORS 657A.260
Stats. Implemented: ORS 657A.260
Hist.: CCD 1-2000, f. 3-31-00, cert. ef. 4-2-00; CCD 2-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; Administrative correction 7-27-10; ELD 4-2015, f. & cert. ef. 2-3-15

414-205-0130
Record Keeping

(1) The following records must be kept by the provider for at least one year and must be available at all times to OCC:

(a) Information from the parent(s) for each child at the time of admission:

(A) Name and birth date of the child;

(B) Any chronic health problem(s), including allergies, the child has;

(C) Date child entered care;

(D) Names, work and home telephone numbers and addresses, and the work hours of the parent(s) or legal guardian(s);

(E) Name and telephone number of person(s) to contact in an emergency;

(F) Name and telephone number of person(s) to whom the child may be released;

(G) The name of the school attended by the child care child; and

(H) Name, address and telephone number of the child's doctor and dentist.

(I) Health history of any problems that could affect the child's participation in child care.

(b) Daily attendance records, including dates each child attended and arrival and departure times for each day. Times shall be recorded as the child care children arrive and depart;

(c) Medications administered, including the child's name, and the date and time of dosage and the dosage amount; and

(d) Injuries to a child.

(2) Injuries to a child which require attention from a licensed health care professional, such as a physician, EMT or nurse, must be reported to OCC within seven days.

(3) The provider must have a written statement from the parent(s) regarding whether or not the provider is authorized to:

(a) Obtain emergency medical treatment for a child;

(b) Administer medications to a child;

(c) Take a child on a field trip or other activity outside the home or participate in any water activity; and

(d) Transport a child to or from school or allow a child to bus or walk to or from school or home.

Stat. Auth.: ORS 657A.260
Stats. Implemented: ORS 657A.260
Hist.: CCD 1-2000, f. 3-31-00, cert. ef. 4-2-00; CCD 2-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; Administrative correction 7-27-10; ELD 4-2015, f. & cert. ef. 2-3-15

414-205-0140
Night Care

A provider providing night care must:

(1) Have a written plan for the care, mutually agreed upon by the parent(s) and the provider;

(2) Have a written plan for emergency situations occurring during the night;

(3) Be awake for the arrival and departure of each child in night care; and

(4) Follow all other applicable Registration rules.

Stat. Auth.: ORS 657A.260
Stats. Implemented: ORS 657A.260
Hist.: CCD 1-2000, f. 3-31-00, cert. ef. 4-2-00; CCD 2-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; Administrative correction 7-27-10; ELD 4-2015, f. & cert. ef. 2-3-15

414-205-0150
Exceptions to Rules

(1) A provider may request an exception to a rule.

(a) An exception must be requested on a form provided by OCC;

(b) The provider must provide a justification for the requested exception and an explanation of how the provider will ensure, through safeguards or other conditions, the health, safety and well-being of the children.

(2) The provider must be in compliance with the rule as written until the provider has received approval for the exception from OCC.

(3) In instances where care that is subject to registration, as defined in subsection (2) of rule 414-205-0000, will not be provided in the provider's own residence, the applicant/provider must request and receive approval for an exception prior to providing care at that location. In all respects, the location must appear and be arranged as a residence.

(4) No exception to a rule shall be granted unless the health, safety, and well-being of the children are ensured.

(5) An exception is valid only for the specified dates for which it is issued.

(6) The granting of an exception to a rule shall not set a precedent, and each request shall be evaluated on its own merits.

Stat. Auth.: ORS 657A.260
Stats. Implemented: ORS 657A.260
Hist.: CCD 1-2000, f. 3-31-00, cert. ef. 4-2-00; CCD 2-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; Administrative correction 7-27-10; ELD 4-2015, f. & cert. ef. 2-3-15

414-205-0160
Complaints

(1) The Office of Child Care will respond to complaints made on registered and illegal providers, and will cooperate with law enforcement or other agencies in response to allegations of child abuse or noncompliance.

(a) Any and all complaints may result in an on-site assessment at the family child care home;

(b) All serious complaints will result in an on-site assessment at the family child care home;

(c) Complaints alleging child abuse or neglect will be reported to the Department of Human Services Child Welfare (DHS) or local law enforcement agencies.

(2) New applicants for registration will be given a copy of OCC's complaint procedures at the time of the on-site health and safety review. The complaint procedures are also available upon request.

Stat. Auth.: ORS 657A.260
Stats. Implemented: ORS 657A.260
Hist.: CCD 1-2000, f. 3-31-00, cert. ef. 4-2-00; CCD 2-2007, f. & cert. ef. 7-13-07; CCD 2-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; Administrative correction 7-27-10; ELD 4-2015, f. & cert. ef. 2-3-15

414-205-0170
Grievance Review and Sanctions

(1) A provider has the right to a review of any finding made by OCC. New applicants for registration will be given a copy of OCC's findings review procedures at the time of the on-site inspection. Information on the OCC findings review process will be in complaint letters. The OCC findings review procedures are also available upon request.

(2) Registration may be denied, suspended, or revoked if a provider fails to meet requirements, provide OCC with information requested, allow an inspection, or correct deficiencies.

(3) Any action taken by OCC to deny, suspend, or revoke registration may be reported to USDA Child Care Food Programs, child care resource and referral agencies, Children, Adults and Families, Office of Self-Sufficiency and Office of Safety and Permanency for Children.

(4) A registration may be suspended immediately when OCC believes children may be at risk of harm in the family child care home. Such action may be taken before an investigation is completed.

(a) A provider whose registration has been suspended must immediately notify, verbally or in writing, all parents of the suspension.

(b) A provider whose registration has been suspended must post the suspension in the home where it can be viewed by parents.

(c) A provider whose registration has been suspended must immediately provide OCC with all names, work and home telephone numbers and addresses of the parent(s) or legal guardian(s) for each child.

(5) Registration will be denied, suspended or revoked if the provider or other resident of the home has been removed or suspended from the CBR.

(6) If an individual listed in 414-205-0040(2)(a) or (b) has been charged with, arrested for, or a warrant is out for any crime which OCC has determined indicates behavior that would have a detrimental effect on a child, the provider's application will be denied or registration will be suspended or revoked until the charge, arrest, or warrant has been resolved.

(7) Registration will be denied, suspended or revoked if an individual listed in OAR 414-205-0040(2)(a) or (b) has been convicted of or sentenced for offenses that would disqualify the individual from the CBR.

(8) Registration will be denied, suspended or revoked if an individual listed in OAR 414-205-0040(2)(a) or (b) has a founded child protective services case or an open child protective services or law enforcement case that would disqualify the individual from the CBR.

(9) A provider whose registration has been denied for cause or revoked for cause shall not be eligible to reapply for three years after the effective date of the revocation.

(10) A provider who violates these rules or the terms and conditions of registration under these rules may be subject to a civil penalty.

(a) For a serious violation, as defined in OAR 414-205-0010(29) a provider may be subject to a civil penalty of $100 for a violation after a written warning with time to correct is issued; and $100 for each subsequent violation, not to exceed $1,000 in a quarter for all rule violations.

(b) For other violations, a provider may be subject to a civil penalty of $50 for a violation after a written warning with time to correct is issued; $100 for a second violation, and $100 for each subsequent violation, not to exceed $1,000 in a quarter for all rule violations.

(11) The provider has the right to appeal any decision to deny, suspend, or revoke registration or to impose a civil penalty, subject to the provisions of Chapter 183, Oregon Revised Statutes.

Stat. Auth.: ORS 657.610 & 657A.260
Stats. Implemented: ORS 657A.260
Hist.: CCD 1-2000, f. 3-31-00, cert. ef. 4-2-00; CCD 5-2004, f. & cert. ef. 11-16-04; CCD 1-2005, f. & cert. ef. 4-29-05; CCD 2-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 2-2010, f. 6-29-10, cert. ef. 7-1-10; CCD 7-2010, f. 12-29-10, cert. ef. 1-1-11; ELD 4-2015, f. & cert. ef. 2-3-15

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Oregon Health Authority, Division of Medical Assistance Programs
Chapter 410

Rule Caption: Adopt New Rule Allowing a DME Repurposing Pilot Program

Adm. Order No.: DMAP 1-2015(Temp)
Filed with Sec. of State: 1-29-2015
Certified to be Effective: 1-29-15 thru 7-27-15
Notice Publication Date:
Rules Adopted: 410-122-0187
Subject: Adopt New Rule Allowing a DME Repurposing Pilot Program.
Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-122-0187
Durable Medical Equipment (DME) Repurposing Pilot Program

(1) The DME Repurposing Pilot Program is designed to refurbish gently used durable medical equipment that is no longer needed by other individuals and reassign to OHP clients. The pilot program serves clients residing in Washington, Multnomah, Clackamas, Umatilla, Marion, and Polk Counties and other counties as approved by the Division of Medical Assistance Programs (Division).

(2) DME provided through this program requires a written order signed and dated by the prescribing practitioner prior to dispensing items to a client. Medical need shall be supported within the prescribing practitioner's clinical documentation.

(3) The DME collected for use in this program shall be properly cleaned, sanitized, repaired, refurbished, and reconfigured by qualified and trained staff prior to reassignment.

(4) Certified Assistive Technology Professionals (ATP) or other appropriately licensed or certified providers shall:

(a) Assess each item of equipment to assure that it is safe and functionally appropriate for reuse;

(b) Assess the client's needs for equipment and consult with and advise the client and the prescribing practitioner in the selection of medically appropriate equipment;

(c) Instruct the client or the client's caregiver in the appropriate use of the equipment; and

(d) Be available after delivery of the equipment to provide timely support, repairs, and necessary modifications.

(5) The non-profit organization awarded the grant for this pilot program shall be reimbursed for costs associated with managing inventory, collection, cleaning, sanitizing, repairing, refurbishing, reconfiguring, fitting and setup, delivery, follow-up support, repairs, and adjustments of the DME reassigned through the program.

Stat. Auth.: ORS 414.065 & HB 4108
Stats. Implemented: ORS 414.065
Hist.: DMAP 1-2015(Temp), f. & cert. ef. 1-29-15 thru 7-27-15

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Rule Caption: Amend Rules Governing Payment for Medicaid EHR Incentive Program
Adm. Order No.: DMAP 2-2015(Temp)
Filed with Sec. of State: 1-30-2015
Certified to be Effective: 2-3-15 thru 8-1-15
Notice Publication Date:
Rules Amended: 410-165-0000, 410-165-0020, 410-165-0040, 410-165-0060, 410-165-0080, 410-165-0100
Subject: The Division is amending these rules because new federal legislation from the Centers for Medicare and Medicaid Services (CMS) affects how providers are eligible for the Medicaid EHR Incentive Program. These rules include changes for a shortened EHR reporting period in 2014 as well as overall clean up to existing language. Notably, in program year 2014, providers are given the flexibility to use either a 3-month calendar quarter or any continuous 90-day EHR reporting period to demonstrate meaningful use.
Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-165-0000
Basis and Purpose

(1) These rules (OAR chapter 410, division 165) govern the Oregon Health Authority (Authority), Division of Medical Assistance Programs (Division), Medicaid Electronic Health Record (EHR) Incentive Program. The Medicaid EHR Incentive Program provides incentive payments consistent with federal law concerning such payments to eligible providers participating in the Medicaid program who adopt, implement, upgrade, or successfully demonstrate meaningful use of certified EHR technology and who are qualified by the program.

(2) The Medicaid EHR Incentive Program is implemented pursuant to:

(a) The American Reinvestment and Recovery Act of 2009, Pub. L. No. 111-5, section 4201;

(b) The Centers for Medicare and Medicaid Services (CMS) federal regulation 42 CFR Part 495 (2010, 2012, & 2014) pursuant to the Social Security Act sections 1903(a)(3)(F) and 1903(t);

(c) The Division's General Rules program, OAR chapter 410, division 120;

(d) The Authority's Provider Rules, OAR chapter 943, division 120.

(3) The following retroactive effective dates apply to these rules:

(a) For all sections and references in this rule that refer to CMS federal regulation 42 CFR Part 495 (2014), the effective date is October 1, 2014;

(b) For eligible hospitals, except for sections and references in the rule applicable under section (3)(a) above, the effective date is October 1, 2013, which is also the start date for program year 2014.

(c) For eligible professionals, except for sections and references in the rule applicable under section (3)(a) above, the effective date is January 1, 2014, which is also the start date for program year 2014.

Stat. Auth.: ORS 413.042
Stats. Implemented: ORS 413.042 & 414.033
Hist.: DMAP 13-2011, f. 6-29-11, cert. ef. 7-1-11; DMAP 20-2013(Temp), f. & cert. ef. 4-26-13 thru 10-23-13; DMAP 56-2013, f. & cert. ef. 10-22-13; DMAP 2-2015(Temp), f. 1-30-15, cert. ef. 2-3-15 thru 8-1-15

410-165-0020
Definitions

The following definitions apply to OAR 410-165-0010 through 410-165-0140:

(1) Acceptance documents means written evidence supplied by a provider demonstrating that the provider met Medicaid EHR Incentive Program eligibility criteria or participation requirements according to standards specified by the Oregon Health Authority's (Authority), Division of Medical Assistance Programs.

(2) Acute care hospital means a healthcare facility including but not limited to a critical access hospital with a Centers for Medicare and Medicaid Services' (CMS) certification number (CCN) that ends in 0001-0879 or 1300-1399; and where the average length of patient stay is 25 days or fewer.

(3) Adopt, implement, or upgrade:

(a) Acquire, purchase, or secure access to Certified EHR Technology capable of meeting meaningful use requirements;

(b) Install or commence utilization of Certified EHR Technology capable of meeting meaningful use requirements; or

(c) Expand the available functionality of Certified EHR Technology capable of meeting meaningful use requirements at the practice site, including staffing, maintenance, and training or upgrade from existing EHR technology to Certified EHR Technology.

(4) Attestation means a statement that:

(a) Is made by an eligible provider or preparer during the application process;

(b) Represents that the eligible provider met the thresholds and requirements of the Medicaid EHR Incentive Program; and

(c) Is made under penalty of prosecution for falsification or concealment of a material fact.

(5) Certified EHR Technology as defined in 42 CFR 495.302 (2010, 2012, and 2014), 42 CFR 495.4 (2010 and 2012), 42 CFR 495.6 (2014) and 45 CFR 170.102 (2010, 2011, 2012, and 2014) per the Office of the National Coordinator for Health Information Technology EHR certification criteria.

(6) Children's hospital means a separately certified hospital, either freestanding or hospital-within a hospital that predominantly treats individuals under 21 years of age and that either:

(a) Has a CMS Certification Number (CCN) that ends in 3300–3399; or

(b) Does not have a CCN but has been provided an alternative number by CMS for purposes of enrollment in the Medicaid EHR Incentive Program as a children's hospital.

(7) Dentist has the meaning given that term in in OAR 410-120-0000 and 42 CFR 440.100.

(8) Eligible hospital means an acute care hospital with at least 10 percent Medicaid patient volume or a children's hospital.

(9) Eligible professional means a professional who:

(a) Is a physician; a dentist; a nurse practitioner, including a nurse-midwife nurse practitioner; or a physician assistant practicing in a Federally

Qualified Health Center (FQHC) or a Rural Health Clinic (RHC) that is so led by a physician assistant;

(b) Meets patient volume requirements described in OAR 410-165-0060; and

(c) Is not a hospital-based professional.

(10) Eligible provider means an eligible hospital or eligible professional.

(11) Encounter means:

(a) For an eligible hospital, either:

(A) Services rendered to an individual per inpatient discharge; or

(B) Services rendered to an individual in an emergency department on any one day.

(b) For an eligible professional, services rendered to an individual on any one day.

(12) Enrolled provider means a hospital or health care practitioner who is actively registered with the Authority pursuant to OAR 943-120-0320.

(13) Entity promoting the adoption of Certified EHR Technology means an entity designated by the Authority that promotes the adoption of Certified EHR Technology by enabling:

(a) Oversight of the business and operational and legal issues involved in the adoption and implementation of Certified EHR Technology; or

(b) The exchange and use of electronic clinical and administrative data between participating providers in a secure manner, including but not limited to maintaining the physical and organizational relationship integral to the adoption of Certified EHR Technology by eligible providers.

(14) Federal fiscal year (FFY) means October 1 to September 30.

(15) Federally Qualified Health Center (FQHC) has the meaning given that term in OAR 410-120-0000.

(16) Grace period means a period of time or specified date following the end of a program year when an eligible provider may submit an application to the Medicaid EHR Incentive Program for that program year:

(a) For program years 2011 and 2012, the following applies:

(A) For a first year application, the grace period is 60 days;

(B) For all subsequent years, the grace period is 90 days.

(b) For program year 2013, the grace period is 90 days;

(c) For program year 2014, the following applies:

(A) For eligible hospitals, the grace period ends on January 31, 2015;

(B) For eligible professionals, the grace period ends on May 31, 2015;

(d) For program year 2015 and later, the grace period is 90 days.

(17) Group has the meaning given that term in OAR 407-120-0100.

(18) Hospital-based professional means a professional who furnishes 90 percent or more of Medicaid-covered services in a hospital emergency room (place of service code 23) or inpatient hospital (place of service code 21) in the calendar year (CY) preceding the program year, except that hospital-based professional does not include a professional practicing predominantly at a Federally Qualified Health Center (FQHC) or a Rural Health Clinic (RHC).

(19) Individuals receiving Medicaid means individuals served by an eligible provider where the services rendered would qualify under the Medicaid encounter definition.

(20) Meaningful EHR user means an eligible provider that, for an EHR reporting period for a program year, demonstrates in accordance with 42 CFR 495.4 (2010 and 2012) and 42 CFR 495.8 (2010, 2012, and 2014), meaningful use of Certified EHR Technology by meeting the applicable objectives and associated measures in 42 CFR 495.6 (2010, 2012, and 2014) and as prescribed by 42 CFR Part 495.

(21) Medicaid encounter means:

(a) For an eligible hospital applying for program year 2011 or 2012, either:

(A) Services rendered to an individual per inpatient discharge where Medicaid (or a Medicaid demonstration project approved under the Social Security Act section 1115) paid for part or all of the service; or Medicaid (or a Medicaid demonstration project approved under the Social Security Act section 1115) paid all or part of the individual's premiums, copayments, or cost-sharing; or

(B) Services rendered in an emergency department on any one day where Medicaid (or a Medicaid demonstration project approved under the Social Security Act section 1115) paid for part or all of the service; or Medicaid (or a Medicaid demonstration project approved under the Social Security Act section 1115) paid all or part of the individual's premiums, copayments, and cost-sharing.

(b) For an eligible hospital applying for program year 2013 or later, either:

(A) Services rendered to an individual per inpatient discharge where the individual was enrolled in Medicaid (or a Medicaid demonstration project approved under the Social Security Act section 1115) or Children's Health Insurance Program (CHIP) if part of a state's Medicaid expansion (does not apply to Oregon's as it is designated as a separate CHIP state) at the time the billable service was provided; or

(B) Services rendered in an emergency department on any one day where the individual was enrolled in Medicaid (or a Medicaid demonstration project approved under the Social Security Act section 1115) or Children's Health Insurance Program (CHIP) if part of a state's Medicaid expansion (does not apply to Oregon's as it is designated as a separate CHIP state) at the time the billable service was provided;

(c) For an eligible professional applying for program year 2011 or 2012, either:

(A) Services rendered to an individual on any one day where Medicaid (or a Medicaid demonstration project approved under the Social Security Act section 1115) paid for part or all of the service; or

(B) Medicaid (or a Medicaid demonstration project approved under the Social Security Act section 1115) paid all or part of the individual's premiums, copayments, and cost-sharing;

(d) For an eligible professional applying for program year 2013 or later, services rendered to an individual on any one day where the individual was enrolled in a Medicaid program (or a Medicaid demonstration project approved under the Social Security Act section 1115) or Children's Health Insurance Program (CHIP) if part of a state's Medicaid expansion (does not apply to Oregon's as it is designated as a separate CHIP state) at the time the billable service was provided.

(22) National Provider Identifier has the meaning given that term in 45 CFR Part 160 and OAR 410-120-0000.

(23) Needy individual means individuals served by an eligible professional where the services rendered qualify under the needy individual encounter definition.

(24) Needy individual encounter means:

(a) For an eligible professional applying for program year 2011 or 2012, services rendered to an individual on any one day where:

(A) Medicaid or CHIP (or a Medicaid or CHIP demonstration project approved under the Social Security Act section 1115) paid for part or all of the service;

(B) Medicaid or CHIP (or a Medicaid or CHIP demonstration project approved under the Social Security Act section 1115) paid all or part of the individual's premiums, copayments, or cost-sharing;

(C) The services were furnished at no cost and calculated consistent with 42 CFR 495.310(h) (2010); or

(D) The services were paid for at a reduced cost based on a sliding scale determined by the individual's ability to pay;

(b) For an eligible professional applying for program year 2013 or later, services rendered to an individual on any one day where:

(A) The services were rendered to an individual enrolled in a Medicaid program (or a Medicaid demonstration project approved under the Social Security Act section 1115) or CHIP at the time the billable service was provided;

(B) The services were furnished at no cost and calculated consistently with 42 CFR 495.310(h) (2010); or

(C) The services were paid for at a reduced cost based on a sliding scale determined by the individual's ability to pay.

(25) Nurse practitioner has the meaning given that term in OAR 410-120-0000 and 42 CFR 440.166.

(26) Panel means a managed care panel, medical or health home program panel, or similar provider structure with capitation or case assignment that assigns patients to providers.

(27) Patient volume means:

(a) For eligible hospitals, the proportion of Medicaid encounters to total encounters expressed as a percentage;

(b) For eligible professionals who do not meet the definition of "practices predominantly": The proportion of Medicaid encounters to total encounters expressed as a percentage;

(c) For eligible professionals who meet the definition of "practices predominantly": The proportion of Needy Individual encounters to total encounters expressed as a percentage.

(28) Pediatrician means a physician who predominantly treats individuals under 21.

(29) Physician has the meaning given that term in OAR 410-120-0000 and 42 CFR 440.50.

(30) Physician assistant has the meaning given that term in OAR 410-120-0000 and 42 CFR 440.60.

(31) Practices predominantly mean an eligibility criterion to permit use of needy individual patient volume. An eligible professional "practices predominantly" if:

(a) For program year 2011 or 2012, more than 50 percent of an eligible professional's total patient encounters over a period of six months in the calendar year preceding the program year occur at an FQHC or RHC;

(b) For program year 2013 and later, more than 50 percent of an eligible professional's total patient encounters occur at an FQHC or RHC:

(A) During a six-month period in the calendar year preceding the program year; or

(B) During a six-month period in the most recent 12 months prior to attestation.

(32) Preparer means an individual authorized by an eligible provider to act on behalf of the provider to complete an application for a Medicaid EHR incentive via an electronic media connection with the Authority.

(33) Program year means:

(a) The calendar year (CY) for an eligible professional; or

(b) The federal fiscal year (FFY) for an eligible hospital.

(34) Provider Web Portal means the Authority's website that provides a secure gateway for eligible providers or preparers to apply for the Medicaid EHR Incentive Program.

(35) Qualify means to meet the eligibility criteria and participation requirements to receive a Medicaid EHR incentive payment for the program year. The Medicaid EHR Incentive Program (Program) makes the determination as to whether an eligible provider qualifies.

(36) Rural Health Clinic (RHC) means a clinic located in a rural and medically underserved community designated as an RHC by CMS. Payment by Medicare and Medicaid to an RHC is on a cost-related basis for outpatient physician and certain non-physician services.

(37) So led means when an FQHC or RHC has a physician assistant who is:

(a) The primary provider in the clinic;

(b) A clinical or medical director at the clinical site of practice; or

(c) An owner of the RHC.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.042 & 414.033

Hist.: DMAP 13-2011, f. 6-29-11, cert. ef. 7-1-11; DMAP 20-2013(Temp), f. & cert. ef. 4-26-13 thru 10-23-13; DMAP 56-2013, f. & cert. ef. 10-22-13; DMAP 2-2015(Temp), f. 1-30-15, cert. ef. 2-3-15 thru 8-1-15

410-165-0040
Application

(1) An eligible provider must apply to the Medicaid Electronic Health Record (EHR) Incentive Program (Program) each program year that the eligible provider seeks an incentive payment. In order to apply, an eligible provider or a preparer acting on behalf of an eligible provider must:

(a) Register with the Centers for Medicare and Medicaid Services (CMS);

(b) Apply to the Program after registering with CMS for each program year; and

(c) Attest that:

(A) The information submitted is true, accurate, and complete; and

(B) Any falsification or concealment of a material fact may be prosecuted under federal and state laws;

(d) Maintain for a period of no less than seven years from the date of completed application complete, accurate, and unaltered copies of all acceptance documents associated with all data transmissions and attestations. The information maintained must include at a minimum documentation to support:

(A) The financial or legal obligation for the adoption, implementation, or upgrade of certified EHR technology including, but not limited to, the purchase agreement or contract;

(B) Demonstration of meaningful use for the year corresponding to the program year;

(C) Patient volume for the year corresponding to the program year; and

(D) The eligible hospital's payment calculation data including, but not limited to, Medicare cost reports.

(2) An eligible provider must submit the acceptance documents referred to above in section (1)(d)(A) when the eligible provider is attesting for a payment for the adoption, implementation, or upgrade to certified EHR technology or when new Certified EHR Technology is acquired. If the eligible provider is an eligible hospital seeking its first year payment, it must submit the acceptance documents referred to in section (1)(d)(D).

(3) The Program reviews the completed application and the acceptance documents to determine if the eligible provider qualifies for an incentive payment:

(a) The Program verifies the information in the application;

(b) The Program determines if the eligible provider's information complies with the eligibility criteria and participation requirements;

(c) The Program notifies the eligible provider about the incentive payment determination;

(d) The Authority may reduce the incentive payment to pay off debt if an eligible provider or incentive payment recipient owes a debt under a collection mandate to the State of Oregon. The incentive payment is considered paid to the eligible provider even when part or all of the incentive may offset the debt. The Authority may not reduce the incentive payment amount for any other purpose unless permitted or required by federal or state law; and

(e) The Authority distributes 1099 forms to the tax identification number designated to receive the Medicaid EHR incentive payment.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS, 413.042 & 414.033

Hist.: DMAP 13-2011, f. 6-29-11, cert. ef. 7-1-11; DMAP 20-2013(Temp), f. & cert. ef. 4-26-13 thru 10-23-13; Administrative correction, 11-22-13; DMAP 2-2015(Temp), f. 1-30-15, cert. ef. 2-3-15 thru 8-1-15

410-165-0060
Eligibility

(1) For the purposes of the Medicaid Electronic Health Record (EHR) Incentive Program, there are three categories of eligibility criteria: criteria for an eligible professional, criteria for an eligible professional practicing predominately in a Federally Qualified Health Center (FQHC) or a Rural Health Clinic (RHC), and criteria for an eligible hospital.

(2) To be eligible for a Medicaid EHR incentive payment for the program year, an eligible professional as listed in Table 165-0060-1 must meet the Medicaid EHR Incentive Program criteria each year:

(a) To be eligible for an incentive payment, an eligible professional must at a minimum:

(A) Meet and follow the scope of practice regulations as applicable for each professional as defined in 42 CFR Part 440;

(B) Meet the following certified EHR technology and meaningful use requirements for the corresponding year of participation:

(i) First year of participation:

(I) Adopt, implement, or upgrade certified EHR technology; or

(II) Demonstrate meaningful use as prescribed by 42 CFR 495.4 (2010 and 2012) and 42 CFR 495.8 (2010, 2012, and 2014) and meet the corresponding meaningful use criteria as prescribed by 42 CFR 495.6 (2010, 2012, and 2014).

(ii) Subsequent years of participation, demonstrate meaningful use as prescribed by 42 CFR 495.4 (2010 and 2012) and 42 CFR 495.8 (2010, 2012, and 2014) and meet the corresponding meaningful use criteria as prescribed by 42 CFR 495.6 (2010, 2012, and 2014).

(C) Either not be a hospital-based professional or for program year 2013 or later meet the requirements that allow a reversal of a hospital-based determination. To be considered non-hospital-based in future program years after an initial reversal determination, the professional must attest in each subsequent program year that the professional continues to meet the requirements. To meet the requirements, the professional must do all of the following:

(i) Fund the acquisition, implementation, and maintenance of Certified EHR Technology, including supporting hardware and interfaces needed for meaningful use without reimbursement from an eligible hospital and use such Certified EHR Technology in the inpatient or emergency department of a hospital;

(ii) Provide documentation to the Program for review and approval for the program year and in accordance with the program application rules in OAR 410-165-0040;

(iii) Meet all applicable requirements to receive an incentive payment; and

(iv) If attesting to meaningful use, demonstrate using all encounters at all locations equipped with Certified EHR Technology, including those in the inpatient and emergency departments of the hospital.

(D) Meet one of the following criteria:

(i) Have a minimum of 30 percent patient volume attributable to individuals receiving Medicaid; or

(ii) Be a pediatrician who has a minimum of 20 percent patient volume attributable to individuals receiving Medicaid;

(b) An eligible professional must calculate patient volume, as listed in Table 165-0060-2, by using the patient volume calculation method either of patient encounter or of patient panel. The patient panel volume calculation method may be used only when all of the following apply:

(A) The patient panel is appropriate as a patient volume calculation method for the eligible professional; and

(B) There is an auditable data source to support the patient panel data;

(c) An eligible professional must calculate patient volume as listed in Table 165-0060-2 by using either the patient volume of the eligible professional or the patient volume of the group. The patient volume of the group may be used only when all of the following apply:

(A) The group's patient volume is appropriate as a patient volume methodology calculation for the eligible professional;

(B) There is an auditable data source to support the group's patient volume determination;

(C) All eligible professionals in the group must use the same patient volume calculation method for the program year;

(D) The group uses the entire practice or clinic's patient volume and does not limit patient volume in any way; and

(E) If an eligible professional works inside and outside of the group, then the patient volume calculation includes only those encounters associated with the group and not the eligible professional's outside encounters.

(d) An eligible professional's patient volume must be calculated using one of the following methods:

(A) The patient encounter calculation method based on the patient volume of the eligible professional requires that:

(i) For program year 2011 or 2012, the eligible professional must divide the total Medicaid encounters by the total patient encounters that were rendered by the eligible professional in any representative, continuous 90-day period in the preceding calendar year; or

(ii) For program year 2013 and later, the eligible professional must divide the total Medicaid encounters by the total patient encounters that were rendered by the eligible professional in any representative, continuous 90-day period either in the preceding calendar year or in the twelve month timeframe preceding the date of attestation. The eligible professional may not use the same 90-day timeframe to calculate patient volume in different program years.

(B) The patient encounter calculation method based on the patient volume of the group requires that:

(i) For program year 2011 or 2012, the eligible professional must divide the group's total Medicaid encounters by the group's total patient encounters in any representative, continuous 90-day period in the preceding calendar year;

(ii) For program year 2013 and later, the eligible professional must divide the group's total Medicaid encounters by the group's total patient encounters in any representative, continuous 90-day period either in the preceding calendar year or in the twelve-month timeframe preceding the date of attestation. The eligible professional may not use the same 90-day timeframe to calculate patient volume in different program years.

(C) The patient panel calculation method based on the patient volume of the eligible professional requires that:

(i) For program year 2011 or 2012, the eligible professional must:

(I) Add the total Medicaid patients assigned to the eligible professional's panel in any representative 90-day period in the prior calendar year, provided at least one Medicaid encounter took place with the patient in the preceding calendar year, to the eligible professional's unduplicated Medicaid encounters rendered in the same 90-day period; and

(II) Divide the result calculated above in (1)(d)(C)(i)(I) by the sum of the total patients assigned to the eligible professional's panel in the same 90-day period, provided at least one encounter took place with the patient during the preceding calendar year, plus all of the unduplicated patient encounters in the same 90-day period;

(ii) For program year 2013 and later, the eligible professional must:

(I) Add the total Medicaid patients assigned to the eligible professional's panel in any representative 90-day period in either the preceding calendar year or during the 12-month timeframe preceding the attestation date, provided at least one Medicaid encounter took place with the individual during the 24 months before the beginning of the 90-day period, to the eligible professional's unduplicated Medicaid encounters rendered same 90-day period; and

(II) Divide the result calculated above in section (2)(d)(C)(ii)(I) by the sum of the total patients assigned to the eligible professional's panel in the same 90-day period, provided at least one encounter took place with the patient during the 24 months before the beginning of the 90-day period, plus all of the unduplicated patient encounters in the same 90-day period; and

(III) Not use the same 90-day timeframe to calculate patient volume in different program years;

(D) The patient panel calculation method based on the patient volume of the group requires that:

(i) For program year 2011 or 2012, the eligible professional must:

(I) Add the total Medicaid patients assigned to the group's panel in any representative 90-day period in the prior calendar year, provided at least one Medicaid encounter took place with the patient in the preceding calendar year, to the group's unduplicated Medicaid encounters in the same 90-day period; and

(II) Divide the result calculated above in (1)(d)(D)(i)(I) by the sum of the total patients assigned to the group's panel in the same 90-day period, provided at least one encounter took place with the patient during the preceding calendar year, plus all of the unduplicated patient encounters in the same 90-day period.

(ii) For program year 2013 and later, the eligible professional must:

(I) Add the total Medicaid patients assigned to the group's panel in any representative 90-day period in either the preceding calendar year or during the 12-month timeframe preceding the attestation date, provided at least one Medicaid encounter took place with the individual during the 24 months before the beginning of the 90-day period, to the group's unduplicated Medicaid encounters that same 90-day period;

(II) Divide the result calculated above in (1)(d)(D)(ii)(I) by the sum of the total patients assigned to the group's panel in the same 90-day period, provided at least one encounter took place with the patient during the 24 months before the beginning of the 90-day period, plus all of the unduplicated patient encounters in the same 90-day period; and

(III) Not use the same 90-day timeframe to calculate patient volume in different program years.

(3) To be eligible for a Medicaid EHR incentive payment for the program year, an eligible professional practicing predominantly in an FQHC or an RHC, as listed in Table 165-0060-1, must meet the Medicaid EHR Incentive Program professional eligibility criteria each year by meeting either the above section (2) of this rule or by meeting the following FQHC- and RHC-specific criteria:

(a) To be eligible for an incentive payment, an eligible professional must at a minimum:

(A) Meet and follow the scope of practice regulations as applicable for each professional as prescribed by 42 CFR Part 440;

(B) Meet the following certified EHR technology and meaningful use requirements for the corresponding year of participation:

(i) First year of participation:

(I) Adopt, implement, or upgrade Certified EHR Technology; or

(II) Demonstrate meaningful use as prescribed by 42 CFR 495.4 (2010 and 2012) and 42 CFR 495.8 (2010, 2012, and 2014) and meet the corresponding meaningful use criteria as prescribed by 42 CFR 495.6 (2010, 2012, and 2014).

(ii) Subsequent years of participation demonstrate meaningful use as prescribed by 42 CFR 495.4 (2010 and 2012) and 42 CFR 495.8 (2010, 2012, and 2014) and meet the corresponding meaningful use criteria as prescribed by 42 CFR 495.6 (2010, 2012, and 2014).

(C) Have a minimum of 30 percent patient volume attributable to needy individuals.

(b) An eligible professional must calculate patient volume, as listed in Table 165-0060-3, by using the patient volume calculation method either of patient encounter or of patient panel. The patient panel volume calculation method may be used only when all of the following apply:

(A) The patient panel is appropriate as a patient volume calculation method for the eligible professional; and

(B) There is an auditable data source to support the patient panel data;

(c) An eligible professional must calculate patient volume, as listed in Table 165-0060-3, by using either the patient volume of the eligible professional or the patient volume of the group. The group's patient volume may be used only when all of the following apply:

(A) The group's patient volume is appropriate as a patient volume methodology calculation for the eligible professional;

(B) There is an auditable data source to support the group's patient volume determination;

(C) All eligible professionals in the group must use the same patient volume calculation method for the program year;

(D) The group uses the entire practice or clinic's patient volume and does not limit patient volume in any way; and

(E) If an eligible professional works inside and outside of the group, then the patient volume calculation includes only those encounters associated with the group and not the eligible professional's outside encounters.

(d) An eligible professional's needy individual patient volume must be calculated using one of the following methods:

(A) The patient encounter calculation method based on the patient volume of the eligible professional:

(i) For program year 2011 or 2012, the eligible professional must divide the total needy individual encounters by the total patient encounters that were rendered by the eligible professional in any representative, continuous 90-day period in the preceding calendar year;

(ii) For program year 2013 and later, the eligible professional must divide the total needy individual encounters by the total patient encounters that were rendered by the eligible professional in any representative, continuous 90-day period either in the preceding calendar year or in the12-month timeframe preceding the date of attestation. The eligible professional may not use the same 90-day timeframe to calculate patient volume in different program years;

(B) The patient encounter calculation method based on the patient volume of the group requires that:

(i) For program year 2011 or 2012, the eligible professional must divide the group's total needy individual encounters by the group's total patient encounters in any representative, continuous 90-day period in the preceding calendar year;

(ii) For program year 2013 and later, the eligible professional must divide the group's total needy individual encounters by the group's total patient encounters in any representative, continuous 90-day period either in the preceding calendar year or in the 12-month timeframe preceding the date of attestation. The eligible professional may not use the same 90-day timeframe to calculate patient volume in different program years;

(C) The patient panel calculation method based on the patient volume of the eligible professional requires that:

(i) For program year 2011 or 2012, the eligible professional must:

(I) Add the total needy individual patients assigned to the eligible professional's panel in any representative, 90-day period in the prior calendar year, provided at least one Medicaid encounter took place with the patient in the preceding calendar year, to the eligible professional's unduplicated needy individual encounters rendered in the same 90-day period; and

(II) Divide the result calculated above in section (2)(d)(C)(i)(I) by the sum of the total patients assigned to the eligible professional's panel in the same 90-day period, provided at least one encounter took place with the patient during the preceding calendar year, plus all of the unduplicated patient encounters in the same 90-day period;

(ii) For program year 2013 and later, the eligible professional must:

(I) Add the total needy individual patients assigned to the eligible professional's panel in any representative, 90-day period either in the preceding calendar year or during the twelve month timeframe preceding the attestation date, provided at least one Medicaid encounter took place with the individual during the 24 months before the beginning of the 90-day period, to the eligible professional's unduplicated needy individual encounters rendered same 90-day period;

(II) Divide the result calculated above in section (2)(d)(C)(ii)(I) by the sum of the total patients assigned to the eligible professional's panel in the same 90-day period, provided at least one encounter took place with the patient during the 24 months before the beginning of the 90-day period, plus all of the unduplicated patient encounters in the same 90-day period; and

(III) Not use the same 90-day timeframe to calculate patient volume in different program years;

(D) The patient panel calculation method based on the patient volume of the group requires that:

(i) For program year 2011 or 2012, the eligible professional must:

(I) Add the total needy individual patients assigned to the group's panel in any representative 90-day period in the prior calendar year, provided at least one needy individual encounter took place with the patient in the preceding calendar year, to the group's unduplicated Medicaid encounters in the same 90-day period; and

(II) Divide the result calculated above in section (2)(d)(D)(i)(I) by the sum of the total patients assigned to the group's panel in the same 90-day period, provided at least one encounter took place with the patient during the preceding calendar year, plus all of the unduplicated patient encounters in the same 90-day period;

(ii) For program year 2013 and later, the eligible professional must:

(I) Add the total needy individual patients assigned to the group's panel in any representative, 90-day period either in the preceding calendar year or during the 12-month timeframe preceding the attestation date, provided at least one needy individual encounter took place with the individual during the 24 months before the beginning of the 90-day period, to the group's unduplicated Medicaid encounters that same 90-day period;

(II) Divide the result calculated above in section (2)(d)(D)(ii)(I) by the sum of the total patients assigned to the group's panel in the same 90-day period, provided at least one encounter took place with the patient during the 24 months before the beginning of the 90-day period, plus all of the unduplicated patient encounters in the same 90-day period; and

(III) Not use the same 90-day timeframe to calculate patient volume in different program years.

(4) To be eligible for a Medicaid EHR incentive payment for the program year, an eligible hospital must meet the Medicaid EHR Incentive Program criteria each year:

(a) To be eligible for an incentive payment, an eligible hospital must, at a minimum, meet the Certified EHR Technology and meaningful use requirements for the corresponding year of participation:

(A) First year of participation:

(i) Adopt, implement, or upgrade Certified EHR Technology;

(ii) For eligible hospitals that participate in the Medicaid EHR Incentive Program only, demonstrate meaningful use as prescribed by 42 CFR 495.4 (2010 and 2012) and 42 CFR 495.8 (2010, 2012, and 2014) and meet the corresponding meaningful use criteria as prescribed by 42 CFR 495.6 (2010, 2012, and 2014); or

(iii) For eligible hospitals that participate in both the Medicare and Medicaid EHR Incentive Programs, demonstrate meaningful use under the Medicare EHR Incentive Program to Centers for Medicare and Medicaid Services (CMS) and be deemed a meaningful EHR user for the program year, as prescribed by 42 CFR 495.4 (2010 and 2012), 42 CFR 495.6 (2010, 2012, and 2014), and 42 CFR 495.8 (2010, 2012, and 2014);

(B) Subsequent years of participation:

(i) For eligible hospitals that participate in both the Medicare and Medicaid EHR Incentive Programs, demonstrate meaningful use under the Medicare EHR Incentive Program to Centers for Medicare and Medicaid Services (CMS) and be deemed a meaningful EHR user for the program year as prescribed by 42 CFR 495.4 (2010 and 2012), 42 CFR 495.6 (2010, 2012, and 2014), and 42 CFR 495.8 (2010, 2012, and 2014); or

(ii) For eligible hospitals that participate in the Medicaid EHR Incentive Program only, demonstrate meaningful use as prescribed by 42 CFR 495.4 (2010 and 2012) and 42 CFR 495.8 (2010, 2012, and 2014) and meet the corresponding meaningful use criteria as prescribed by 42 CFR 495.6 (2010, 2012, and 2014);

(b) If an eligible hospital is an acute care hospital, it must calculate patient volume by dividing the total eligible hospital Medicaid encounters by the total encounters in any representative, continuous 90-day period:

(A) For program year 2011 and 2012, in the preceding federal fiscal year;

(B) For program year 2013 and later, either in the preceding federal fiscal year or in the 12-month timeframe preceding the attestation date. The eligible hospital may not use the same 90-day timeframe to calculate patient volume in different program years.

(5) **Table 165-0060-1**.

(6) **Table 165-0060-2**.

(7) **Table 165-0060-3**.

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

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.042 & 414.033

Hist.: DMAP 20-2011, f. 7-21-11, cert. ef. 7-22-11; DMAP 20-2013(Temp), f. & cert. ef. 4-26-13 thru 10-23-13; DMAP 56-2013, f. & cert. ef. 10-22-13; DMAP 2-2015(Temp), f. 1-30-15, cert. ef. 2-3-15 thru 8-1-15

410-165-0080

Meaningful Use

(1) An eligible provider must demonstrate being a meaningful Electronic Health Record (EHR) user as prescribed by 42 CFR 495.4 (2010 and 2012), 42 CFR 495.6 (2010, 2012, and 2014), and 42 CFR 495.8 (2010, 2012, and 2014):

(a) For eligible providers that are demonstrating meaningful use under the Medicaid EHR Incentive Program in Stage 1 to comply with 42 CFR 495.8, the state of Oregon requires an eligible provider to satisfy the objective "Capability to submit electronic data to immunization registries or immunization information systems and actual submission in accordance with applicable law and practice";

(b) For eligible hospitals:

(A) If CMS deems an eligible hospital to be a meaningful EHR user for the Medicare EHR Incentive Program for a program year, then the eligible hospital is automatically deemed to be a meaningful EHR user for the Medicaid EHR Incentive Program for the same program year;

(B) An eligible hospital deemed to be a meaningful EHR user by Medicare for a program year does not have to also meet Oregon's Stage 1 requirement to satisfy the objective "Capability to submit electronic data to immunization registries or immunization information systems and actual submission in accordance with applicable law and practice" for the Medicaid EHR incentive payment for the same program year.

(2) As prescribed by 42 CFR 495.4 (2010 and 2012), the following meaningful use EHR reporting periods must be used by eligible providers that are demonstrating meaningful use to the Medicaid EHR Incentive Program:

(a) For program year 2014 only:

(A) For eligible professionals, either:

(i) Any continuous 90-day period in calendar year 2014; or

(ii) Any of the following 3-month periods:

(I) January 1, 2014 through March 31, 2014;

(II) April 1, 2014 through June 30, 2014;

(III) July 1, 2014 through September 30, 2014; or

(IV) October 1, 2014 through December 31, 2014;

(B) For eligible hospitals, either:

(i) Any continuous 90-day period in federal fiscal year 2014; or

(ii) Any of the following 3-month periods:

(I) October 1, 2013 through December 31, 2013;

(II) January 1, 2014 through March 31, 2014;

(III) April 1, 2014 through June 30, 2014; or

(IV) July 1, 2014 through September 30, 2014;

(b) For Program years other than 2014:

(A) For eligible professionals demonstrating meaningful use:

(i) For the first time, either:

(I) Any continuous 90-day period in the calendar year; or

(II) The calendar year.

(ii) For a subsequent time: the calendar year;

(B) For eligible hospitals demonstrating meaningful use:

(i) For the first time, either:

(I) Any continuous 90-day period in the federal fiscal year; or

(II) The federal fiscal year.

(ii) For a subsequent time, the federal fiscal year.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.042 & 414.033

Hist.: DMAP 13-2011, f. 6-29-11, cert. ef. 7-1-11; DMAP 20-2013(Temp), f. & cert. ef. 4-26-13 thru 10-23-13; DMAP 56-2013, f. & cert. ef. 10-22-13; DMAP 2-2015(Temp), f. 1-30-15, cert. ef. 2-3-15 thru 8-1-15

410-165-0100

Participation and Incentive Payments

(1) To qualify for an incentive payment, an eligible provider applying for a Medicaid Electronic Health Record (EHR) incentive payment must meet the Medicaid EHR Incentive Program eligibility criteria and participation requirements for each year that the eligible provider applies:

(a) An eligible provider must meet the eligibility criteria for each program year of:

(A) Type of eligible provider;

(B) Patient volume minimum; and

(C) Certified EHR Technology adoption, implementation, or upgrade requirements in the first year of participation and meaningful use requirements in subsequent years, or meaningful use requirements in all years of participation;

(b) An eligible provider must meet the participation requirements for each program year including:

(A) Be an enrolled Medicaid provider with the Oregon Health Authority's (Authority) Division of Medical Assistance Programs (Division);

(B) Maintain current provider information with the Division;

(C) Possess an active professional license and comply with all licensing statutes and regulations within the state where the eligible provider practices;

(D) Have an active Provider Web Portal account;

(E) Ensure the designated payee is able to receive electronic funds transfer from the Authority; and

(F) Comply with all applicable Oregon Administrative Rules (OAR), including chapter 410, division 120, and chapter 943, division 120;

(c) An eligible professional may reassign the entire amount of the incentive payment to:

(A) The eligible professional's employer with which the eligible professional has a contractual arrangement allowing the employer to bill and receive payments for the eligible professional's covered professional services;

(B) An entity with which the eligible professional has a contractual arrangement allowing the entity to bill and receive payments for the eligible professional's covered professional services; or

(C) An entity promoting the adoption of certified EHR technology.

(2) An eligible professional must follow the Medicaid EHR Incentive Program participation conditions including requirements that an eligible professional must:

(a) Receive an incentive payment from only one state for a program year;

(b) Only receive an incentive payment from either Medicare or Medicaid for a program year, but not both;

(c) Not receive more than the maximum incentive amount of $63,750 over a six-year period or the maximum incentive of $42,500 over a six-year period if the eligible professional qualifies as a pediatrician who meets the 20 percent patient volume minimum and less than the 30 percent patient volume;

(d) Participate in the Medicaid EHR Incentive Program:

(A) Starting as early as calendar year (CY) 2011 but no later than CY 2016;

(B) Ending no later than CY 2021;

(C) For a maximum of six years; and

(D) On a consecutive or non-consecutive annual basis;

(e) Be allowed to switch between the Medicare and Medicaid EHR Incentive Program only one time after receiving at least one incentive payment and only for a program year before 2015.

(3) Payments are disbursed to an eligible professional following verification of eligibility for the program year:

(a) An eligible professional is paid an incentive amount for the corresponding program year for each year of qualified participation in the Medicaid EHR Incentive Program;

(b) The payment structure is as follows for:

(A) An eligible professional qualifying with 30 percent minimum patient volume:

(i) The first payment incentive amount is $21,250; and

(ii) The second, third, fourth, fifth, or sixth payment incentive amount is $8,500; or

(B) An eligible pediatrician qualifying with 20 percent but less than 30 percent minimum patient volume:

(i) The first payment incentive amount is $14,167; and

(ii) The second, third, fourth, fifth, or sixth payment incentive amount is $5,667.

(4) An eligible hospital must follow the Medicaid EHR Incentive Program participation conditions including requirements that the eligible hospital:

(a) Receives a Medicaid EHR incentive payment from only one state for a program year;

(b) May participate in both the Medicare and Medicaid EHR Incentive Programs only if the eligible hospital meets all eligibility criteria for the program year for both programs;

(c) Participates in the Medicaid EHR Incentive Program:

(A) Starting as early as Federal Fiscal Year (FFY) 2011 but no later than FFY 2016;

(B) Ending no later than FFY 2021;

(C) For a maximum of three years;

(D) On a consecutive or non-consecutive annual basis for federal fiscal years prior to FFY 2016; and

(E) On a consecutive annual basis for federal fiscal years starting in FFY 2016;

(d) A multi-site hospital with one Centers for Medicare and Medicaid Services' Certification Number (CCN) is considered one hospital for purposes of calculating payment.

(5) Payments are disbursed to an eligible hospital following verification of eligibility for the program year. An eligible hospital is paid the aggregate incentive amount over three years of qualified participation in the Medicaid EHR Incentive Program:

(a) The payment structure as listed in Table 165-0100-1 is as follows:

(A) The first payment incentive amount is equal to 50 percent of the aggregate EHR amount;

(B) The second payment incentive amount is equal to 40 percent of the aggregate EHR amount; and

(C) The third payment incentive amount is equal to 10 percent of the aggregate EHR amount;

(b) The aggregate EHR amount is calculated as the product of the "overall EHR amount" times the "Medicaid Share" as listed in Table 165-00100-2. The aggregate EHR amount is calculated once for the first year participation and then paid over three years according to the payment schedule:

(A) The overall EHR amount for an eligible hospital is based upon a theoretical four years of payment the hospital would receive and is the sum of the following calculation performed for each of such four years. For each year, the overall EHR amount is the product of the initial amount, the Medicare share, and the transition factor:

(i) The initial amount as listed in Table 165-0100-3 is equal to the sum of the base amount, which is set at $2,000,000 for each of the theoretical four years plus the discharge-related amount that is calculated for each of the theoretical four years:

(I) For initial amounts calculated in program years 2011 or 2012, the discharge-related amount is $200 per discharge for the 1,150th through the 23,000th discharge, based upon the total discharges for the eligible hospital (regardless of source of payment) from the hospital fiscal year that ends during the federal fiscal year (FFY) prior to the FFY year that serves as the first payment year. No discharge-related amount is added for discharges prior to the 1,150th or any discharges after the 23,000th;

(II) For initial amounts calculated in program year 2013 or later, the discharge-related amount is $200 per discharge for the 1,150th through the 23,000th discharge, based upon the total discharges for the eligible hospital (regardless of source of payment) from the hospital fiscal year that ends before the FFY that serves as the first payment year. No discharge-related amount is added for discharges prior to the 1,150th or any discharges after the 23,000th;

(III) For purposes of calculating the discharge-related amount for the last three of the theoretical four years of payment, discharges are assumed to increase each year by the hospital's average annual rate of growth; negative rates of growth must also be applied. Average annual rate of growth is calculated as the average of the annual rate of growth in total discharges for the most recent three years for which data are available per year.

(ii) The Medicare share that equals 1;

(iii) The transition factor that equals:

(I) 1 for the first of the theoretical four years;

(II) 0.75 for the second of the theoretical four years;

(III) 0.5 for the third of the theoretical four years; and

(IV) 0.25 for the fourth of the theoretical four years;

(B) The Medicaid share for an eligible hospital is equal to a fraction:

(i) The numerator for the FFY and with respect to the eligible hospital is the sum of:

(I) The estimated number of inpatient-bed-days that are attributable to Medicaid individuals; and

(II) The estimated number of inpatient-bed-days that are attributable to individuals who are enrolled in a managed or coordinated care organization, a pre-paid inpatient health plan, or a pre-paid ambulatory health plan administered under 42 CFR Part 438;

(ii) The denominator is the product of:

(I) The estimated total number of inpatient-bed-days with respect to the eligible hospital during such period; and

(II) The estimated total amount of the eligible hospital's charges during such period, not including any charges that are attributable to charity care, divided by the estimated total amount of the hospital's charges during such period;

(iii) In computing inpatient-bed-days for the Medicaid share, an eligible hospital may not include either of the following:

(I) Estimated inpatient-bed-days attributable to individuals that may be made under Medicare Part A; or

(II) Inpatient-bed-days attributable to individuals who are enrolled with a Medicare Advantage organization under Medicare Part C;

(iv) If an eligible hospital's charity care data necessary to calculate the portion of the formula for the Medicaid share are not available, the eligible hospital's data on uncompensated care may be used to determine an appropriate proxy for charity care but must include a downward adjustment to eliminate bad debt from uncompensated care data if bad debt is not otherwise differentiated from uncompensated care. Auditable data sources must be used; and

(v) If an eligible hospital's data necessary to determine the inpatient bed-days attributable to Medicaid managed care patients are not available, that amount is deemed to equal 0. In the absence of an eligible hospital's data necessary to compute the percentage of inpatient bed days that are not charity care as described under subparagraph (B)(ii)(II) in this section, that amount is deemed to be 1.

(6) The aggregate EHR amount is determined by the state from which the eligible hospital receives its first incentive payment. If a hospital receives incentive payments from other states in subsequent years, total incentive payments received over all payment years of the program can be no greater than the aggregate EHR amount calculated by the state from which the eligible hospital received its first incentive payment.

(7) **Table 165-0100-1**.

(8) **Table 165-0100-2**.

(9) **Table 165-0100-3**.

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

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 413.042 & 414.033

Hist.: DMAP 13-2011, f. 6-29-11, cert. ef. 7-1-11; DMAP 20-2013(Temp), f. & cert. ef. 4-26-13 thru 10-23-13; DMAP 56-2013, f. & cert. ef. 10-22-13; DMAP 2-2015(Temp), f. 1-30-15, cert. ef. 2-3-15 thru 8-1-15

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Rule Caption: Eligibility Requirements for the Authority's Office of Client and Community Services Medical Programs

Adm. Order No.: DMAP 3-2015

Filed with Sec. of State: 1-30-2015

Certified to be Effective: 1-30-15

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Rules Amended: 410-200-0010, 410-200-0015, 410-200-0100, 410-200-0105, 410-200-0110, 410-200-0111, 410-200-0115, 410-200-0120, 410-200-0125, 410-200-0130, 410-200-0135, 410-200-0140, 410-200-0145, 410-200-0146, 410-200-0200, 410-200-0205, 410-200-0210, 410-200-0215, 410-200-0220, 410-200-0225, 410-200-0230, 410-200-0235, 410-200-0240, 410-200-0305, 410-200-0310, 410-200-0315, 410-200-0400, 410-200-0405, 410-200-0410, 410-200-0415, 410-200-0420, 410-200-0425, 410-200-0435, 410-200-0440, 410-200-0500, 410-200-0505, 410-200-0510

Rules Repealed: 410-200-0010(T), 410-200-0015(T), 410-200-0100(T), 410-200-0105(T), 410-200-0110(T), 410-200-0111(T), 410-200-0115(T), 410-200-0120(T), 410-200-0125(T), 410-200-0130(T), 410-200-0135(T), 410-200-0140(T), 410-200-0145(T), 410-200-0146(T), 410-200-0200(T), 410-200-0205(T), 410-200-0210(T), 410-200-0215(T), 410-200-0220(T), 410-200-0225(T), 410-200-0230(T), 410-200-0235(T), 410-200-0240(T), 410-200-0305(T), 410-200-0310(T), 410-200-0315(T), 410-200-0400(T), 410-200-0405(T), 410-200-0410(T), 410-200-0415(T), 410-200-0420(T), 410-200-0425(T), 410-200-0435(T), 410-200-0440(T), 410-200-0500(T), 410-200-0505(T), 410-200-0510(T)

Subject: With passage of the Affordable Care Act (ACA), Medicaid and CHIP eligibility methodologies were updated effective January 1, 2014. As of November 15, 2014, individuals may begin applying for OCCS medical program coverage through the Federally Facilitated Marketplace (FFM). Additionally, Oregon has received ongoing clarifications and guidance regarding the implementation of the ACA mandated changes. Along with clean-up of formatting, structure, and references within rules, these updates are reflected in the attached edits.

Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-200-0010

Overview

These rules, OAR 410-200-0010 through 0510, describe eligibility requirements for the Office of Client and Community Services (OCCS) medical programs.

Stat. Auth.: ORS 411.402, 411.404 & 413.042

Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, 413.038, 414.025, 414.231, 414.440, 414.534, 414.536 & 414.706

Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14; DMAP 20-2014, f. & cert. ef. 3-28-14; DMAP 67-2014(Temp), f. 11-14-14, cert. ef. 11-15-14 thru 5-13-15; DMAP 3-2015, f. & cert. ef. 1-30-15

410-200-0015

General Definitions

(1) "Action" means a termination, suspension, denial, or reduction of Medicaid or CHIP eligibility or covered services.

(2) "Address Confidentiality Program (ACP)" means a program of the Oregon Department of Justice that provides a substitute mailing address and mail forwarding service for ACP participants who are victims of domestic violence, sexual assault, or stalking.

(3) "AEN" means Assumed Eligible Newborn (OAR 410-200-0115).

(4) "Affordable Care Act" means the Patient Protection and Affordable Care Act of 2010 (Pub. L. 111–148), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152), as amended by the Three Percent Withholding Repeal and Job Creation Act (Pub. L. 112–56).

(5) "Agency" means the Oregon Health Authority, Department of Human Services, and Cover Oregon.

(6) "American Indian and Alaska Native income exceptions" means:

(a) Distributions from Alaska Native Corporations and Settlement Trusts;

(b) Distributions from any property held in trust, subject to federal restrictions, located within the most recent boundaries of a prior federal reservation or otherwise under the supervision of the Secretary of the Interior;

(c) Distributions and payments from rents, leases, rights of way, royalties, usage rights, or natural resource extraction and harvest, including farming, from:

(A) Rights of ownership or possession in any lands described in section (b) of this part; or

(B) Federally protected rights regarding off-reservation hunting, fishing, gathering, or usage of natural resources;

(d) Distributions resulting from real property ownership interests related to natural resources and improvements:

(A) Located on or near a reservation or within the most recent boundaries of a prior federal reservation; or

(B) Resulting from the exercise of federally-protected rights relating to such real property ownership interests;

(e) Payments resulting from ownership interests in or usage rights to items that have unique religious, spiritual, traditional, or cultural significance or rights that support subsistence or a traditional lifestyle according to applicable tribal law or custom;

(f) Student financial assistance provided under the Bureau of Indian Affairs education programs.

(7) "Applicant" means an individual who is seeking an eligibility determination for themselves or someone for whom they are applying through an application submission or a transfer from another agency, insurance affordability program, or the FFM.

(8) "Application" means:

(a) The single streamlined application for all insurance affordability programs developed by Cover Oregon and the Authority or the FFM; or

(b) An application designed specifically to determine eligibility on a basis other than the applicable MAGI standard, submitted by or on behalf of the individual who may be eligible or is applying for assistance on a basis other than the applicable MAGI standard,

(9) "APTC" means advance payments of the premium tax credit, which means payment of the tax credits specified in section 36B of the Internal Revenue Code (as added by section 1401 of the Affordable Care Act) that are provided on an advance basis to an eligible individual enrolled in a QHP through an Exchange in accordance with sections 1402 and 1412 of the Affordable Care Act.

(10) "Assumed eligibility" means an individual is deemed to be eligible for a period of time based on receipt of another program benefit or because of another individual's eligibility.

(11) "Authorized Representative" means an individual or organization that acts on behalf of an applicant or beneficiary in assisting with the individual's application and renewal of eligibility and other on-going communications with the Agency (OAR 410-200-0111).

(12) "Beneficiary" means an individual who has been determined eligible and is currently receiving OCCS medical program benefits, Aging and People with Disability medical program benefits, or APTC.

(13) "BRS" means Behavioral Residential Services.

(14) "Budget Month" means the calendar month from which financial and nonfinancial information is used to determine eligibility.

(15) "Caretaker" means a parent, caretaker relative, or non-related caretaker who assumes primary responsibility for a child's care.

(16) "Caretaker Relative" means a relative of a dependent child by blood, adoption, or marriage with whom the child is living who assumes primary responsibility for the child's care, which may but is not required to be indicated by claiming the child as a tax dependent for federal income tax purposes and who is one of the following:

(a) The child's father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece;

(b) The spouse of the parent or relative even after the marriage is terminated by death or divorce;

(c) An individual described in this section who is a relative of the child based on blood, including those of half-blood, adoption, or marriage.

(17) "CAWEM" means Citizen/Alien-Waived Emergency Medical, which is Medicaid coverage for emergency medical needs for clients who are not eligible for other medical programs solely because they do not meet citizenship and alien status requirements (OAR 410-200-0240).

(18) "CAWEM Prenatal" means medical services for pregnant CAWEM beneficiaries.

(19) "Child" means an individual including minor parent, under the age of 19. Child does not include an unborn. Child includes a natural or biological, adopted, or step child.

(20) "Children's Health Insurance Program" also called "CHIP" means Oregon medical coverage under Title XXI of the Social Security Act.

(21) "Citizenship" includes status as a "national of the United States" defined in 8 U.S.C. 1101(a) (22) that includes both citizens of the United States and non-citizen nationals of the United States.

(22) "Claim" means a legal action or a demand by, or on behalf of, an applicant or beneficiary for damages for or arising out of a personal injury that is against any person, public body, agency, or commission other than the State Accident Insurance Fund Corporation or Worker's Compensation Board.

(23) "Claimant" means an individual who has requested a hearing or appeal.

(24) "Code" means Internal Revenue Code of 1986 as amended.

(25) "Combined eligibility notice" means an eligibility notice that informs an individual, or multiple family members of a household when feasible, of eligibility for each of the insurance affordability programs and enrollment in a qualified health plan through Cover Oregon for which a determination or denial was made by Cover Oregon, the Authority, or the FFM.

(26) "Community partner" means all external entities that partner with Cover Oregon or the Authority and enter into formal agreement with the Authority to conduct outreach or enrollment assistance, whether or not they are funded or compensated by Cover Oregon or the Authority. Insurance agents are not considered community partners.

(27) "Coordinated content" means information included in eligibility notice regarding the transfer of the individual's or household's electronic account to another insurance affordability program for a determination of eligibility.

(28) "Cover Oregon" means the Oregon Health Insurance Exchange Corporation.

(29) "Custodial Parent" means, for children whose parents are divorced, separated, or unmarried, the parent for whom:

(a) If living with one parent, a court order or binding separation, divorce, or custody agreement establishes physical custody controls; or

(b) If living with one parent and there is no such order or agreement described in section (a), or in the event of a shared custody agreement, the custodial parent is the parent with whom the child spends most nights;

(c) If a child does not live with either parent, the parent who claims the child as a tax dependent is treated as the custodial parent for the purposes of OCCS medical program eligibility.

(30) "Date of Request" means the earlier of:

(a) The date the request for medical benefits is received by the Agency, the FFM, or a community partner; or

(b) The date the applicant received a medical service, if the request for medical benefits is received by midnight of the following business day.

(31) "Decision notice" means a written notice of a decision made regarding eligibility for an OCCS medical program benefit. A decision notice may be a:

(a) "Basic decision notice" mailed no later than the date of action given in the notice;

(b) "Combined Decision notice" informs an individual or multiple family members of a household, when feasible, of the eligibility decision made for each of the MAGI insurance affordability programs;

(c) "Timely continuing benefit decision notice" informs the client of the right to continued benefits and is mailed no later than ten calendar days prior to the effective date of the change, except for clients in the Address Confidentiality Program, for whom it should be mailed no later than 15 calendar days prior to the effective date of the change.

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

(33) "Dependent child" means a child who is under the age of 18 or age 18 and a full-time student in a secondary school or equivalent vocational or technical training, if before attaining age 19 the child may reasonably be expected to complete the school or training.

(34) "ELA" (Express Lane Agency) means the Department of Human Services making determinations regarding one or more eligibility requirements for the MAGI Child or MAGI CHIP programs.

(35) "ELE" (Express Lane Eligibility) means the Oregon Health Authority's option to rely on a determination made within a reasonable period by an ELA finding that a child satisfies the requirements for MAGI Child or MAGI CHIP program eligibility.

(36) "Electronic account" means an electronic file that includes all information collected and generated by the Agency regarding each individual's Medicaid or CHIP eligibility and enrollment, including all required documentation and including any information collected or generated as part of a fair hearing process conducted by the Authority, Cover Oregon, or the FFM appeals process.

(37) "Electronic application" means an application electronically signed and submitted through the Internet.

(38) "Eligibility determination" means an approval or denial of eligibility and a renewal or termination of eligibility.

(39) "Expedited appeal" also called "expedited hearing" means a hearing held within five working days of the Authority's receipt of a hearing request, unless the claimant requests more time.

(40) "Family size" means the number of individuals used to compare to the income standards chart for the applicable program. The family size consists of all members of the Household group and each unborn child of any pregnant members of the Household group.

(41) "Federal data services hub" means an electronic service established by the Secretary of the Department of Health and Human Services through which all insurance affordability programs can access specified data from pertinent federal agencies needed to verify eligibility, including SSA, the Department of Treasury, and the Department of Homeland Security.

(42) "Federal poverty level (FPL)" means the federal poverty level updated periodically in the Federal Register by the Secretary of the Department of Health and Human Services under the authority of 42 U.S.C. 9902(2) as in effect for the applicable budget period used to determine an individual's eligibility in accordance with 42 CFR 435.603(h).

(43) "Federally Facilitated Marketplace" also called "FFM" means a website used by consumers.

(44) "Hearing Request" means a clear expression, oral or written, by an individual or the individual's representative that the individual wishes to appeal an Authority or FFM decision or action.

(45) "Household group" consists of every individual whose income is considered for determining each medical applicant's eligibility as defined in OAR 410-200-0305.

(46) "Inmate" means:

(a) An individual living in a public institution that is:

(A) Confined involuntarily in a local, state, or federal prison, jail, detention facility, or other penal facility, including being held involuntarily in a detention center awaiting trial or serving a sentence for a criminal offense;

(B) Residing involuntarily in a facility under a contract between the facility and a public institution where, under the terms of the contract, the facility is a public institution;

(C) Residing involuntarily in a facility that is under governmental control; or

(D) Receiving care as an outpatient while residing involuntarily in a public institution;

(b) An individual is not considered an inmate when:

(A) The individual is released on parole, probation, or post-prison supervision;

(B) The individual is on home or work-release, unless the individual is required to report to a public institution for an overnight stay;

(C) The individual is receiving inpatient care at a medical institution not associated with the public institution where the individual is an inmate;

(D) The individual is staying voluntarily in a detention center, jail, or county penal facility after his or her case has been adjudicated and while other living arrangements are being made for the individual; or

(E) The individual is in a public institution pending other arrangements as defined in 42 CFR 435.1010.

(47) "Insurance affordability program" means a program that is one of the following:

(a) Medicaid;

(b) CHIP;

(c) A program that makes coverage available in a qualified health plan through Cover Oregon or the FFM with advance payments of the premium tax credit established under section 36B of the Internal Revenue Code available to qualified individuals;

(d) A program that makes coverage available in a qualified health plan through Cover Oregon or the FFM with cost-sharing reductions established under section 1402 of the Affordable Care Act.

(48) "Lawfully present" means an individual:

(a) Is a qualified non-citizen, as defined in this section;

(b) Has valid non-immigrant status, as defined in 8 U.S.C. 1101(a)(15) or otherwise under the immigration laws (as defined in 8 U.S.C. 1101(a)(17));

(c) Is paroled into the United States in accordance with 8 U.S.C. 1182(d)(5) for less than one year, except for an individual paroled for prosecution, for deferred inspection or pending removal proceedings; or

(d) Belongs to one of the following classes:

(A) Granted temporary resident status in accordance with 8 U.S.C. 1160 or 1255a, respectively;

(B) Granted Temporary Protected Status (TPS) in accordance with 8 U.S.C. 1254a and individuals with pending applications for TPS who have been granted employment authorization;

(C) Granted employment authorization under 8 CFR 274a.12(c);

(D) Family Unity beneficiaries in accordance with section 301 of Public Law 101–649, as amended;

(E) Under Deferred Enforced Departure (DED) in accordance with a decision made by the President;

(F) Granted Deferred Action status;

(G) Granted an administrative stay of removal under 8 CFR part 241; (viii) Beneficiary of approved visa petition that has a pending application for adjustment of status;

(e) Is an individual with a pending application for asylum under 8 U.S.C. 158, or for withholding of removal under 8 U.S.C. 1231, or under the Convention Against Torture who:

(A) Has been granted employment authorization; or

(B) Is under the age of 14 and has had an application pending for at least 180 days;

(f) Has been granted withholding of removal under the Convention Against Torture;

(g) Is a child who has a pending application for Special Immigrant Juvenile status as described in 8 U.S.C. 1101(a)(27)(J);

(h) Is lawfully present in American Samoa under the immigration laws of American Samoa;

(i) Is a victim of a severe form of trafficking in persons, in accordance with the Victims of Trafficking and Violence Protection Act of 2000, Public Law 106–386, as amended (22 U.S.C. 7105(b)); or

(j) Exception: An individual with deferred action under the Department of Homeland Security's deferred action for childhood arrivals process, as described in the Secretary of Homeland Security's June 15, 2012 memorandum, may not be considered to be lawfully present with respect to any of the above categories in sections (a) through (i) of this rule.

(49) "Legal Argument" has the meaning given that term in OAR 137-003-0008(c).

(50) "Medicaid" means Oregon's Medicaid program under Title XIX of the Social Security Act.

(51) "MAGI" means Modified Adjusted Gross Income and has the meaning provided at IRC 36B(d)(2)(B) and generally means federally taxable income with the following exceptions:

(a) The income of the following individuals is excluded when they are not expected to be required to file a tax return for the tax year in which eligibility is being determined. This subsection applies whether or not the child or tax dependent actually files a tax return:

(A) Children, regardless of age, who are included in the household of a parent;

(B) Tax dependents;

(b) In applying subsection (a) of this section, IRC § 6012(a) (1) is used to determine who is required to file a tax return.

(52) "MAGI-based income" means income calculated using the same financial methodologies used to determine MAGI as defined in section 36B(d)(2)(B) of the Code with the following exceptions:

(a) American Indian and Alaska Native income exceptions;

(b) Child support;

(c) Life insurance proceeds;

(d) Non-taxable Veterans' benefits;

(e) Non-taxable workers' compensation benefits;

(f) Scholarships, awards, or fellowship grants used for educational expenses;

(g) Supplemental Security Income (SSI);

(h) An amount received as a lump sum is counted as income only in the month received. Lump sum income includes but is not limited to:

(A) Winnings;

(B) Countable educational income;

(C) Capital gains;

(D) Dividends, interest, royalties;

(i) Scholarships, awards, or fellowship grants used for education purposes and not for living expenses;

(j) Self-employment and business entity income is determined by adding gross receipts and other business income and subtracting deductions described in Internal Revenue Code (IRC) §§ 161 through 249. Items not deductible are described in IRC §§ 261 through 280 include, but are not limited to, most capital expenditures, such as business start-up costs, buildings, and furniture and payments or deductions for personal, living, or family use. Business structures are determined by state statutes and are dependent on elections made by business owners. Each state may use different regulations for business structures. Salaries and wages paid to employees, including those who are owners or stockholders, are countable income to the employees. Business income is countable to owners and stockholders as described below:

(A) Sole proprietors, independent contractors, and Limited Liability Companies (LLC) who choose to file federal taxes as a sole proprietor: The necessary and ordinary costs of producing income are subtracted from gross receipts and other business income to determine countable income. Expenses related to costs for both business and personal use are prorated according to the proportions used for each purpose. Costs are limited to those described in IRC §§161 through 199 and Treasury Regulations §§ Sec. 1.162 through 1.263;

(B) Partnerships that are not publicly traded and LLCs who choose to file federal taxes as a partnership: Owners' income is determined as follows:

(i) The distributive share of income, gain, and loss is determined proportionately according to the partnership agreement or the LLC agreement;

(ii) Income from other partnerships, estates, and trusts is added to the amount in paragraph (A) of this subsection;

(iii) The costs of producing income described in subsection (4) (a) except for oil and gas depletion and costs listed below are proportionately subtracted from gross receipts to determine each partner's countable income:

(I) Bad debts;

(II) Guaranteed payments to partners;

(III) Losses from other partnerships, farms, estates, and trusts;

(IV) Retirement plans;

(C) S Corporations and LLCs who choose to file federal taxes as an S Corporation: Shareholders' income is determined as follows:

(i) The distributive share of profits, gain, and loss are determined proportionately on the basis of the stockholders' shares of stock;

(ii) The costs of producing income described in subsection (a) are proportionately subtracted from gross receipts to determine each stockholder's countable income;

(iii) The distributive share of profits is countable income to the shareholders whether or not it is actually distributed to the shareholders;

(D) C Corporations and LLCs who choose to file taxes as C Corporations: Shareholders' income is countable when it is distributed to them through dividends.

(53) "MAGI income standard" means the monthly income standard for the relevant program and family size described in OAR 410-200-0315.

(54) "Minimum essential coverage" means medical coverage under:

(a) A government-sponsored plan, including Medicare Part A, Medicaid (excluding CAWEM), CHIP, TRICARE, the veterans' health care program, and the Peace Corps program;

(b) Employer-sponsored plans with respect to an employee, including coverage offered by an employer that is a government plan, any other plan or coverage offered in the small or large group market within the state, and any plan established by an Indian tribal government;

(c) Plans in the individual market;

(d) Grandfathered health plans; and

(e) Any other health benefits coverage, such as a state health benefits risk pool, as recognized by the HHS secretary in coordination with the Treasury Secretary.

(55) "Non-applicant" means an individual not seeking an eligibility determination for him or herself and is included in an applicant's or beneficiary's household to determine eligibility for the applicant or beneficiary.

(56) "Non-citizen" has the meaning given the term "alien" as defined in section 101(a)(3) of the Immigration and Nationality Act (INA), (8 U.S.C. 1101(a)(3)) and includes any individual who is not a citizen or national of the United States, defined at 8 U.S.C. 1101(a)(22).

(57) "OCCS" means the Office of Client and Community Services, part of the Division of Medical Assistance Programs under the Oregon Health Authority.

(58) "OCCS medical programs" means all programs under the Office of Client and Community Services including:

(a) "CEC" means Continuous Eligibility for OHP-CHP pregnant women. Title XXI medical assistance for a pregnant non-CAWEM child found eligible for the OHP-CHP program who, for a reason other than moving out of state or becoming a recipient of private major medical health insurance, otherwise would lose her eligibility;

(b) "CEM" means Continuous Eligibility for Medicaid: Title XIX medical assistance for a non-CAWEM child found eligible for Medicaid who loses his or her eligibility for a reason other than turning 19 years of age or moving out of state;

(c) "EXT" means Extended Medical Assistance. The Extended Medical Assistance program provides medical assistance for a period of time after a family loses its eligibility for the MAA, MAF, or PCR program due to an increase in their spousal support or earned income;

(d) "MAA" means Medical Assistance Assumed;

(e) "MAF" means Medical Assistance to Families. The Medical Assistance to Families program provides medical assistance to people who are ineligible for MAA but are eligible for Medicaid using ADC program standards and methodologies that were in effect as of July 16, 1996;

(f) "OHP" means Oregon Health Plan. The Oregon Health Plan program provides medical assistance to many low-income individuals and families. The program includes five categories of individuals who may qualify for benefits. The acronyms for these categories are:

(A) "OHP-CHP" Persons under 19. OHP coverage for persons under 19 years of age who qualify at or below the 300 percent income standard;

(B) "OHP-OPC" Children. OHP coverage for children who qualify under the 100 percent income standard;

(C) "OHP-OPP" Pregnant Females and their newborn children. OHP coverage for pregnant females who qualify under the 185 percent income standard and their newborn children;

(D) "OHP-OPU" Adults. OHP coverage for adults who qualify under the 100 percent income standard. A person eligible under OHP-OPU is referred to as a health plan new/non-categorical (HPN) client;

(E) "OHP-OP6" Children under 6. OHP coverage for children under age 6 who qualify under the 133 percent income standard;

(g) "Substitute Care" means medical coverage for children in BRS or PRTF;

(h) "BCCTP" means Breast and Cervical Cancer Treatment Program;

(i) "MAGI Medicaid/CHIP" means OCCS medical programs for which eligibility is based on MAGI, including:

(A) MAGI Child;

(B) MAGI Parent or Other Caretaker Relative;

(C) MAGI Pregnant Woman;

(D) MAGI Children's Health Insurance Program (CHIP);

(E) MAGI Adult.

(59) "OCWP" means Office of Child Welfare Programs.

(60) "OSIPM" means Oregon Supplemental Income Program Medical. Medical coverage for elderly and disabled individuals administered by the Department of Human Services, Aging and People with Disabilities and Developmental Disabilities.

(61) "Parent" means a natural or biological, adopted, or step parent.

(62) "Personal Injury" means a physical or emotional injury to an individual including, but not limited to, assault, battery, or medical malpractice arising from the physical or emotional injury.

(63) "Post-eligibility review" means a review period of 30 days following the eligibility determination during which the Authority will verify information used to approve OCCS medical program benefits and ensure all non-financial eligibility requirements are met (OAR 410-200-0230).

(64) "Pregnant woman" means a woman during pregnancy and the postpartum period that begins on the date the pregnancy ends, extends 60 days and ends on the last day of the month in which the 60-day period ends.

(65) "Primary contact" means the primary person the Agency will communicate with and:

(a) Is listed as the case name; or

(b) Is the individual named as the primary contact on the Cover Oregon, Authority, or FFM medical application.

(66) "Private major medical health insurance" means a comprehensive major medical insurance plan that at a minimum provides physician services, inpatient and outpatient hospitalization, outpatient lab, x-ray, immunizations, and prescription drug coverage. This term does not include coverage under the Kaiser Child Health Program or Kaiser Transition Program but does include policies that are purchased privately or are employer-sponsored.

(67) "PRTF" means Psychiatric Residential Treatment Facility.

(68) "Public institution" means any of the following:

(a) A state hospital (ORS 162.135);

(b) A local correctional facility (ORS 169.005), a jail, or prison for the reception and confinement of prisoners that is provided, maintained, and operated by a county or city and holds individuals for more than 36 hours;

(c) A Department of Corrections institution (ORS 421.005), a facility used for the incarceration of individuals sentenced to the custody of the Department of Corrections, including a satellite, camp, or branch of a facility;

(d) A youth correction facility (ORS 162.135):

(A) A facility used for the confinement of youth offenders and other individuals placed in the legal or physical custody of the youth authority, including a secure regional youth facility, a regional accountability camp, a residential academy and satellite, and camps and branches of those facilities; or

(B) A facility established under ORS 419A.010 to 419A.020 and 419A.050 to 419A.063 for the detention of children, wards, youth or youth offenders pursuant to a judicial commitment or order;

(e) As used in this rule, the term public institution does not include:

(A) A medical institution as defined in 42 CFR 435.1010 including the Secure Adolescent Inpatient Program (SAIP) and the Secure Children's Inpatient Program (SCIP);

(B) An intermediate care facility as defined in 42 CFR 440.140 and 440.150; or

(C) A publicly operated community residence that serves no more than 16 residents, as defined in 42 CFR 435.1009.

(69) "Qualified Hospital" means a hospital that:

(a) Participates as an enrolled Oregon Medicaid provider;

(b) Notifies the Authority of their decision to make presumptive eligibility determinations;

(c) Agrees to make determinations consistent with Authority policies and procedures;

(d) Informs applicants for presumptive eligibility of their responsibility and available assistance to complete and submit the full Medicaid application and to understand any documentation requirements; and

(e) Are not disqualified by the Authority for violations related to standards established for the presumptive eligibility program under 42 CFR § 435.1110(d).

(70) "Qualified non-citizen" means an individual that is any of the following:

(a) A non-citizen lawfully admitted for permanent residence under the INA (8 U.S.C. 1101 et seq);

(b) A refugee admitted to the United States as a refugee under section 207 of the INA (8 U.S.C. 1157);

(c) A non-citizen granted asylum under section 208 of the INA (8 U.S.C. 1158);

(d) A non-citizen whose deportation is being withheld under section 243(h) of the INA (8 U.S.C. 1253(h)) (as in effect immediately before April 1, 1997) or section 241(b) (3) of the INA (8 U.S.C. 1231(b) (3)) (as amended by section 305(a) of division C of the Omnibus Consolidated Appropriations Act of 1997, Pub. L. No. 104-208, 110 Stat. 3009-597 (1996));

(e) A non-citizen paroled into the United States under section 212(d) (5) of the INA (8 U.S.C. 1182(d) (5)) for a period of at least one year;

(f) A non-citizen granted conditional entry pursuant to section 203(a) (7) of the INA (8 U.S.C. 1153(a) (7)) as in effect prior to April 1, 1980;

(g) A non-citizen who is a Cuban and Haitian entrant (as defined in section 501(3) of the Refugee Education Assistance Act of 1980);

(h) An Afghan or Iraqi alien granted Special Immigration Status (SIV) under section 101(a) (27) of the INA; or

(i) A battered spouse or dependent child who meets the requirements of 8 U.S.C. 1641(c) and is in the United States on a conditional resident status, as determined by the U.S. Citizenship and Immigration Services.

(71) "Reasonable opportunity period:"

(a) May be used to obtain necessary verification or resolve discrepancy regarding US citizenship or non-citizen status;

(b) Begins on and shall extend 90 days from the date on which notice is received by the individual. The date on which the notice is received is considered to be five days after the date on the notice, unless the individual shows that he or she did not receive the notice within the five-day period;

(c) May be extended beyond 90 days if the individual is making a good faith effort to resolve any inconsistencies or obtain any necessary documentation or the Agency needs more time to complete the verification process.

(72) "Redetermination" means a review of eligibility outside of regularly scheduled renewals. Redeterminations that result in the assignment of a new renewal date are considered renewals.

(73) "Renewal" means a regularly scheduled periodic review of eligibility resulting in a renewal or change of program benefits, including the assignment of a new renewal date or a change in eligibility status.

(74) "Required documentation" means:

(a) Facts to support the Agency's decision on the application; and

(b) Either:

(A) A finding of eligibility or ineligibility; or

(B) An entry in the case record that the applicant voluntarily withdrew the application, and the Agency sent a notice confirming the decision, that the applicant has died, or that the applicant cannot be located.

(75) "Secure electronic interface" means an interface which allows for the exchange of data between Medicaid or CHIP and other insurance affordability programs and adheres to the requirements in 42 CFR part 433, subpart C.

(76) "Shared eligibility service" means a common or shared eligibility system or service used by a state to determine individuals' eligibility for insurance affordability programs.

(77) "Sibling" means natural or biological, adopted, or half or step sibling.

(78) "Spouse" means an individual who is legally married to another individual under:

(a) The statutes of the state where the marriage occurred;

(b) The common law of the state in which two individuals previously resided while meeting the requirements for common law marriage in that state; or

(c) The laws of a country in which two individuals previously resided while meeting the requirements for legal marriage in that country.

(79) "SSA" means Social Security Administration.

(80) "Tax dependent" has meaning given the term "dependent" under section 152 of the Internal Revenue Code, as an individual for whom another individual claims a deduction for a personal exemption under section 151 of the Internal Revenue Code for a taxable year.

(81) "Title IV-E" means Title IV-E of the Social Security Act (42 U.S.C. §§ 671-679b).

Stat. Auth.: ORS 411.095, 411.402, 411.404, 413.038, 414.025, 414.534

Stats. Implemented: ORS 411.095, 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, 413.038, 414.025, 414.231, 414.440, 414.534, 414.536, 414.706

Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14; DMAP 20-2014, f. & cert. ef. 3-28-14; DMAP 67-2014(Temp), f. 11-14-14, cert. ef. 11-15-14 thru 5-13-15; DMAP 3-2015, f. & cert. ef. 1-30-15

410-200-0100

Coordinated Eligibility and Enrollment Process with the Department of Human Services and Cover Oregon

(1) This rule describes Oregon Health Authority's (Authority) coordination of eligibility and enrollment with the Department of Human Services (Department), Cover Oregon, and the FFM. The Authority shall:

(a) Minimize the burden on individuals seeking to obtain or renew eligibility or to appeal a determination of eligibility for insurance affordability programs;

(b) Ensure determinations of eligibility and enrollment in the appropriate program without undue delay, consistent with timeliness standards described in OAR 410-200-0110 based on the application date;

(c) Provide coordinated content for those household members whose eligibility status is not yet determined; and

(d) Screen every applicant or beneficiary who submits an application or renewal form, or whose eligibility is being renewed under a change in circumstance for criteria that identify individuals for whom MAGI-based income methods do not apply.

(2) For individuals undergoing eligibility determination based on MAGI-based methodology and standards, the Authority, consistent with the timeliness standards described in OAR 410-200-0110, shall:

(a) Determine eligibility for MAGI Medicaid/CHIP on the basis of having household income at or below the applicable MAGI-based standard, or

(b) If ineligible under section (a) or if eligible for CAWEM-level benefits only, direct as appropriate to Cover Oregon for the 2014 benefit year or the FFM for the 2015 benefit year.

(3) If ineligible for MAGI Medicaid/CHIP, the Authority shall, consistent with the timeliness standards described in OAR 410-200-0110:

(a) Screen for eligibility for non-MAGI programs as indicated by information provided on the application or renewal form;

(b) Transfer timely via secure electronic interface the individual's electronic account information to the Department, as appropriate, OCCS medical program;

(c) Provide notice to the individual that:

(A) The Authority has determined the individual ineligible for OCCS medical programs;

(B) The Department is continuing to evaluate Medicaid eligibility on one or more other bases, including a plain language explanation of the other bases being considered;

(C) The notice shall include coordinated content relating to the transfer of the individual's electronic account to the Department, as appropriate; and

(D) There is a right to a hearing to challenge the eligibility decision;

(d) Provide or assure that the Department has provided the individual with notice of the final determination of eligibility on one or more other bases.

(4) For beneficiaries found ineligible for on-going OCCS medical program benefits who are referred to the Department for a non-MAGI Medicaid eligibility review, the Authority shall maintain OCCS medical program benefits while eligibility is being determined by the Department and may not take action to close benefits until determination of eligibility is complete.

(5) Coordination among agencies:

(a) The Authority shall maintain a secure electronic interface through which the Authority can receive an individual's electronic account from the Department, Cover Oregon, and the FFM;

(b) The Authority may not request information or documentation from the individual included in the individual's electronic account or provided to the Agency; and

(c) If information is available through electronic data match and is useful and related to eligibility for OCCS medical programs, the Authority shall obtain the information through electronic data match.

(6) Cover Oregon may perform any obligation of the Authority under these rules pertaining to MAGI Medicaid/CHIP except for hospital presumptive eligibility. Each Agency shall either complete the processing of any application or redetermination for medical benefits or transfer the application to another Agency for completion.

Stat. Auth.: ORS 411.402, 411.404, 413.042 & 414.534

Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, 413.038, 414.025, 414.231, 414.440, 414.534, 414.536 & 414.706

Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14; DMAP 20-2014, f. & cert. ef. 3-28-14; DMAP 67-2014(Temp), f. 11-14-14, cert. ef. 11-15-14 thru 5-13-15; DMAP 3-2015, f. & cert. ef. 1-30-15

410-200-0105

Hospital Presumptive Eligibility

This rule sets out when an individual is presumptively eligible for MAGI Medicaid/CHIP, BCCTP, and Former Foster Care Youth Medical (OAR 413-100-0457) based on the determination of a qualified hospital.

(1) The qualified hospital will determine Hospital Presumptive Eligibility for MAGI Medicaid/CHIP, BCCTP, or Former Foster Care Youth Medical based on the following information attested by the individual:

(a) Family size;

(b) Household income;

(c) Receipt of other health coverage;

(d) US citizenship, US national, or non-citizen status.

(2) To be eligible via Hospital Presumptive Eligibility, an individual must be a US citizen, US National, or meet the citizenship and alien status requirements found in 410-200-0215 and one of the following:

(a) A child under the age of 19 with income at or below 300 percent of the federal poverty level;

(b) A parent or caretaker relative of a dependent child with income at or below the MAGI Parent or Other Caretaker Relative income standard for the appropriate family size in OAR 410-200-0315;

(c) A pregnant woman with income at or below 185 percent of the federal poverty level;

(d) A non-pregnant adult between the ages of 19 through 64 with income at or below 133 percent of the federal poverty level; or

(e) A woman under the age of 65 who has been determined eligible for the Breast and Cervical Cancer Treatment Program (OAR 410-200-0400);

(f) An individual under the age of 26 who was in Oregon foster care on their 18th birthday.

(3) To be eligible via Hospital Presumptive Eligibility, an individual may not:

(a) Be receiving Supplemental Security Income benefits;

(b) Be a Medicaid/CHIP beneficiary; or

(c) Have received Hospital Presumptive Eligibility for any portion of the full year (365 days) preceding a new Hospital Presumptive Eligibility period.

(4) In addition to the requirements outlined in sections (2) and (3) above, the following requirements also apply:

(a) To receive MAGI Adult benefits via Hospital Presumptive Eligibility, an individual may not be entitled to or enrolled in Medicare benefits under part A or B of Title XVIII of the Act;

(b) To receive MAGI CHIP benefits via Hospital Presumptive Eligibility, an individual may not be covered by any minimum essential coverage that is accessible (OAR 410-200-0410(2)(c));

(c) To receive BCCTP benefits via Hospital Presumptive Eligibility, an individual may not be covered by any minimum essential coverage.

(5) The Hospital Presumptive Eligibility period begins on the earlier of:

(a) The date the qualified hospital determines the individual is eligible; or

(b) The date that the individual received a covered medical service from the qualified hospital, if the hospital determines the individual is eligible and submits the decision to the Authority within five calendar days following the date of service.

(6) The Hospital Presumptive Eligibility period ends:

(a) For individuals on whose behalf a Medicaid/CHIP application has been filed by the last day of the month following the month in which the hospital presumptive eligibility period begins, the day on which the state makes an eligibility determination for MAGI Medicaid/CHIP and sends basic decision notice; or

(b) If subsection (a) is not completed, the last day of the month following the month in which the hospital presumptive eligibility period begins.

(7) A Hospital Presumptive Eligibility decision does not qualify a beneficiary for continuous eligibility (OAR 410-200-0135).

(8) A baby born to a woman receiving benefits during a Hospital Presumptive Eligibility period is not assumed eligible (OAR 410-200-0135).

Stat. Auth.: ORS 411.402, 411.404, 413.042 & 414.534

Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, 413.038, 414.025, 414.231, 414.440, 414.534, 414.536 & 414.706

Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14; DMAP 20-2014, f. & cert. ef. 3-28-14; DMAP 67-2014(Temp), f. 11-14-14, cert. ef. 11-15-14 thru 5-13-15; DMAP 3-2015, f. & cert. ef. 1-30-15

410-200-0110

Application and Renewal Processing and Timeliness Standards

(1) General information as it relates to application processing is as follows:

(a) An individual may apply for one or more medical programs administered by the Authority, the Department, or Cover Oregon using a single streamlined application;

(b) An application may be submitted via the Internet, the FFM, by telephone, by mail, in person, or through other commonly available electronic means;

(c) The Agency shall ensure that an application form is readily available to anyone requesting one and that community partners or Agency staff are available to assist applicants to complete the application process;

(d) If the Agency requires additional information to determine eligibility, the Agency shall send the applicant or beneficiary written notice that includes a statement of the specific information needed to determine eligibility and the date by which the applicant or beneficiary shall provide the required information in accordance with section (7) of this rule.

(e) If an application is filed containing the applicant or beneficiary's name and address, the Agency shall send the applicant or beneficiary a decision notice within the time frame established in section (7) of this rule;

(f) An application is complete if all of the following requirements are met:

(A) All information necessary to determine the individual's eligibility and benefit level is provided on the application for each individual in the household group;

(B) The applicant, even if homeless, provides an address where they can receive postal mail;

(C) The application is signed in accordance with section (6) of this rule;

(D) The application is received by the Agency;

(g) To complete the application process, the applicant shall:

(A) With the exception of sections (5) and (6) of this rule, complete and sign an application; and

(B) Provide necessary information to the Agency within the time frame established in section (7) of this rule.

(2) General information as it relates to renewal and redetermination processing is as follows:

(a) The Authority shall redetermine eligibility at assigned intervals and whenever a beneficiary's eligibility becomes questionable;

(b) When renewing or redetermining medical benefits, the Agency shall, to the extent feasible, determine eligibility using information found in the beneficiary's electronic account and electronic data accessible to the Agency;

(c) If the Agency is unable to determine a beneficiary's eligibility using information found in the beneficiary's electronic account and electronic data accessible to the Agency, then the Agency shall provide a pre-populated renewal form to the beneficiary containing information known to the Agency, a statement of the additional information needed to renew eligibility, and the date by which the beneficiary must provide the required information in accordance with section (7) of this rule;

(d) The Agency shall assist applicants seeking assistance to complete the pre-populated renewal form or gather information necessary to renew eligibility;

(e) The pre-populated renewal form is complete if it meets the requirements identified in section (1) (e) of this rule;

(f) If the Agency provides the individual with a pre-populated renewal form to complete the renewal process, the individual must:

(A) Complete and sign the form in accordance with section (6) of this rule;

(B) Submit the form via the Internet, by telephone, via mail, in person, and through other commonly available electronic means, and

(C) Provide necessary information to the Agency within the time frame established in section (7) of this rule;

(g) An individual may withdraw their pre-populated renewal form at any time.

(3) Except for individuals found eligible for MAGI Medicaid/CHIP through the Fast-Track enrollment process (OAR 410-200-0505), for renewals due between July 1, 2014 and December 31, 2014, the Authority will:

(a) Utilize a pre-populated Expedited Renewal form to determine if the individual has experienced:

(A) A change in household members; or

(B) A change in income;

(b) Renew eligibility based on the individual's attested information on the Expedited Renewal form if:

(A) There is no change in household members; and

(B) The attested income allows all beneficiaries to remain eligible for Medicaid/CHIP;

(c) If unable to renew eligibility based on the individual's attested information on the Expedited Renewal form, the Authority will send the beneficiary an application in order to complete a full eligibility review.

(4) A new application is required when:

(a) An individual requests medical benefits and no member of the household group currently receives OCCS medical program benefits;

(b) A child turns age 19, is no longer claimed as a tax dependent, and wishes to retain medical benefits;

(c) The Authority determines that an application is necessary to complete an eligibility determination.

(5) A new application is not required when:

(a) The Agency determines an applicant is ineligible in the month of application and:

(A) Is determining if the applicant is eligible the following month; or

(B) Is determining if the applicant is eligible retroactively (OAR 410-200-0130);

(b) Determining initial eligibility for OCCS medical programs via Fast-Track enrollment pursuant to OAR 410-200-0505;

(c) Benefits are closed and reopened during the same calendar month;

(d) An individual's medical benefits were suspended because they became an inmate and met the requirements of OAR 410-200-0140;

(e) An assumed eligible newborn (AEN) is added to a household group receiving medical program benefits;

(f) An individual not receiving medical program benefits is added to an on-going household group receiving medical program benefits, and eligibility can be determined using information found in the individual or beneficiary's electronic account and electronic data available to the Agency;

(g) Redetermining or renewing eligibility for beneficiaries and the Agency has sufficient evidence to redetermine or renew eligibility for the same or new program;

(h) At renewal, the beneficiary fails to submit additional information requested by the Agency within 30 days but provides the requested information within 90 days after the date medical benefits were terminated.

(6) Signature requirements are as follows:

(a) The application must be signed by one of the following:

(A) The primary contact;

(B) At least one caretaker relative or parent in the household group;

(C) The primary contact when there is no parent in the household group; or

(D) An authorized representative;

(b) Hospital Presumptive Eligibility may be determined without a signature described in section (a);

(c) When renewing eligibility, if the Agency is unable to determine eligibility using information found in the beneficiary's electronic account and electronic data accessible to the Agency, a signature is required on the pre-populated renewal form sent to the beneficiary for additional information;

(d) Signatures may be submitted and shall be accepted by the Agency via Internet, mail, telephone, in person, or other electronic means;

(e) An electronic application must be submitted to and received by the Authority with an electronic signature.

(7) Application and renewal processing timeliness standards are as follows:

(a) At initial eligibility determination, the Agency shall inform the individual of timeliness standards, make an eligibility determination, and send a decision notice not later than the 45th calendar day after the Date of Request if:

(A) All information necessary to determine eligibility is present; or

(B) The application is not completed by the applicant within 45 days after the Date of Request;

(b) At initial eligibility determination, the Agency may extend the 45-day period described in section (a) if there is an administrative or other emergency beyond the control of the Agency. The Agency must document the emergency;

(c) Except for periodic renewals of eligibility described in section (d), the Agency provides:

(A) The reasonable opportunity period to obtain necessary verification or resolve discrepancy regarding US citizenship or non-citizen status after eligibility has been determined; or

(B) The post-eligibility review period to verify information used to approve OCCS medical program benefits and ensure all non-financial eligibility requirements are met;

(d) At periodic renewal of eligibility, if additional information beyond data available to the Agency on the beneficiary's electronic account or electronic data is required, the Authority shall provide the beneficiary at least 30 days from the date of the renewal form to respond and provide necessary information.

(8) Individuals may apply through the FFM. The FFM will determine eligibility for OCCS Medicaid/CHIP. Oregon will accept determinations made by the FFM and sent to the Authority. The Authority will enroll eligible individuals as indicated by the FFM.

(9) Medical program eligibility is determined in the following order:

(a) For a child applicant, the order is as follows:

(A) Assumed eligibility for OCCS medical programs (OAR 410-200-0135);

(B) Substitute Care, when the child is in Behavioral Rehabilitation Services (BRS) or in Psychiatric Residential Treatment Facility (PRTF) (OAR 410-200-0405);

(C) MAGI Parent or Other Caretaker Relative (OAR 410-200-0420);

(D) MAGI Pregnant Woman program (OAR 410-200-0425);

(E) MAGI Child (OAR 410-200-0415);

(F) Continuous Eligibility (OAR 410-200-0135);

(G) MAGI CHIP (OAR 410-200-0410);

(H) EXT (OAR 410-200-0440);

(b) For an adult applicant, the order is as follows:

(A) Assumed eligibility for OCCS medical programs (OAR 410-200-0135);

(B) Substitute Care (OAR 410-200-0405);

(C) MAGI Parent or Other Caretaker Relative (OAR 410-200-0420);

(D) EXT (OAR 410-200-0440);

(E) MAGI Pregnant Woman (OAR 410-200-0425);

(F) MAGI Adult (OAR 410-200-0435);

(G) BCCTP (OAR 410-200-0400).

Stat. Auth.: ORS 411.402, 411.404, 413.042 & 414.534

Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, 413.038, 414.025, 414.231, 414.440, 414.534, 414.536 & 414.706

Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14; DMAP 20-2014, f. & cert. ef. 3-28-14; DMAP 67-2014(Temp), f. 11-14-14, cert. ef. 11-15-14 thru 5-13-15; DMAP 3-2015, f. & cert. ef. 1-30-15

410-200-0111

Authorized Representatives

(1) The following individuals may designate an authorized representative:

(a) A caretaker;

(b) The primary contact when there is no caretaker in the household group;

(c) An adult in the household group; or

(d) The Agency, if an authorized representative is needed but has not been designated by the individual.

(2) The Agency shall accept an applicant or beneficiary's designation of an authorized representative via any of the following methods which must include either a handwritten or electronic signature of both the applicant or beneficiary and designated authorized representative:

(a) The Internet;

(b) E-mail;

(c) Mail;

(d) Telephonic recording;

(e) In person; or

(f) Other electronic means.

(3) Applicants and beneficiaries may authorize their authorized representative to:

(a) Sign an application on the applicant's behalf;

(b) Complete and submit a renewal form;

(c) Receive copies of the applicant or beneficiary's notices and other communications from the Agency; or

(d) Act on behalf of the applicant or beneficiary in any or all other matters with the Agency.

(4) The authorized representative must:

(a) Fulfill all responsibilities encompassed within the scope of the authorized representation as identified in section (3) to the same extent as the individual represented; and

(b) Maintain the confidentiality of any information regarding the applicant or beneficiary provided by the Authority.

(5) In addition to authorized representatives as designated in sections (1) through (4) above, an individual is treated as an authorized representative if the individual has been given authority under state law. Such authority includes but is not limited to:

(a) A court order establishing legal guardianship;

(b) A health care representative, when the individual is unable to make their own decisions; or

(c) A court order establishing power of attorney.

(6) As a condition of serving as an authorized representative, a provider or staff member or volunteer of an organization with a service-providing relationship to the beneficiary must affirm that he or she will adhere to the regulations in 45 CFR 431, subpart F and at 45 CFR 155.260(f) and at 45 CFR 447.10 as well as other relevant state and federal laws concerning conflicts of interest and confidentiality of information.

(7) The power to act as an authorized representative is valid until the Agency is notified via any of the methods described in section (2) of any of the following:

(a) The applicant or beneficiary modifies the authorization or notifies the Agency that the representative is no longer authorized to act on his or her behalf;

(b) The authorized representative informs the Agency that he or she no longer is acting in such capacity; or

(c) There is a change in the legal authority upon which the individual or organization's authority was based.

Stat. Auth.: ORS 411.402, 411.404, 413.042 & 414.534

Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, 413.038, 414.025, 414.231, 414.440, 414.534, 414.536 & 414.706

Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14; DMAP 20-2014, f. & cert. ef. 3-28-14; DMAP 67-2014(Temp), f. 11-14-14, cert. ef. 11-15-14 thru 5-13-15; DMAP 3-2015, f. & cert. ef. 1-30-15

410-200-0115

OCCS Medical Programs—Effective Dates

(1) Date of Request:

(a) For all OCCS medical programs, the applicant or an individual authorized to act on behalf of the applicant must contact the Authority, the Department, Cover Oregon, or the FFM to request medical benefits. The request may be via the Internet, by telephone, community partner, by mail, by electronic communication, or in person.

(b) The Date of Request is the earlier of the following:

(A) The date the request for medical benefits is received; or

(B) The date the applicant received a medical service, if the request for medical benefits is received by midnight of the following business day;

(c) For current beneficiaries of OCCS medical programs, the Date of Request is one of the following:

(A) The date the beneficiary reports a change requiring a redetermination of eligibility; or

(B) The date the Agency initiates a review, except that the automatic mailing of an application does not constitute a Date of Request;

(d) The Date of Request starts the application processing time frame;

(e) If the application is required under OAR 410-200-0110 and is not received within 45 days after the Date of Request or within the extended time that the Authority has allowed under OAR 410-200-0110, the new Date of Request is the date the application is submitted to the Agency.

(2) For EXT, the effective date is determined according to OAR 410-200-0440.

(3) Except for EXT, the effective date of medical benefits for new applicants for OCCS medical programs is whichever comes first:

(a) The Date of Request, if the applicant is found eligible as of that date; or

(b) If ineligible on the Date of Request, the first day following the Date of Request on which the client is determined to be eligible within the month of the Date of Request or the following month.

(4) The effective date for retroactive medical benefits (OAR 410-200-0130) for MAGI Medicaid/CHIP and BCCTP is the earliest date of eligibility during the three months preceding the Date of Request. The Authority reviews each month individually for retroactive medical eligibility.

(5) Establishing a renewal date:

(a) Except for EXT and MAGI Pregnant Woman, as provided in subsection (b) for all OCCS medical programs, eligibility shall be renewed every 12 months. The renewal date is the last day of the month determined as follows:

(A) For initial eligibility, the renewal date is determined by counting 12 full months following the initial month of eligibility;

(B) For renewals that are regularly scheduled, the new renewal date is determined by counting 12 full months following the current renewal month;

(C) For redeterminations that are the result of a reported change, the new renewal date is determined by counting 12 full months following the month the change occurred;

(b) Except for OHP-OPP and individuals who are 18 turning 19 years of age, all OCCS medical program beneficiaries who have renewal dates between October 1, 2013, and March 31, 2014, the renewal date shall be extended as follows:

(A) Renewal dates that fall in October 2013 shall be extended to July 2014;

(B) Renewal dates that fall in November 2013 shall be extended to August 2014;

(C) Renewal dates that fall in December 2013 shall be extended to September 2014;

(D) Renewal dates that fall in January 2014 shall be extended to July 2014;

(E) Renewal dates that fall in February 2014 shall be extended to August 2014;

(F) Renewal dates that fall in March 2014 shall be extended to September 2014;

(G) Renewal dates that fall in April 2014 shall be extended to October 2014;

(H) Renewal dates that fall in May 2014 shall be extended to November 2014;

(I) Renewal dates that fall in June 2014 shall be extended to December 2014.

(6) Acting on Reported Changes (also see Changes That Must Be Reported OAR 410-200-0235):

(a) When the beneficiary reports a change in circumstances at any time other than the renewal month, eligibility shall be redetermined for all household group members;

(b) Except for OHP-OPP, MAGI Pregnant Woman, and MAGI Parent or Other Caretaker Relative, based on the reported change, if the benefici-

ary is determined to be eligible for another OCCS medical program, the effective date for the change is the first of the month following the month in which the determination was made;

(c) For OHP-OPP, MAGI Pregnant Woman, and MAGI Parent or Other Caretaker Relative, the effective date is the Date of Request;

(d) For OCCS medical program beneficiaries who were found eligible for OCCS medical program benefits using non-MAGI-based methods with a benefit start date of December 31, 2013 or earlier who report changes that may affect eligibility, the following apply:

(A) Eligibility shall be redetermined using the budgeting policies outlined in OARs 410-200-0310 and 410-200-0315; and

(B) If ineligible for Medicaid/CHIP benefits as a result of the redetermination, the effective date of the change shall be delayed until April 1, 2014, the end of the month following timely notice or the next scheduled renewal, whichever is later;

(C) OCCS medical program benefits shall be maintained during the period of time between the loss of eligibility and the APTC or closure effective date of April 1, 2014.

(7) Assumed eligibility:

(a) A pregnant woman eligible for and receiving Medicaid benefits the day the pregnancy ends or who was eligible for and receiving medical under any Medicaid program and becomes ineligible while pregnant is assumed eligible for continuous eligibility through the end of the calendar month in which the 60th day following the last day of the pregnancy falls unless:

(A) She is no longer an Oregon resident; or

(B) She requests medical benefits to be closed;

(b) A child born to a mother eligible for and receiving Medicaid, OHP-CHP, or MAGI CHIP benefits is an assumed eligible newborn (AEN) for medical benefits until the end of the month the child turns one year of age, unless:

(A) The child dies;

(B) The child is no longer an Oregon resident; or

(C) The child's representative requests a voluntary termination of the child's eligibility.

(8) Twelve-Month Continuous Eligibility:

(a) A child determined eligible for MAGI Medicaid/CHIP or BCCTP at initial eligibility or at the renewal period shall have a 12-month continuous enrollment period. The 12-month continuous enrollment period begins on the Date of Request or date the child is initially found eligible, whichever is later, and continues for the following 12 full months;

(b) For a child transitioning from another Medicaid program, the 12-month continuous enrollment period begins the first month following the month in which the other Medicaid program ends.

(9) Suspending or Closing Medical Benefits:

(a) The effective date for closing all OCCS medical program benefits is the earliest of:

(A) The date of a beneficiary's death;

(B) The last day of the month in which the beneficiary becomes ineligible and a timely continuing benefit decision notice is sent;

(C) The day prior to the start date for Office of Child Welfare Programs or OSIPM for beneficiaries transitioning from an OCCS medical program;

(D) The date the program ends; or

(E) The last day of the month in which a timely continuing benefit decision notice is sent if on-going eligibility cannot be determined because the beneficiary does not provide required information within 30 days;

(b) Prior to closing medical benefits, the Agency shall determine eligibility for all other insurance affordability programs;

(c) For suspension of OCCS medical program eligibility of beneficiaries who become incarcerated (OAR 461-200-0140).

(10) Denial of Benefits. The effective date for denying OCCS medical program benefits is the earlier of the following:

(a) The date the decision is made that the applicant is not eligible and notice is sent; or

(b) The end of the application processing time frame, unless the time period has been extended to allow the applicant more time to provide required verification.

(11) Eligibility Following Closure:

(a) The Authority shall redetermine in a timely manner (OAR 410-200-0110), without requiring a new application, the eligibility of an individual who:

(A) Lost OCCS medical program eligibility because they did not submit required information needed to renew eligibility; and

(B) Within 90 days of the medical closure date, submits the required information needed to renew eligibility.

(b) If the individual is found to meet OCCS medical program eligibility based on the completed redetermination using the original budget month, eligibility shall be restored effective the earliest date following the medical closure date on which the individual requested benefits, as long as all necessary information is submitted within 90 days following the medical closure date.

(c) The date described in section (b) establishes a new date of request (see section (1)) and budget month (410-200-0310) if:

(A) The individual is ineligible based on the completed redetermination using the original budget month; or

(B) All necessary information is not submitted within 90 days following the medical closure date.

Stat. Auth.: ORS, 411.402, 411.404, 413.042 & 414.534

Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, 413.038, 414.025, 414.231, 414.440, 414.534, 414.536 & 414.706

Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14; DMAP 20-2014, f. & cert. ef. 3-28-14; DMAP 67-2014(Temp), f. 11-14-14, cert. ef. 11-15-14 thru 5-13-15; DMAP 3-2015, f. & cert. ef. 1-30-15

410-200-0120
Notices

(1) Except as provided in this rule, the Authority shall send:

(a) A basic decision notice whenever an application for OCCS medical program benefits is approved or denied;

(b) A timely continuing benefit decision notice whenever OCCS medical program benefits are reduced or closed.

(2) For a beneficiary who is placed in a public institution or a correctional facility, the Authority shall send a basic decision notice to close, reduce, or suspend OCCS medical program benefits.

(3) For a beneficiary who has been placed in skilled nursing care, intermediate care, or long-term hospitalization, the Authority shall send a basic decision notice to close, suspend, or reduce OCCS medical program benefits.

(4) The Authority shall send a basic decision notice to close OCCS medical program benefits for a beneficiary who has received them for less than 30 days and who is ineligible for any insurance affordability program.

(5) When returned mail is received without a forwarding address and the beneficiary's whereabouts are unknown, the Authority shall send a basic decision notice to end benefits if the mail was sent by postal mail. If the returned mail was sent electronically, the Authority shall resend by postal mail within three business days. The date on the notice shall be the date the notice is sent by postal mail.

(6) The Authority shall send one of the following notices when a beneficiary ceases to be an Oregon Resident:

(a) A timely continuing benefit notice; or

(b) A basic decision notice if the beneficiary is eligible for benefits in the other state.

(7) Except as provided in section (9) of this rule, to close medical program benefits based on a request made by the beneficiary, another adult member of the household group or the authorized representative, the Authority shall send the following decisions notices:

(a) A timely continuing benefit decision notice when an oral request is made to close benefits;

(b) A basic decision notice when a request to withdraw, end, or reduce benefits is made with written signature or recorded verbal signature;

(c) A basic decision notice when an oral request to withdraw an application for benefits is made.

(8) No other notice is required when an individual completes a voluntary agreement if all of the following are met:

(a) The Authority provides the individual with a copy of the completed agreement; and

(b) The Authority acts on the request by the date indicated on the form.

(9) No decision notice is required in the following situations:

(a) The only individual in the household group dies;

(b) A hearing was requested after a notice was received and either the hearing request is dismissed or a final order is issued.

(10) Decision notices shall be written in plain language and be accessible to individuals who are limited English proficient and individuals with disabilities. In addition:

(a) All decision notices shall include:

(A) A statement of the action taken;

(B) A clear statement listing the specific reasons why the decision was made and the effective date of the decision;

(C) Rules supporting the action;

(D) Information about the individual's right to request a hearing and the method and deadline to request a hearing;

(E) A statement indicating under what circumstances a default order may be taken;

(F) Information about the right to counsel at a hearing and the availability of free legal services;

(b) A decision notice approving OCCS medical program benefits including retroactive medical shall include:

(A) The level of benefits and services approved;

(B) If applicable, information relating to premiums, enrollment fees, and cost sharing; and

(C) The changes that must be reported and the process for reporting changes;

(c) A decision notice reducing, denying, or closing OCCS medical program benefits shall include information about a beneficiary's right to continue receiving benefits.

(11) The Authority may amend:

(a) A decision notice with another decision notice; or

(b) A contested case notice.

(12) Except as the notice is amended, or when a delay results from the client's request for a hearing, a notice to reduce or close benefits becomes void if the reduction or closure is not made effective on the date stated on the notice.

(13) The Authority shall provide individuals with a choice to receive decision notices and information referenced in this rule in an electronic format or by postal mail. If an individual chooses to receive notices and information electronically and has established an online account with Cover Oregon, the Authority shall:

(a) Send confirmation of this decision by postal mail;

(b) Post notices to the individual's electronic account within one business day of the date on the notice;

(c) Send an email or other electronic communication alerting the individual that a notice has been posted to their electronic account;

(d) At the request of the individual, send by postal mail any notice or information delivered electronically;

(e) Inform the individual of the right to stop receiving electronic notices and information and begin receiving these through postal mail; and

(f) If any electronic communication referenced above is undeliverable, send the notice by postal mail within three business days of the failed communication.

Stat. Auth.: ORS 411.402, 411.404, 413.042 & 414.534

Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, 413.038, 414.025, 414.231, 414.440, 414.534, 414.536 & 414.706

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410-200-0125

Acting on Reported Changes

(1) When an OCCS medical program beneficiary or authorized representative makes a timely report of a change in circumstances at any time between regular renewals of eligibility that may affect the beneficiary's eligibility (any changes reported per OAR410-200-0235), the Authority shall promptly redetermine eligibility before reducing or ending medical benefits.

(2) The Authority shall limit requests for information from the individual to information related to the reported change.

(3) If the Authority has enough information to determine eligibility, a new 12-month renewal period shall be given when a redetermination results in a renewal.

(4) If the Authority has information about anticipated changes in a beneficiary's circumstances that may affect eligibility, it shall redetermine eligibility at the appropriate time based on the changes.

Stat. Auth.: ORS 411.402, 411.404, 413.042 & 414.534

Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, 413.038, 414.025, 414.231, 414.440, 414.534, 414.536 & 414.706

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410-200-0130

Retroactive Medical

(1) Effective 10/01/13: The Authority may evaluate the following for retroactive medical eligibility:

(a) Applicants requesting OCCS medical programs may be evaluated for retroactive medical benefits if they have unpaid medical bills or received donated medical services in Oregon in the three months preceding the Date of Request that would have been covered by Medicaid/CHIP benefits;

(b) Deceased individuals who would have been eligible for Medicaid covered services had they, or someone acting on their behalf, applied.

(2) If eligible for retroactive medical, the individual's eligibility may not start earlier than the date indicated by OAR 410-200-0115 Effective Dates.

(3) The Authority reviews each month individually for retroactive medical eligibility.

(4) Retroactive medical eligibility may not be determined on the basis of Hospital Presumptive Eligibility (OAR 410-200-0105).

Stat. Auth.: ORS 411.402, 411.404 & 414.534

Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 413.032, 414.025, 414.231, 414.534, 414.536 & 414.706

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410-200-0135

Assumed Eligibility and Continuous Eligibility for Children and Pregnant Women

This rule sets out when an individual is eligible for OCCS Medicaid/CHIP based Continuous Eligibility or being assumed eligible as of January 1, 2014.

(1) Assumed Eligibility. A child born to a mother eligible for and receiving Medicaid/CHIP benefits is assumed eligible for the MAGI Child program until the end of the month in which the child turns one year of age, unless:

(a) The child dies;

(b) The child is no longer a resident of Oregon; or

(c) The child's representative requests a voluntary termination of the child's eligibility.

(2) Continuous Eligibility

(a) Children under age 19 eligible for and receiving medical assistance under any Medicaid or CHIP program who lose eligibility for all Medicaid or CHIP programs prior to the 12-month renewal date shall remain eligible until the end of the renewal month, regardless of any change in circumstances, except for the following:

(A) No longer an Oregon resident;

(B) Death;

(C) Turning age 19;

(D) For children in the CHIP program, except as described in 410-200-0410(4), receipt of minimum essential coverage; or

(E) When any adult in the household group requests the medical benefits are closed;

(b) Pregnant women eligible for and receiving medical assistance under any Medicaid program who lose eligibility for the medical program are eligible for continuous eligibility through the end of the calendar month in which the 60th day following the last day of the pregnancy falls, except in the following circumstances:

(A) She is no longer an Oregon resident;

(B) Death; or

(C) She requests medical benefits are closed.

Stat. Auth.: ORS 411.095, 411.402, 411.404, 413.038, 414.025 & 414.534

Stats. Implemented: ORS 411.095, 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, 413.038, 414.025, 414.231, 414.440, 414.534, 414.536 & 414.706

Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14; DMAP 20-2014, f. & cert. ef. 3-28-14; DMAP 67-2014(Temp), f. 11-14-14, cert. ef. 11-15-14 thru 5-13-15; DMAP 3-2015, f. & cert. ef. 1-30-15

410-200-0140

Eligibility for Inmates

(1) An inmate of a public institution may not receive benefits with OCCS medical programs.

(2) If an OCCS medical program beneficiary becomes an inmate of a public institution with an expected stay of no more than 12 months, medical benefits shall be suspended for up to 12 full calendar months during the incarceration period.

(3) Suspended benefits shall be restored to the first day the individual is no longer an inmate without the need for a new application when:

(a) The individual reports their release to the Agency within ten days of the release date;

(b) The individual reports their release to the Agency more than ten days from the release date, and there is good cause for the late reporting; or

(c) The inmate is released to a medical facility and begins receiving treatment as an inpatient, providing the facility is not associated with the institution where the individual was an inmate.

(4) When released, benefits will be restored as described in section (3), and:

(a) If the individual is released prior to their eligibility renewal date, the eligibility renewal date will not be changed; or

(b) If the individual is released after the eligibility renewal date has passed, benefits will be restored and a redetermination of eligibility processed.

Stat. Auth.: ORS 411-095, 411.402, 411.404, 413.038, 414.025 & 414.534
Stats. Implemented: ORS, 411.070, 411.404, 411.439, 411.443, 411.445, 411.816, 412.014, 412.049 & 414.426
Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14; DMAP 20-2014, f. & cert. ef. 3-28-14; DMAP 67-2014(Temp), f. 11-14-14, cert. ef. 11-15-14 thru 5-13-15; DMAP 3-2015, f. & cert. ef. 1-30-15

410-200-0145
Contested Case Hearing

(1) For the purposes of this rule, timely means within 90 days of the date the notice of adverse action is received.

(2) This rule applies to contested case hearings for programs described in OAR chapter 410 division 200. Contested case hearings are conducted in accordance with the Attorney General's model rules OAR 137-003-0501 and following ORS Ch. 183 except to the extent that Authority rules provide for different procedures.

(3) The Authority's contested case hearings governed by this rule are not open to the public and are closed to nonparticipants, except nonparticipants may attend subject to the parties' consent and applicable confidentiality laws.

(4) A claimant may request a contested case hearing upon the timely completion of a hearing request in medical assistance programs in the following situations:

(a) The Authority has not approved or denied an application within 45 days of the date of request for benefits or the extended time the Authority has allowed for processing;

(b) The Authority acts to deny, reduce, close, or suspend medical assistance, including the denial of continued benefits pending the outcome of a contested case hearing;

(c) The Authority claims that an earlier medical assistance payment was an overpayment;

(d) A claimant claims that the Authority previously under issued medical assistance;

(e) A claimant disputes the current level of benefits.

(5) An officer or employee of the Authority or the Department of Human Services may appear on behalf of the Authority in medical assistance hearings described in this rule. The Authority's lay representative may not make legal argument on behalf of the Authority.

(6) The Authority representative is subject to the 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. An Authority representative appearing under this rule shall read and be familiar with it.

(7) When an Authority representative is used, requests for admission and written interrogatories are not permitted.

(8) The Authority representative and the claimant may have an informal conference in order to:

(a) Provide an opportunity to settle the matter;

(b) Review the basis for the eligibility determination, including reviewing the rules and facts that serve as the basis for the decision;

(c) Exchange additional information that may correct any misunderstandings of the facts relevant to the eligibility determination; or

(d) Consider any other matters that may expedite the orderly disposition of the hearing.

(9) A claimant who is receiving medical assistance benefits and who is entitled to a continuing benefit decision notice may, at the option of the claimant, receive continuing benefits in the same manner and amount until a final order resolves the contested case. In order to receive continuing benefits, a claimant must request a hearing not later than:

(a) The tenth day following the date the notice is received; and

(b) The effective date of the action proposed in the notice.

(10) The continuing benefits are subject to modification based on additional changes affecting the claimant's eligibility or level of benefits.

(11) When a claimant contests the denial of continuing benefits, the claimant shall receive an expedited hearing.

(12) In computing timeliness under sections (1) and (9) of this rule:

(a) Delay caused by circumstances meeting the good cause criteria described in OAR 137-003-0501(7) may not be counted; and

(b) The notice is considered to be received on the fifth day after the notice is sent unless the claimant shows the notice was received later or was not received.

Stat. Auth.: ORS 411.404, 411.816, 412.014, 412.049 & 413.042
Stats. Implemented: ORS 183.452, 411.060, 411.404, 411.816, 412.014 & 412.049
Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14; DMAP 20-2014, f. & cert. ef. 3-28-14; DMAP 50-2014(Temp), f. 8-14-14, cert. ef. 8-15-14 thru 2-11-15; DMAP 67-2014(Temp), f. 11-14-14, cert. ef. 11-15-14 thru 5-13-15; DMAP 3-2015, f. & cert. ef. 1-30-15

410-200-0146
Final Orders, Dismissals and Withdrawals

(1) When the Authority refers a contested case under chapter 410 division 200 to the Office of Administrative Hearings (OAH), the Authority must indicate on the referral:

(a) Whether the Authority is authorizing a proposed order, a proposed and final order, or a final order; and

(b) If the Authority establishes an earlier deadline for written exceptions and argument because the contested case is being referred for an expedited hearing.

(2) When the Authority authorizes either a proposed order or a proposed and final order:

(a) The claimant may file written exceptions and written argument to be considered by the Authority. The exceptions and argument must be received at the location indicated in the OAH order not later than the 20th day after service of the proposed order or proposed and final order, unless section (1)(b) of this rule applies;

(b) The Authority shall issue the final order after OAH issues a proposed order unless the Authority requests that OAH issue the final order pursuant to OAR 137-003-0655.

(c) The proposed and final order becomes a final order on the 21st day after the service of the proposed and final order, if the claimant does not submit timely exceptions or arguments following a proposed and final order, unless:

(A) The Authority has issued a revised order; or

(B) The Authority has notified the claimant and OAH that the Authority shall issue the final order.

(d) The Authority shall issue the final order when the Authority receives timely exceptions or argument unless the Authority requests that OAH issue the final order.

(3) In a contested case hearing, if the OAH is authorized to issue a final order on behalf of the Authority, the Authority may issue the final order in the case of default.

(4) A petition by a claimant for reconsideration or rehearing must be filed with the individual who signed the final order unless stated otherwise on the final order.

(5) A final order is effective immediately upon being signed or as otherwise provided in the order. Delay due to a postponement or continuance granted at the claimant's request may not be counted in computing time limits for a final order. A final order shall be issued or the case otherwise shall be resolved no later than:

(a) Ninety days following the date of the hearing for the standard hearing time frame;

(b) Three working days after the date the OAH hears an expedited hearing.

(6) In the event a request for a hearing is not timely or the claimant has no right to a contested case hearing on an issue, and there are no factual disputes about whether this division of rules provides a right to a hearing, the Authority may issue an order accordingly. The Authority may refer an untimely request to the OAH for a hearing on timeliness or on the question of whether the claimant has the right to a contested case hearing.

(7) If the Authority serves a decision notice on the claimant by postal or electronic mail and the Authority receives an untimely hearing request from the claimant within 75 days from the date the decision notice became a final order, then one of the following shall occur:

(a) If the Authority finds that the claimant did not receive the decision notice and did not have actual knowledge of the notice, the Authority shall refer the hearing request to the OAH for a contested case hearing on the merits of the Authority's action described in the notice; or

(b) If there is a factual dispute regarding the claimant's receipt or knowledge of the notice, the Authority shall refer the hearing request to the OAH for a contested case hearing to determine whether the claimant received or had actual knowledge of the notice. The Authority has the burden to prove by a preponderance of the evidence that the claimant had actual knowledge of the notice or that the Authority mailed the notice to the

claimant's correct mailing address or sent an electronic notice to the claimant's correct electronic mail address according to the information the claimant provided to the Authority.

(8) If the Authority receives an untimely hearing request from the claimant, regardless of the manner in which the Authority served the decision notice on the claimant, then:

(a) If the Authority finds that the claimant's hearing request was untimely for good cause as defined in OAR 137-003-0501(7), the Authority shall refer the hearing request to the OAH for a contested case hearing on the merits of the Authority's action described in the notice; or

(b) If there is a factual dispute regarding the existence of good cause, the Authority shall refer a hearing request to the OAH for a contested case hearing to determine whether there was good cause as defined in OAR 137-003-0501(7) for the claimant's delay in submitting the hearing request to the Authority.

(c) Any hearing request is treated as timely when required under the Servicemembers Civil Relief Act.

(d) The Authority may dismiss a hearing request as untimely if the claimant does not qualify for a hearing under sections 8(a), (b), or (c).

(9) A claimant may withdraw a hearing request at any time before a final order has been issued on the contested case. When a claimant withdraws a hearing request:

(a) The Authority shall send an order confirming the withdrawal to the claimant's last known address;

(b) The claimant may cancel the withdrawal in writing. The withdrawal must be received by the Authority hearing representative no later than the tenth working day following the date the Authority sent the order confirming the withdrawal.

(10) A hearing request is dismissed by order by default when neither the claimant nor the claimant's representative appears at the time and place specified for the hearing. The order is effective on the date scheduled for the hearing. The Authority shall cancel the dismissal order on request of the claimant on a showing that the claimant was unable to attend the hearing and unable to request a postponement due to circumstances meeting the good cause criteria described in OAR 137-003-0501(7).

Stat. Auth.: ORS 183.341, 413.042, 411.060, 411.404, 411.408, 411.816, 412.014 & 412.049
Stats. Implemented: ORS 183.341, 411.060, 411.404, 411.408, 411.816, 412.014 & 412.049
Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14; DMAP 20-2014, f. & cert. ef. 3-28-14; DMAP 50-2014(Temp), f. 8-14-14, cert. ef. 8-15-14 thru 2-11-15; DMAP 67-2014(Temp), f. 11-14-14, cert. ef. 11-15-14 thru 5-13-15; DMAP 3-2015, f. & cert. ef. 1-30-15

410-200-0200
Residency Requirements

(1) To be eligible for OCCS medical programs, an individual must be a resident of Oregon.

(2) An individual is a resident of Oregon if the individual lives in Oregon except:

(a) An individual 21 years of age or older who is placed in a medical facility in Oregon by another state is considered to be a resident of the state that makes the placement if:

(A) The individual is capable of indicating intent to reside; or

(B) The individual became incapable of indicating intent to reside after attaining 21 years of age (see section (6));

(b) For an individual less than 21 years of age who is incapable of indicating intent to reside or an individual of any age who became incapable of indicating that intent before attaining 21 years of age, the state of residence is one of the following:

(A) The state of residence of the individual's parent or legal guardian at the time of application;

(B) The state of residence of the party who applies for benefits on the individual's behalf if there is no living parent or the location of the parent is unknown, and there is no legal guardian;

(C) Oregon, if the individual has been receiving medical assistance in Oregon continuously since November 1, 1981, or is from a state with which Oregon has an interstate agreement that waives the residency requirement;

(D) When a state agency of another state places the individual, the individual is considered to be a resident of the state that makes the placement.

(3) There is no minimum amount of time an individual must live in Oregon to be a resident. The individual is a resident of Oregon if:

(a) The individual intends to remain in Oregon; or

(b) The individual entered Oregon with a job commitment or is looking for work.

(4) An individual is not a resident if the individual is in Oregon solely for a vacation.

(5) An individual continues to be a resident of Oregon during a temporary period of absence if he or she intends to return when the purpose of the absence is completed.

(6) An individual is presumed to be incapable of indicating intent to reside if the individual falls under one or more of the following:

(a) The individual is assessed with an IQ of 49 or less based on a test acceptable to the Authority;

(b) The individual has a mental age of seven years or less based on tests acceptable to the Authority;

(c) The individual is judged legally incompetent by a court of competent jurisdiction;

(d) The individual is found incapable of indicating intent to reside based on documentation provided by a physician, psychologist, or other professional licensed by the State of Oregon in the field of intellectual disabilities.

Stat. Auth.: ORS 411.402, 411.404, 413.042 & 414.534
Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, 413.038, 414.025, 414.231, 414.440, 414.534, 414.536 & 414.706
Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14; DMAP 20-2014, f. & cert. ef. 3-28-14; DMAP 67-2014(Temp), f. 11-14-14, cert. ef. 11-15-14 thru 5-13-15; DMAP 3-2015, f. & cert. ef. 1-30-15

410-200-0205
Concurrent and Duplicate Program Benefits

(1) An individual receiving OCCS medical program benefits may not receive the following medical benefits at the same time:

(a) Any other OCCS medical program;

(b) Office of Child Welfare Medical;

(c) Oregon Youth Authority Medical;

(d) Oregon Supplemental Income Program-Medical (OSIPM); or

(e) Refugee Medical Assistance (REFM);

(2) An individual may not receive OCCS medical program benefits and medical benefits from another state unless the individual's provider refuses to submit a bill to the Medicaid/CHIP agency of the other state and the individual would not otherwise receive medical care.

Stat. Auth.: ORS 411.402, 411.404, 413.042 & 414.534
Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, 413.038, 414.025, 414.231, 414.440, 414.534, 414.536 & 414.706
Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14; DMAP 20-2014, f. & cert. ef. 3-28-14; DMAP 67-2014(Temp), f. 11-14-14, cert. ef. 11-15-14 thru 5-13-15; DMAP 3-2015, f. & cert. ef. 1-30-15

410-200-0210
Requirement to Provide Social Security Number

(1) The Agency may collect a Social Security Number (SSN) for the following purposes:

(a) The determination of eligibility for benefits. The SSN is used to verify income and other assets and to match with other state and federal records such as the Internal Revenue Service (IRS), Medicaid, spousal support, Social Security benefits, and unemployment benefits;

(b) The preparation of aggregate information and reports requested by funding sources for the program providing benefits;

(c) The operation of the program applied for or providing benefits;

(d) Conducting quality assessment and improvement activities;

(e) Verifying the correct amount of payments, recovering overpaid benefits, and identifying any individual receiving benefits in more than one household.

(2) As a condition of eligibility, except as provided in section (6) below, each applicant (including children) requesting medical benefits shall:

(a) Provide a valid SSN; or

(b) Apply for an SSN if the individual does not have one and provide the SSN when it is received.

(3) The agency may not deny or delay services to an otherwise eligible individual pending issuance or verification of the individual's SSN or if the individual meets one of the exceptions identified in section (6).

(4) Except as provided in section (6) below, if an applicant does not recall their SSN or has not been issued an SSN and the SSN is not available to the Agency, the Agency shall:

(a) Obtain required evidence under SSA regulations to establish the age, the citizenship, or alien status and the true identity of the applicant; and

(b) Either assist the applicant in completing an application for an SSN or, if there is evidence that the applicant has previously been issued an SSN, request SSA to furnish the number.

(5) The Agency may request that non-applicants provide an SSN on a voluntary basis. The Agency shall use the SSN for the purposes outlined in section (1).

(6) An applicant is not required to apply for or provide an SSN if the individual:

(a) Does not have an SSN and the SSN may be issued only for a valid-non-work reason;

(b) Is not eligible to receive an SSN;

(c) Is a member of a religious sect or division of a religious sect that has continuously existed since December 31, 1950 and the individual adheres to its tenets or teachings that prohibit applying for or using an SSN; or

(d) Is a newborn that is assumed eligible based on the eligibility of the mother of the newborn and who is under one year of age.

Stat. Auth.: ORS 411.402, 411.404, 413.042 & 414.534

Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 413.032, 413.038, 414.025, 414.231, 414.534, 414.536 & 414.706

Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14; DMAP 20-2014, f. & cert. ef. 3-28-14; DMAP 67-2014(Temp), f. 11-14-14, cert. ef. 11-15-14 thru 5-13-15; DMAP 3-2015, f. & cert. ef. 1-30-15

410-200-0215

Citizenship and Alien Status Requirements

(1) Except as provided in section (2) of this rule, to be a beneficiary of a medical program an individual must be:

(a) A citizen of the United States;

(b) A non-citizen who meets the alien status requirements in section (4) of this rule;

(c) A citizen of Puerto Rico, Guam, the Virgin Islands or Saipan, Tinian, Rota or Pagan of the Northern Mariana Islands; or

(d) A national from American Samoa or Swains Islands.

(2) To be eligible for CAWEM benefits, an individual must be ineligible for a Medicaid program solely because he or she does not meet citizenship or alien status requirements set forth in this rule.

(3) An individual is a qualified non-citizen if the individual is any of the following:

(a) A non-citizen lawfully admitted for permanent residence under the INA (8 U.S.C. 1101 et seq);

(b) A refugee admitted to the United States as a refugee under section 207 of the INA (8 U.S.C. 1157);

(c) A non-citizen granted asylum under section 208 of the INA (8 U.S.C. 1158);

(d) A non-citizen whose deportation is being withheld under section 243(h) of the INA (8 U.S.C. 1253(h)) (as in effect immediately before April 1, 1997) or section 241(b)(3) of the INA (8 U.S.C. 1231(b)(3)) (as amended by section 305(a) of division C of the Omnibus Consolidated Appropriations Act of 1997, Pub. L. No. 104-208, 110 Stat. 3009-597 (1996));

(e) A non-citizen paroled into the United States under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) for a period of at least one year;

(f) A non-citizen granted conditional entry pursuant to section 203(a)(7) of the INA (8 U.S.C. 1153(a) (7)) as in effect prior to April 1, 1980;

(g) A non-citizen who is a Cuban and Haitian entrant (as defined in section 501(3) of the Refugee Education Assistance Act of 1980);

(h) An Afghan or Iraqi alien granted Special Immigration Status (SIV) under section 101(a) (27) of the INA; or

(i) A battered spouse or child who meets the requirements of 8 U.S.C. 1641(c) and is in the United States on a conditional resident status, as determined by the U.S. Citizenship and Immigration Services.

(4) A non-citizen meets the alien status requirements if the individual is:

(a) An American Indian born in Canada to whom the provisions of section 289 of the Immigration and Nationality Act (INA) (8 U.S.C. 1359) apply;

(b) A member of an Indian tribe, as defined in section 4(e) of the Indian Self-Determination and Education Act (25 U.S.C. 450b(e));

(c) A veteran of the United States Armed Forces who was honorably discharged for reasons other than alien status and who fulfilled the minimum active-duty service requirements described in 38 U.S.C. 5303A(d);

(d) A member of the United States Armed Forces on active duty (other than active duty for training);

(e) The spouse or a child of an individual described in subsection (c) or (d) of this section.

(f) A qualified non-citizen and meets one of the following criteria:

(A) Effective October 1, 2009 is an individual under 19 years of age;

(B) Was a qualified non-citizen before August 22, 1996;

(C) Physically entered the United States before August 22, 1996, and was continuously present in the United States between August 22, 1996, and the date qualified non-citizen status was obtained. An individual is not continuously present in the United States if the individual is absent from the United States for more than 30 consecutive days or a total of more than 90 days between August 22, 1996 and the date qualified non-citizen status was obtained.;

(D) Has been granted any of the following alien statuses:

(i) Refugee under section 207 of the INA;

(ii) Asylum under section 208 of the INA;

(iii) Deportation being withheld under section 243(h) of the INA;

(iv) Cubans and Haitians who are either public interest or humanitarian parolees;

(v) An individual granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988;

(vi) A "victim of a severe form of trafficking in persons" certified under the Victims of Trafficking and Violence Protection Act of 2000 (22 U.S.C. 7101 to 7112;

(vii) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003 (22 U.S.C. 7101 to 7112);

(viii) An Iraqi or Afghan alien granted special immigrant status (SIV) under section 101(a) (27) of the INA;

(g) Under the age of 19 and is one of the following:

(A) A citizen of a Compact of Free Association State (i.e., Federated States of Micronesia, Republic of the Marshall Islands, and the Republic of Palau) who has been admitted to the U.S. as a non-immigrant and is permitted by the Department of Homeland Security to reside permanently or indefinitely in the U.S;

(B) An individual described in 8 CFR section 103.12(a)(4) who belongs to one of the following classes of aliens permitted to remain in the United States because the Attorney General has decided for humanitarian or other public policy reasons not to initiate deportation or exclusion proceedings or enforce departure:

(i) An alien currently in temporary resident status pursuant to section 210 or 245A of the INA (8 USC 1160 and 1255a);

(ii) An alien currently under Temporary Protected Status (TPS) pursuant to section 244 of the INA (8 USC 1229b);

(iii) Cuban-Haitian entrants, as defined in section 202(b) Pub. L. 99–603 (8 USC 1255a), as amended;

(iv) Family Unity beneficiaries pursuant to section 301 of Pub. L. 101–649 (8 USC 1255a), as amended;

(v) An alien currently under Deferred Enforced Departure (DED) pursuant to a decision made by the President;

(vi) An alien currently in deferred action status pursuant to Department of Homeland Security Operating Instruction OI 242.1(a) (22); or

(vii) An alien who is the spouse or child of a United States citizen whose visa petition has been approved and who has a pending application for adjustment of status;

(C) An individual in non-immigrant classifications under the INA who is permitted to remain in the U.S. for an indefinite period, including those individuals as specified in section 101(a)(15) of the INA (8 USC 1101);

(D) An alien in non-immigrant status who has not violated the terms of the status under which he or she was admitted or to which he or she has changed after admission;

(E) Aliens who have been granted employment authorization under 8 CFR 274a.12(c)(9), (10), (16), (18), (20), (22), or (24);

(F) A pending applicant for asylum under section 208(a) of the INA (8 U.S.C. § 1158) or for withholding of removal under section 241(b)(3) of the INA (8 U.S.C. § 1231) or under the Convention Against Torture who has been granted employment authorization, and such an applicant under the age of 14 who has had an application pending for at least 180 days;

(G) An alien who has been granted withholding of removal under the Convention Against Torture;

(H) A child who has a pending application for Special Immigrant Juvenile status as described in section 101(a)(27)(J) of the INA (8 U.S.C. § 1101(a)(27)(J));

(I) An alien who is lawfully present in the Commonwealth of the Northern Mariana Islands under 48 U.S.C. § 1806(e); or

(J) An alien who is lawfully present in American Samoa under the immigration laws of American Samoa.

(5) Individuals described in sections (3)(a), (3)(e), (3)(f), and (3)(i) of this rule who entered the United States or were given qualified non-citizen status on or after August 22, 1996 meet the alien status requirement five

years following the date the non-citizen received the qualified non-citizen status.

(6) Individuals described in sections (3)(a) through (g), (3)(i), (4)(g)(B)(ii), (4)(g)(B)(iv), (4)(g)(B)(v), (4)(g)(B)(vii), and (4)(g)(D) through (J) with deferred action under Deferred Action for Childhood Arrivals (DACA) process do not meet the non-citizen requirement for OCCS medical programs.

Stat. Auth.: ORS 411.402, 411.404, 413.042 & 414.534
Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 413.032, 414.025, 414.231, 414.534, 414.536 & 414.706
Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14; DMAP 20-2014, f. & cert. ef. 3-28-14; DMAP 67-2014(Temp), f. 11-14-14, cert. ef. 11-15-14 thru 5-13-15; DMAP 3-2015, f. & cert. ef. 1-30-15

410-200-0220
Requirement to Pursue Assets

(1) As a condition of on-going eligibility, an applicant or beneficiary shall make a good faith effort to obtain an asset to which they have a legal right or claim, except an applicant or beneficiary is not required to:

(a) Apply for Supplemental Security Income (SSI) from the Social Security Administration;

(b) Borrow money;

(c) Make a good faith effort to obtain such asset if the individual can show good cause for not doing so (see section (4).

(2) Pursuable assets include, but are not limited to:

(a) Claims related to an injury;

(b) Disability benefits;

(c) Healthcare coverage;

(d) Retirement benefits;

(e) Survivorship benefits;

(f) Unemployment compensation; and

(g) Veteran's compensation and pensions.

(3) Except for beneficiaries in the OHP-CHP or MAGI CHIP programs, caretakers shall obtain available health insurance coverage and cash medical support for household group members receiving medical assistance:

(a) Each caretaker in the household group shall assist the Agency and the Division of Child Support (DCS) in establishing paternity for each child receiving medical assistance and in obtaining an order directing the non-custodial parent of a child receiving benefits to provide cash medical support and health care coverage for that child;

(b) For a parent receiving medical assistance who fails to meet the requirements of section (3) (a), a penalty is applied as identified in section (3) (e) or section (3) (f) after providing the beneficiary with notice and opportunity to show the provisions of section (4) of this rule apply;

(c) Each applicant, including a parent for their child, shall make a good faith effort to obtain available coverage under Medicare. The Authority may not penalize children for non-cooperation;

(d) With the exception of OHP-CHP, MAGI CHIP, and OHP-OPU, caretakers who are OCCS medical program beneficiaries shall apply for, accept, and maintain cost-effective employer-sponsored health insurance as set forth in OAR 461-155-0360 unless they have good cause;

(e) For MAA, MAF, EXT, CEM, and Substitute Care medical programs, a parent who fails to meet the requirements of section (3) is excluded from the family size;

(f) With the exception of OHP-CHP, MAGI-CHIP, and CEC, a parent of a child receiving OCCS medical program benefits who fails to meet the requirements of section (3) is ineligible for assistance.

(4) Section (3) of this rule does not apply to individuals when:

(a) The individual's compliance would result in emotional or physical harm to the dependent child or to the caretaker. The statement of the caretaker serves as prima facie evidence that harm would result;

(b) The child was conceived as a result of incest or rape and efforts to obtain support would be detrimental to the dependent child. The statement of the caretaker serves as prima facie evidence on the issues of conception and detrimental effect to the dependent child;

(c) Legal proceedings are pending for adoption of the child;

(d) The parent is being helped by a public or licensed private social agency to resolve the issue of whether to release the child for adoption;

(e) The individual is pregnant; or

(f) Other good cause reasons exist for non-cooperation.

(5) An individual involved in a personal injury shall pursue a claim for the personal injury. If the claim or action to enforce such claim was initiated prior to the application for medical assistance, the individual shall notify the Agency during the eligibility verification process (OAR 410-200-0230). The following information is required:

(a) The names and addresses of all parties against whom the action is brought or claim is made;

(b) A copy of each claim demand; and

(c) If an action is brought, the case number and the county where the action is filed.

(6) Unless specified otherwise in this rule, an individual who fails to comply with the requirements of this rule is ineligible for benefits until the individual meets the requirements of this rule.

Stat. Auth.: ORS 411.402, 411.404 & 413.0042
Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 413.032, , 414.025, 414.231 & 414.706
Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14; DMAP 20-2014, f. & cert. ef. 3-28-14; DMAP 67-2014(Temp), f. 11-14-14, cert. ef. 11-15-14 thru 5-13-15; DMAP 3-2015, f. & cert. ef. 1-30-15

410-200-0225
Assignment of Rights

(1) The signature of the applicant or authorized representative on the application for assistance signifies the applicant's agreement to assign the rights to reimbursement for medical care costs to the Agency.

(2) As a condition of eligibility, each applicant shall:

(a) Assign to the Agency any rights of each household group member receiving benefits to reimbursement for medical care costs to the Agency including any third party payments for medical care and any medical care support available under an order of a court or an administrative agency;

(b) Assign to the Agency any rights to payment for medical care from any third party and, once they receive assistance, to assist the Agency in pursuing any third party who may be liable for medical care or services paid by the Agency, including health services paid for pursuant to ORS 414.706 to 414.750 as set forth in OAR 410-200-0220, 461-195-0303 and 461-195-0310;

(c) Unless good cause exists as established in OAR 410-200-0220 (Requirement to Pursue Assets), failure to assign the right to reimbursement for medical care costs to the Agency shall result in ineligibility for the household group until the requirements of this rule are met.

(3) Except for the OHP-OPU, OHP-CHP, and MAGI CHIP programs:

(a) An applicant shall assign to the state the right of any Medicaid-eligible individual in the household group to receive any cash medical support that accrues while the individual receives assistance, not to exceed the total amount of assistance paid; and

(b) Cash medical support received by the Agency shall be retained as necessary to reimburse the Agency for medical assistance payments made on behalf of an individual with respect to whom such assignment was executed.

Stat. Auth.: ORS 411.402, 411.404 & 413.042
Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 413.032, , 414.025, 414.231 & 414.706
Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14; DMAP 20-2014, f. & cert. ef. 3-28-14; DMAP 67-2014(Temp), f. 11-14-14, cert. ef. 11-15-14 thru 5-13-15; DMAP 3-2015, f. & cert. ef. 1-30-15

410-200-0230
Verification

(1) Except as described in section (6) of this rule, applicants, beneficiaries, or individuals of the applicant or beneficiary's choosing shall attest to the following information:

(a) Age and date of birth;

(b) Application for other benefits;

(c) Caretaker relative status;

(d) Household composition;

(e) Legal name;

(f) Medicare;

(g) Pregnancy;

(h) Receipt or availability of other healthcare coverage;

(i) Residency;

(j) Social Security number; and

(k) American Indian/Alaska Native status.

(2) Applicants and beneficiaries who attest to US citizenship or US national status:

(a) Applicants, beneficiaries, or individuals of the applicant or beneficiary's choosing shall make a declaration of US citizenship or US national status;

(b) Self-attested information shall be used to determine eligibility and verified post-eligibility via the federal data services hub or by electronic data match available to the Agency;

(c) In the event additional verification is needed, the Authority shall provide a reasonable opportunity period to verify US citizen or US national status.

(3) Applicants and beneficiaries who attest to being a non-citizen:

(a) Applicants, beneficiaries, or individuals of the applicant or beneficiary's choosing shall make a declaration of non-citizen status:

(A) If an individual attests to being a non-citizen but does not provide information regarding their status, information shall be obtained by the Agency prior to making an eligibility determination;

(B) Self-attested information shall be used to approve OCCS Medicaid/CHIP as long as the information provided is considered satisfactory immigration status:

(i) The application is not considered incomplete even if the information provided does not include all the immigration information necessary to verify that the applicant meets Medicaid/CHIP non-citizen requirements; and

(ii) The information provided does not indicate that the applicant would be ineligible for full benefits;

(C) If information provided indicates the individual does not meet the Medicaid/CHIP non-citizen requirements, an otherwise eligible applicant shall be found eligible for CAWEM (OAR 410-200-0240);

(b) In the event additional verification is needed, the Authority shall provide a reasonable opportunity period to verify non-citizen status;

(c) The following are exempt from the requirement to verify citizen status:

(A) Individuals who are assumed eligible (OAR 410-200-0135);

(B) Individuals who are enrolled in Medicare;

(C) Individuals who are presumptively eligible for the BCCTP program through the BCCTP screening program or through the Hospital Presumptive Eligibility process (OAR 420-200-0400 and 410-200-0105);

(D) Individuals receiving Social Security Disability Income (SSDI); or

(E) Individuals whose citizen status was previously documented by the Agency. The Agency may not re-verify or require an individual to re-verify citizenship at a renewal of eligibility or subsequent application following a break in coverage;

(d) Non-citizen status shall be reviewed and verified at the following times:

(A) Initial determination of eligibility;

(B) Each redetermination of eligibility; or

(C) When a report of change of non-citizen status is received by the Agency.

(4) Applicants, beneficiaries, or individuals of the applicant or beneficiary's choosing shall make a declaration of income:

(a) For individuals whose request for benefits is able to be processed using the federal data services hub, self-attested information shall be used to approve MAGI-based Medicaid/CHIP, and:

(A) Verified by documentary evidence through a match with available electronic data; or

(B) In the event that additional verification is needed, the Authority shall provide a post-eligibility pend period to verify income information;

(b) Individuals whose request for benefits is not able to be processed using the federal data services hub shall have their income information verified prior to eligibility determination:

(A) Using electronic data match available to the Agency; or

(B) By providing verification of information to the Agency;

(c) In the event that verification is not available via the federal data services hub, electronic data match available to the Agency, or by any other method, the attested information will be accepted to determine eligibility;

(d) In the event that income verification via the federal data services hub or electronic data match available to the Agency is inconsistent with attested information:

(A) If the individual attests to income below the applicable standard and the data source indicates income above the applicable standard, verification or reasonable explanation will be requested from the individual;

(B) If both the data source and attested information are below the applicable standard, the applicant is eligible for MAGI-based Medicaid/CHIP;

(C) If the individual's attested information is above the applicable standard but the data source verification is below the standard, the Agency will accept the attested information, deny MAGI-based Medicaid/CHIP, and screen for potential APTC eligibility.

(5) Additional income verifications for MAGI-based Medicaid/CHIP program approvals will occur during the post-eligibility review process, during which the results of a quarterly match against Employment Department wage data will be reviewed as it becomes available. If necessary, documentation may be required per section (6).

(6) Applicants, beneficiaries, or individuals of the applicant or beneficiary's choosing shall make a declaration of receipt of private health insurance:

(a) For individuals whose request for benefits is able to be processed using the federal data services hub:

(A) Self-attested information shall be used to determine eligibility for MAGI-based Medicaid/CHIP if:

(i) Information obtained through a match with available electronic data does not conflict with self-attested information;

(ii) Information obtained through a match with available electronic data conflicts with self-attested information but does not affect eligibility; or

(iii) Verification is not available via a match with available electronic data or by any other method at the time of application processing;

(B) In the event that information obtained through a match with available electronic data conflicts with self-attested information and may affect eligibility, private health insurance information shall be verified prior to eligibility determination;

(b) Individuals whose request for benefits is not able to be processed using the federal data services hub who attest to private health insurance information that may affect eligibility shall have their private health insurance information verified prior to eligibility determination:

(A) Using electronic data match available to the Agency; or

(B) By providing verification of information to the Agency.

(7) The Authority may request that applicants and beneficiaries of medical assistance provide additional information, including documentation, to verify most eligibility criteria if data obtained electronically is not reasonably compatible with attested information.

Stat. Auth.: ORS 411.402, 411.404, 413.042 & 414.534

Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, 413.038, 414.025, 414.231, 414.440, 414.534, 414.536 & 414.706

Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14; DMAP 20-2014, f. & cert. ef. 3-28-14; DMAP 67-2014(Temp), f. 11-14-14, cert. ef. 11-15-14 thru 5-13-15; DMAP 3-2015, f. & cert. ef. 1-30-15

410-200-0235
Changes That Must Be Reported

(1) Individuals shall report the following changes in circumstances affecting eligibility for beneficiaries within 30 calendar days of its occurrence:

(a) The receipt or loss of health care coverage;

(b) A change in mailing address or residence;

(c) A change in legal name;

(d) A change in pregnancy status of a household group member;

(e) A change in household group membership;

(f) A claim for a personal injury. The following information shall be reported:

(A) The names and addresses of all parties against whom the action is brought or claim is made;

(B) A copy of each claim demand; and

(C) If an action is brought, identification of the case number and the county where the action is filed;

(g) In addition to section (1)(a)–(f), for all OCCS medical programs except OHP-CHP and MAGI CHIP, a change in availability of employer-sponsored health insurance;

(h) In addition to section (1)(a)–(f), in the EXT program, when a household group member receiving medical assistance is no longer a dependent child;

(i) In addition to section (1)(a)–(f), adults in the MAA, MAF, EXT, MAGI Pregnant Woman, MAGI Parent or Other Caretaker Relative, and MAGI Adult programs:

(A) A change in source of income;

(B) A change in employment status;

(i) For a new job, the change occurs the first day of the new job;

(ii) For a job separation, the change occurs on the last day of employment;

(C) A change in earned income more than $100. The change occurs upon the receipt by the beneficiary of the first paycheck from a new job or the first paycheck reflecting a new rate of pay;

(D) A change in unearned income more than $50. The change occurs the day the beneficiary receives the new or changed payment.

(2) Beneficiaries, adult members of the household group, or authorized representatives may report changes via the Internet, by telephone, via mail, in person, and through other commonly available electronic means.

(3) A change is considered reported on the date the beneficiary, adult member of the household group, or authorized representative reports the information to the Agency.

(4) A change reported by the beneficiary, adult member of the household group, or authorized representative for one program is considered reported for all programs administered by the Agency in which the beneficiary participates.

(5) Beneficiaries, adult members of the household group, or authorized representatives are not required to report any of the following changes:

(a) Periodic cost-of-living adjustments to the federal Black Lung Program, SSB, SSDI, SSI, and veterans assistance under Title 38 of the United States Code;

(b) Changes in eligibility criteria based on legislative or regulatory actions.

Stat. Auth.: ORS 411.402, 411.404, 413.042 & 414.534
Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, 414.025, 414.231, 414.440, 414.534, 414.536 & 414.706
Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14; DMAP 20-2014, f. & cert. ef. 3-28-14; DMAP 67-2014(Temp), f. 11-14-14, cert. ef. 11-15-14 thru 5-13-15; DMAP 3-2015, f. & cert. ef. 1-30-15

410-200-0240
Citizen/Alien Waived Emergent Medical

(1) To be eligible for CAWEM benefits, an individual must be ineligible for OCCS medical programs solely because he or she does not meet the citizen or alien status requirements. A child who is ineligible for OHP-CHP, MAGI CHIP, CEM, or CEC solely because he or she does not meet the citizen or alien status requirements is not eligible for CAWEM benefits.

(2) To be eligible for the CAWEM Prenatal enhanced benefit package, a CAWEM recipient must be pregnant.

(3) The pregnant CAWEM client's enhanced medical benefits package ends when the pregnancy ends.

(4) The woman remains eligible for CAWEM emergency benefits through the end of the calendar month in which the 60th day following the last day of the pregnancy falls.

Stat. Auth.: ORS 411.402, 411.404, 413.042, 414.025 & 414.534
Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, 414.025, 414.231, 414.440, 414.534, 414.536, 414.706 & 411.060
Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14; DMAP 20-2014, f. & cert. ef. 3-28-14; DMAP 67-2014(Temp), f. 11-14-14, cert. ef. 11-15-14 thru 5-13-15; DMAP 3-2015, f. & cert. ef. 1-30-15

410-200-0305
Household Group — Modified Adjusted Gross Income (MAGI) based Medicaid and CHIP

When establishing eligibility for MAGI-based Medicaid or MAGI CHIP, each applicant or beneficiary shall have their own household group determined individually based on the following household group rules:

(1) Tax filer's household group:

(a) For tax filers who are not claimed as a tax dependent by another individual, the household group consists of:

(A) The tax filer;

(B) The individual to whom the tax filer is married and files jointly; and

(C) All individuals whom the tax filer intends to claim as tax dependents.

(b) For tax filers who are married and living with their spouse, each spouse shall be included in the household group of the other spouse, whether they file taxes together or separately.

(2) Tax dependent's household group:

(a) In the case of an individual who expects to be claimed as a tax dependent by another individual, the household group is that of the individual claiming the tax dependent; or

(b) Household group is determined under section (3) of this rule, where the tax dependent:

(A) Is not the tax filer's spouse or child;

(B) Is a child living with both parents but the parents are not filing taxes jointly and one of the parents is claiming the child as a tax dependent; or

(C) Is a child living with one parent and claimed as a tax dependent by a non-custodial parent.

(3) The household group for a tax dependent who meets the criteria in section (2) (b) consists of the tax dependent and the following individuals, if living in the same household:

(a) The tax dependent's spouse;

(b) The tax dependent's children;

(c) If the tax dependent is a child, the child's parents and siblings.

(4) For individuals who do not file a tax return and are not claimed as a tax dependent, the individual's household group is determined in accordance with section (3).

Stat. Auth.: ORS 411.402, 411.404 & 413.042
Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, 414.025, 414.231, 414.440 & 414.706
Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14; DMAP 20-2014, f. & cert. ef. 3-28-14; DMAP 67-2014(Temp), f. 11-14-14, cert. ef. 11-15-14 thru 5-13-15; DMAP 3-2015, f. & cert. ef. 1-30-15

410-200-0310
Eligibility and Budgeting; MAGI Medicaid/CHIP; Not BCCTP or EXT

(1) The budget month means the calendar month from which nonfinancial and financial information is used to determine eligibility for OCCS medical programs.

(2) The budget month is determined as follows:

(a) For a new applicant, the budget month is:

(A) The month in which medical assistance is requested; or

(B) If ineligible in the month in which medical assistance is requested, the budget month is the following month;

(b) For a current Medicaid/CHIP beneficiary, the budget month is:

(A) The final month of the twelve-month enrollment period;

(B) The month a change that affects eligibility is reported, if reported timely; or

(C) The month the individual ages off a medical program or is no longer eligible for a medical assistance program;

(c) For retroactive medical, the budget month is the month in which the applicant received medical services for which they are requesting payment. Retroactive medical is determined on a month-by-month basis.

(3) Countable income anticipated or received in the budget month is determined as follows:

(a) Income is calculated by adding together the income of the household group already received in the initial budget month and the income that is reasonably expected to be received in the remainder of the initial budget month;

(b) If ineligible using the initial budget month because the countable income is over the income standard for all OCCS medical programs, income shall be annualized using the requirements of 25 CFR §1.36 B-1(e) for the year in which medical has been requested:

(A) Annualized income will be applied to the budget month for budget month eligibility.

(B) If the annualized income is below 100 percent FPL as identified in 26 CFR §1.36 B-1(e), eligibility shall be determined for the appropriate program pursuant to OAR 410-200-0315;

(c) If ineligible under subsections (a) or (b) of this section, countable income from the month following the initial budget month is considered. If eligible, eligibility will begin the first of that month of an OCCS medical program

(4) The household group's budget month income is compared to the income standard for the appropriate family size to determine if an applicant may be eligible for an OCCS medical program.

Stat. Auth.: ORS 411.402, 411.404 & 413.042
Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, , 414.025, 414.231, 414.440 & 414.706
Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14; DMAP 20-2014, f. & cert. ef. 3-28-14; DMAP 67-2014(Temp), f. 11-14-14, cert. ef. 11-15-14 thru 5-13-15; DMAP 3-2015, f. & cert. ef. 1-30-15

410-200-0315
Standards and Determining Income Eligibility

(1) MAGI-based income not specifically excluded is countable, and its value is used in determining the eligibility and benefit level of an applicant or beneficiary.

(2) MAGI-based income is considered available on the date it is received or the date a member of the household group has a legal right to the payment and the legal ability to make it available, whichever is earlier, except as follows:

(a) Income usually paid monthly or on some other regular payment schedule is considered available on the regular payment date if the date of payment is changed because of a holiday or weekend;

(b) Income withheld or diverted at the request of an individual is considered available on the date the income would have been paid without the withholding or diversion;

(c) An advance or draw of earned income is considered available on the date it is received.

(3) In determining financial eligibility for each applicant, the sum of the budget month MAGI-based income of all household group members is combined and compared to the applicable income standard for the family size. If the income is at or below the MAGI income standard, the individual meets the financial eligibility requirements. Except as provided in section (4) (a), if income exceeds the MAGI income standard, the individual is ineligible.

(4) This section applies to MAGI Medicaid/CHIP programs that became effective January 1, 2014:

(a) If an individual is ineligible for MAGI Medicaid based solely on income and would otherwise be eligible for MAGI CHIP or be referred to the Exchange for APTC, a disregard equivalent to five percentage points of the federal poverty level for the applicable family size shall be applied to the household group's income. If the resulting amount is below the income standard for the applicable program and family size, the individual meets the financial eligibility requirements in the following programs:

(A) The MAGI Parent or Other Caretaker Relative Program;

(B) The MAGI Child Program;

(C) The MAGI Adult Program; and

(D) The MAGI Pregnant Woman Program;

(b) If an individual is ineligible for MAGI CHIP based solely on income and would otherwise be referred to the Exchange for APTC, a disregard equivalent to five percentage points of the federal poverty level for the applicable family size shall be applied to the household group's income. If the resulting amount is below the income standard for the applicable program and family size, the individual meets the financial eligibility requirements in the MAGI CHIP;

(c) Effective April 12, 2014, the MAGI income standard for the MAGI Parent or Other Caretaker-Relative program is set as follows: [Table not included. See ED. NOTE.]

(d) Effective April 12, 2014, the MAGI income standard for the MAGI Child Program and the MAGI Adult Program is set at 133 percent of the FPL as follows. If an individual's household group income exceeds the income standard for their family size, the appropriate disregard for their family size described in section (4) (a) shall be applied: [Table not included. See ED. NOTE.]

(e) Effective April 12, 2014, the MAGI income standard for the MAGI Pregnant Woman Program and for MAGI Child Program recipients under age one is set at 185 percent FPL. If an individual's household group income exceeds the income standard for their family size, the appropriate disregard for their family size described in section (4) (a) shall be applied: [Table not included. See ED. NOTE.]

(f) Effective April 12, 2014, the MAGI income standard for the MAGI CHIP program is set through 300 percent of FPL as follows. If a child's household group income exceeds the income standard for their family size, and the child would be otherwise ineligible for MAGI CHIP, the appropriate disregard for their family size described in section (5) (a) (B) shall be applied: [Table not included. See ED. NOTE.]

(g) When the Department makes an ELE determination and the child meets all MAGI CHIP or MAGI Child Program nonfinancial eligibility requirements, the household size determined by the Department is used to determine eligibility regardless of the family size. The countable income of the household is determined by the ELA. A child is deemed eligible for MAGI CHIP or MAGI Child Program as follows:

(A) Effective April 12, 2014, if the MAGI-based income of the household group is below 163 percent of the 2014 federal poverty level as listed below, the Department deems the child eligible for the MAGI Child Program; [Table not included. See ED. NOTE.]

(B) If the MAGI-based income of the household group is at or above 163 percent of the FPL through 300 percent of the FPL as listed in section (4) (f) of this rule, the Agency deems the child eligible for MAGI CHIP.

(5) For eligibility decisions effective October 1, 2013 through December 31, 2013, the MAGI income standards listed in this section are used:

(a) Individuals who apply from October 1, 2013 through December 31, 2013 shall first be considered for the programs described in OAR 410-200-0510. Individuals found ineligible based on information from all budget months of October, November, or December 2013 shall have their eligibility determined as follows:

(A) For individuals who would be eligible for programs based on eligibility and income standards found in section (4) (c) through (e) as of January 1, 2014, eligibility for the applicable program shall begin as of that date;

(B) For individuals who are ineligible for programs which begin on January 1, 2014 who would otherwise be eligible for MAGI CHIP or be referred to the Exchange for APTC as of January 1, 2014, a disregard equivalent to five percentage points of the federal poverty level for the applicable family size will be applied to the household group's income. If the resulting amount is below the January 1, 2014 income standard found in section (4) (c) through (e) for the applicable program and family size, the individual meets the financial eligibility requirements for MAGI Medicaid/CHIP;

(b) The 2013 MAGI-based income standard for the MAA and Substitute Care programs is as follows. If a child's household group income exceeds the income standard for their family size, and the child would be otherwise ineligible for Medicaid, the appropriate disregard for their family size described in section (5) (a) (B) shall be applied: [Table not included. See ED. NOTE.]

(c) The 2013 MAGI-based income standard for the OHP-OPU program is set at 100 percent of the 2013 federal poverty level: [Table not included. See ED. NOTE.]

(d) The MAGI-based income standard for the OHP-OPC program is set to 100 percent of the 2013 federal poverty level. If a child's household group income exceeds the income standard for their family size, and the child would be otherwise ineligible for Medicaid, the appropriate disregard for their family size described in section (5) (a) (B) shall be applied: [Table not included. See ED. NOTE.]

(e) The 2013 MAGI-based income standard for the OHP-OP6 program is set at 133 percent of the 2013 federal poverty level. If a child's household group income exceeds the income standard for their family size, and the child would be otherwise ineligible for Medicaid, the appropriate disregard for their family size described in section (5) (a) (B) shall be applied: [Table not included. See ED. NOTE.]

(f) The 2013 MAGI-based income standard for the OHP-OPP program is set at 185 percent of the 2013 federal poverty level. If a child's household group income exceeds the income standard for their family size, and the child would be otherwise ineligible for Medicaid, the appropriate disregard for their family size described in section (5) (a) (B) shall be applied: [Table not included. See ED. NOTE.]

(g) The 2013 MAGI income standard for the MAGI CHIP program is set through 300 percent of the 2013 FPL as follows: [Table not included. See ED. NOTE.]

(h) When the Department makes an ELE determination and the child meets all MAGI CHIP or MAGI Child Program nonfinancial eligibility requirements, the household size determined by the Department is used to determine eligibility regardless of the family size. The countable income of the household is determined by the ELA. A child is deemed eligible for MAGI CHIP or MAGI Child Program as follows:

(A) If the MAGI-based income of the household group is below 163 percent of the 2013 federal poverty level as listed below, the Department deems the child eligible for the MAGI Child Program; [Table not included. See ED. NOTE.]

(B) If the MAGI-based income of the household group is at or above 163 percent of the 2013 FPL through 300 percent of the FPL as listed in section (5)(g) of this rule, the Agency deems the child eligible for MAGI CHIP.

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

Stat. Auth.: ORS 411.402, 411.404 & 413.042

Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, 414.025, 414.231, 414.440, 414.706

Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14; DMAP 20-2014, f. & cert. ef. 3-28-14; DMAP 25-2014(Temp), f. & cert. ef. 4-14-14 thru 10-11-14; DMAP 53-2014, f. & cert. ef. 9-23-14; DMAP 67-2014(Temp), f. 11-14-14, cert. ef. 11-15-14 thru 5-13-15; DMAP 3-2015, f. & cert. ef. 1-30-15

410-200-0400

Specific Requirements; Breast and Cervical Cancer Treatment Program (BCCTP)

This rule establishes eligibility criteria for medical assistance based on an individual's need of treatment for breast or cervical cancer, including pre-cancerous conditions (treatment). The Authority administers the Oregon Breast and Cervical Cancer Treatment Program (BCCTP) by entering into agreements with qualified entities as approved by the Authority to provide screening services for BCCTP funded by the Centers for Disease Control in support of the National Breast and Cervical Cancer Early Detection Program.

(1) To be eligible for BCCTP, an individual must:

(a) Be found to need treatment following screening services provided by a qualified entity;

(b) Be under the age of 65;

(c) Not be covered for treatment by minimum essential coverage; and

(d) Not be eligible for Medicaid through a Medicaid program listed in 42 U.S.C. §1396a (a) (10) (A) (i) (mandatory Medicaid eligibility groups).

(2) An individual is presumptively eligible for BCCTP beginning the day a qualified entity determines on the basis of preliminary information that she is likely to meet the requirements of section (1). A qualified entity that determines an individual presumptively eligible for BCCTP shall:

(a) Notify the Authority of the determination within five working days; and

(b) Explain to the individual at the time the determination is made the circumstances under which an application for medical assistance shall be submitted to the Authority and the deadline for the application (see section (3)).

(3) To remain eligible for benefits, an individual determined by a qualified entity to be presumptively eligible for BCCTP shall apply for medical assistance no later than the last day of the month following the month in which the determination of presumptive eligibility is made. Presumptive eligibility for BCCTP ends on:

(a) The last day of the month following the month in which presumptive eligibility begins, if the individual does not file an application by that date;

(b) The day on which a determination is made for other Medicaid/CHIP program benefits.

(4) An individual found eligible for the BCCTP by the Authority becomes ineligible upon the first of the following to occur:

(a) The treating health professional determines the course of treatment is complete;

(b) Upon reaching age 65;

(c) When the individual becomes covered for treatment by minimum essential coverage;

(d) Upon becoming a resident of another state;

(e) When the Authority determines she does not meet the requirements for eligibility.

Stat. Auth.: ORS 411.402, 411.404, 413.042 & 414.534

Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, 413.038, 414.025, 414.231, 414.440, 414.534, 414.536, 414.540 & 414.706

Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14; DMAP 20-2014, f. & cert. ef. 3-28-14; DMAP 67-2014(Temp), f. 11-14-14, cert. ef. 11-15-14 thru 5-13-15; ; DMAP 3-2015, f. & cert. ef. 1-30-15

410-200-0405

Specific Requirements; Substitute Care

In addition to eligibility requirements applicable to the Substitute Care program in other rules in chapter 410 division 200, this rule describes specific eligibility requirements for the Substitute Care program, effective 10/01/13.

(1) To be eligible for Substitute Care, an individual shall be under the age of 21 and live in an intermediate psychiatric care facility for which a public agency of Oregon is assuming at least partial financial responsibility, including those placed in an intermediate psychiatric care facility by the Oregon Youth Authority.

(2) While living in an intermediate psychiatric care facility, an individual's household group consists of the individual only.

(3) There is no income test for Substitute Care.

Stat. Auth.: ORS 411.402, 411.404 & 413.042

Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 413.032, 413.038, 414.025, 414.231 & 414.706

Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14; DMAP 20-2014, f. & cert. ef. 3-28-14; DMAP 67-2014(Temp), f. 11-14-14, cert. ef. 11-15-14 thru 5-13-15; DMAP 3-2015, f. & cert. ef. 1-30-15

410-200-0410

Specific Requirements; MAGI CHIP

In addition to eligibility requirements applicable to the MAGI CHIP program in other rules in chapter 410 division 200, this rule describes specific eligibility requirements for the MAGI CHIP program.

(1) Individuals may not be eligible for the MAGI CHIP program with an effective date prior to October 1, 2013.

(2) To be eligible for the MAGI CHIP program, an individual must be under 19 years of age and must:

(a) Not be eligible for MAGI Child, MAGI Pregnant Woman, MAGI Parent or Caretaker Relative, or Substitute Care programs;

(b) Meet budgeting requirements of OAR 410-200-0315; and

(c) Except as described in section (4), not be covered by minimum essential coverage. For the purposes of this rule, a child is not considered to have minimum essential coverage if it is not accessible for one or more of the following reasons:

(A) The travel time or distance to available providers within the minimum essential coverage network exceeds:

(i) In urban areas: 30 miles, 30 minutes, or the community standard, whichever is greater; or

(ii) In rural areas: 60 miles, 60 minutes, or the community standard, whichever is greater;

(B) Accessing the minimum essential coverage would place a household group member at risk of harm.

(3) For the Authority to enroll a child in MAGI CHIP based on a determination made by an Express Lane Agency (ELA), the child's parent or guardian shall give consent in writing, by telephone, orally, or through electronic signature.

(4) For renewals in 2014, children with minimum essential coverage shall be enrolled in MAGI CHIP for a full 12-month eligibility period if:

(a) At the time of renewal, the child is receiving Medicaid based on a 2013 non-MAGI based eligibility determination;

(b) The child meets all other MAGI CHIP financial and non-financial eligibility requirements, except they are receiving minimum essential coverage; and

(c) The child loses eligibility for Medicaid due to MAGI-based eligibility policy effective October 1, 2013, which eliminated the 50 percent self-employment income disregard.

Stat. Auth.: ORS 411.402, 411.404 & 413.042

Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 413.032, 413.038, 414.025, 414.231 & 414.706

Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14; DMAP 20-2014, f. & cert. ef. 3-28-14; DMAP 67-2014(Temp), f. 11-14-14, cert. ef. 11-15-14 thru 5-13-15; DMAP 3-2015, f. & cert. ef. 1-30-15

410-200-0415

Specific Requirements; MAGI Child

In addition to eligibility requirements applicable to the MAGI Child program in other rules in chapter 410 division 200, this rule describes specific eligibility requirements for the MAGI Child program.

(1) Individuals may not be eligible for the MAGI Child program with an effective date prior to January 1, 2014.

(2) To be eligible for the MAGI Child program, the child must be under the age of 19 with household income at or below:

(a) 133 percent of the federal poverty level (OAR 410-200-0315) for the applicable family size for a child over the age of one but less than age 19; or

(b) 185 percent of the federal poverty level for the applicable family size for an infant under the age of one.

(3) To be eligible for the MAGI Child Program, an individual may not:

(a) Be receiving or deemed to be receiving SSI benefits;

(b) Be receiving Medicaid through another program.

(4) A child born to a mother eligible for and receiving Medicaid benefits is assumed eligible for medical benefits under this rule until the end of the month the child turns one year of age unless:

(a) The child dies;

(b) The child is no longer a resident of Oregon; or

(c) The child's representative requests a termination of the child's eligibility.

(5) To enroll a child in the MAGI Child program based on a determination made by an Express Lane Agency (ELA), the child's parent or guardian shall give consent in writing, by telephone, orally, or through electronic signature.

(6) ELE qualifies a child for medical assistance benefits based on a finding from the Department, even when the Department's eligibility methodology differs from that used for OCCS medical programs.

Stat. Auth.: ORS 411.402, 411.404 & 413.042

Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, 413.038, 414.025, 414.231, 414.440 & 414.706

Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14; DMAP 20-2014, f. & cert. ef. 3-28-14; DMAP 67-2014(Temp), f. 11-14-14, cert. ef. 11-15-14 thru 5-13-15; DMAP 3-2015, f. & cert. ef. 1-30-15

410-200-0420

Specific Requirements; MAGI Parent or Other Caretaker Relative

In addition to eligibility requirements applicable to the MAGI Parent and Other Caretaker Relative program in other rules in chapter 410 division 200, this rule describes specific eligibility requirements for the MAGI Parent or Other Caretaker Relative program.

(1) Individuals may not be eligible for the MAGI Parent and Other Caretaker Relative program with an effective date prior to January 1, 2014.

(2) To be eligible for the MAGI Parent or Other Caretaker Relative program, an individual must have household group income at or below income standard for the applicable family size as identified in OAR 410-200-0315.

(3) To be eligible for the MAGI Parent or Other Caretaker Relative program, an individual must have a dependent child in the home. However, a dependent child for who foster care payments are made for more than 30 days is not eligible while the payments are being made for the dependent child.

Stat. Auth.: ORS 411.402, 411.404 & 413.042
Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, 414.025, 414.231, 414.440 & 414.706
Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14; DMAP 20-2014, f. & cert. ef. 3-28-14; DMAP 67-2014(Temp), f. 11-14-14, cert. ef. 11-15-14 thru 5-13-15; DMAP 3-2015, f. & cert. ef. 1-30-15

410-200-0425
Specific Requirements; MAGI Pregnant Woman

In addition to eligibility requirements applicable to the MAGI Pregnant Woman program in other rules in chapter 410 division 200, this rule describes specific eligibility requirements for the MAGI Pregnant Woman program.

(1) Individuals may not be eligible for the MAGI Pregnant Woman program with an effective date prior to January 1, 2014.

(2) To be eligible for the MAGI Pregnant Woman program, an individual must be pregnant and:

(a) Have household income that is at or below 185 percent of the federal poverty level (OAR 410-200-0315); or

(b) Be eligible for Continuous Eligibility according to the policy described in OAR 410-200-0135(2).

(3) Once a beneficiary is eligible and receiving Medicaid through the MAGI Pregnant Woman program, they are eligible through the end of the calendar month in which the 60th day following the last day of the pregnancy falls (OAR 410-200-0135).

Stat. Auth.: ORS 411.402, 411.404 & 413.042
Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, 414.025, 414.231, 414.440 & 414.706
Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14; DMAP 20-2014, f. & cert. ef. 3-28-14; DMAP 67-2014(Temp), f. 11-14-14, cert. ef. 11-15-14 thru 5-13-15; DMAP 3-2015, f. & cert. ef. 1-30-15

410-200-0435
Specific Requirements; MAGI Adult

In addition to eligibility requirements applicable to the MAGI Adult program in other rules in chapter 410 division 200, this rule describes specific eligibility requirements for the MAGI Adult program.

(1) An individual may not be eligible for the MAGI Adult program with an effective date prior to January 1, 2014.

(2) The Agency may not allow retroactive enrollment into the MAGI Adult program for effective dates prior to January 1, 2014.

(3) To be eligible for the MAGI Adult program an individual must:

(a) Be 19 years of age or older and under age 65; and

(b) Have household income at or below 133 percent federal poverty level (OAR 410-200-0315) for the applicable family size.

(4) To be eligible for the MAGI Adult program, an individual may not be:

(a) Pregnant;

(b) Entitled to or enrolled for Medicare benefits under part A or B of Title XVIII of the Act;

(c) Receiving SSI benefits; or

(d) A parent or other caretaker relative living with a dependent child who is not enrolled in minimum essential coverage.

Stat. Auth.: ORS 411.402, 411.404 & 413.042
Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, 413.038, 414.025, 414.231, 414.440 & 414.706
Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14; DMAP 20-2014, f. & cert. ef. 3-28-14; DMAP 67-2014(Temp), f. 11-14-14, cert. ef. 11-15-14 thru 5-13-15; DMAP 3-2015, f. & cert. ef. 1-30-15

410-200-0440
Specific Requirements; Extended Medical Assistance

(1) Effective 01/01/14 individuals who are eligible for and receiving Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF), or MAGI Parent or Other Caretaker Relative benefits and lose eligibility:

(a) Due to the receipt or increase of earned income are eligible for 12 months of Extended Medical Assistance (EXT) benefits if eligibility is redetermined and the individual is not eligible for Medicaid/CHIP; or

(b) Due to the receipt or increase of spousal support are eligible for four months of EXT benefits if:

(A) Eligibility is redetermined and the individual is not eligible for Medicaid/CHIP; and

(B) They were eligible for and receiving benefits for three of six months preceding the receipt or increase of spousal support.

(2) To be eligible for EXT, the household group of individuals who lose eligibility for MAGI Parent or Other Caretaker Relative benefits must contain a dependent child who has minimum essential coverage.

(3) The EXT beneficiary must be a resident of Oregon.

(4) Individuals who lose EXT eligibility may regain EXT eligibility for the remainder of the original eligibility period if the requirements outlined in sections (2) and (3) are met and:

(a) EXT eligibility is lost because the individual leaves the household during the EXT eligibility period. The individual may regain EXT eligibility if they return to the household; or

(b) EXT eligibility is lost due to a change in circumstance that results in eligibility for another OCCS medical program. If a subsequent change in circumstances occurs that results in ineligibility for all OCCS medical programs, the individual may regain EXT eligibility.

(5) The effective date of EXT is the first of the month following the month in which MAA, MAF, or MAGI Parent or Other Caretaker Relative program eligibility ends.

(6) If an individual receives MAA, MAF, or MAGI Parent or Other Caretaker Relative benefits during months when they were eligible for EXT:

(a) Such months are not an overpayment;

(b) Any month in which an individual receives MAA, MAF, or MAGI Parent or Other Caretaker Relative benefits when they were eligible for EXT is counted as a month of the EXT eligibility period.

(7) If a beneficiary of MAA, MAF, or MAGI Parent or Other Caretaker Relative benefits experiences another change in conjunction with the receipt or increase of earned income or spousal support, and the other change, by itself, makes the household group ineligible for the current program, the beneficiary is not eligible for EXT.

Stat. Auth.: ORS 411.095, 411.402, 411.404, 413.038 & 414.025
Stats. Implemented: ORS 411.095, 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, 413.038, 414.025, 414.231, 414.440 & 414.706
Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14; DMAP 20-2014, f. & cert. ef. 3-28-14: DMAP 67-2014(Temp), f. 11-14-14, cert. ef. 11-15-14 thru 5-13-15; DMAP 3-2015, f. & cert. ef. 1-30-15

410-200-0500
Transitioning Benefits — 2013 Programs

(1) For individuals who apply for OCCS medical programs on or after October 1, 2013, eligibility and budgeting shall be determined according to this section of rules.

(2) Individuals who apply from October 1, 2013 through December 31, 2013 shall first be considered for the programs described in OAR 410-200-0510. If an individual is eligible for one of those programs, eligibility shall continue according to section (3) of this rule. Individuals found ineligible based on information from all budget months of October, November, or December 2013 shall have their eligibility determined as follows:

(a) Individuals who would be eligible for new programs based on eligibility and income standards that begin January 1, 2014, shall become eligible for applicable programs as of that date;

(b) Individuals who are ineligible for new programs that begin on January 1, 2014 shall be referred to the Exchange.

(3) Individuals who are eligible and receiving OCCS medical program benefits described in OAR 410-200-0510 on December 31, 2013, shall be treated as follows effective January 1, 2014:

(a) Individuals receiving OHP-OPU program benefits shall be converted to the MAGI Adult program;

(b) Individuals receiving HKC program benefits shall be converted to the MAGI CHIP program;

(c) Individuals receiving OHP-CHP whose household income is below 133 percent of FPL shall be converted to the MAGI Child program;

(d) All others shall maintain their current program benefits until:

(A) A change occurs that impacts their eligibility; or

(B) Their next scheduled renewal occurs according to OAR 410-200-0115.

Stat. Auth.: ORS 411.402, 411.404 & 413.042
Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, , 414.025, 414.231, 414.440 & 414.706;

Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14; DMAP 20-2014, f. & cert. ef. 3-28-14; DMAP 67-2014(Temp), f. 11-14-14, cert. ef. 11-15-14 thru 5-13-15; DMAP 3-2015, f. & cert. ef. 1-30-15

410-200-0505
Specific Requirements; Fast Track Eligibility and Enrollment for MAGI Medicaid

For Fast Track eligibility and enrollment, the Authority provides MAGI Medicaid benefits based on an individual's eligibility for SNAP program benefits, or for individuals who are parents of children determined eligible for OCCS Medicaid programs.

(1) A SNAP recipient adult may be found eligible for Fast Track eligibility and enrollment based on findings from the Department, even if the Department's eligibility methodology differs from that used by the Authority OCCS medical program if the adult:

(a) Has SNAP income is at or below the applicable income standards for MAGI Adult;

(b) Indicates they wish to pursue medical assistance;

(c) Is not eligible for or receiving Supplemental Security Income;

(d) Agrees to cooperate with the Division of Child Support; and

(e) Meets the specific program requirements for MAGI Adult.

(2) The adult parent or parents of a MAGI Medicaid eligible child may be found eligible for Fast Track eligibility and enrollment if the adult:

(a) Indicates they wish to pursue medical assistance;

(b) Is not eligible for or receiving Supplemental Security Income;

(c) Agrees to cooperate with the Division of Child Support; and

(d) Meets the specific program requirements for the applicable program.

(3) A new application is not required for Fast Track eligibility and enrollment.

(4) If the individual requests Fast Track eligibility and enrollment and is not eligible due to eligibility for or receipt of Supplemental Security Income, the Authority shall refer the applicant to Aging and People with Disabilities for an eligibility determination. The Date of Request is the date the Authority received consent for Fast Track eligibility and enrollment.

Stat. Auth.: ORS 411.402, 411.404, 413.042 & 413.038

Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 413.032, 413.038, 414.025, 414.231 & 414.706

Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14; DMAP 20-2014, f. & cert. ef. 3-28-14; DMAP 67-2014(Temp), f. 11-14-14, cert. ef. 11-15-14 thru 5-13-15; DMAP 3-2015, f. & cert. ef. 1-30-15

410-200-0510
Specific Program Requirements; BCCM, CEC, CEM, EXT, MAA, MAF, OHP, and Substitute Care

(1) This rule describes OCCS medical programs for which individuals may be determined eligible through December 31, 2013. See OAR 410-200-0500 for information regarding the treatment of those beneficiaries as of January 1, 2014.

(2) To be eligible for a program listed in this rule, an individual must meet the following:

(a) The eligibility factors set forth in OAR 410-200-0200 through 410-200-0240;

(b) The budgeting and income standard requirements set forth in OAR 410-200-0300 through 410-200-0315; and

(c) The individual must have established a Date of Request prior to January 1, 2014.

(3) For purposes of this rule, private major medical health insurance means a comprehensive major medical insurance plan that, at a minimum, provides physician services; inpatient and outpatient hospitalization; outpatient lab, x-ray, immunizations; and prescription drug coverage. This term does not include coverage under the Kaiser Child Health Program or Kaiser Transition Program but does include policies that are purchased privately or are employer-sponsored.

(4) For the purposes of this rule, the receipt of private major medical health insurance does not affect OCCS medical program eligibility if it is not accessible. Private major medical health insurance is not considered accessible if:

(a) The travel time or distance to available providers exceeds:

(A) In urban areas: 30 miles, 30 minutes, or the community standard, whichever is greater;

(B) In rural areas: 60 miles, 60 minutes, or the community standard, whichever is greater;

(b) Accessing the private major medical health insurance would place a filing group member at risk of harm.

(5) To be eligible for Chafee medical, the individual must be a child who was receiving foster care in Oregon upon attaining:

(a) Age 18; or

(b) If over 18, the age at which Oregon Medicaid or Oregon Tribal foster care assistance ended under Title IV-E of the Act;

(6) CEM provides eligibility for the balance of the 12-month eligibility period for non-CAWEM children who were receiving Child Welfare (CW) medical, EXT, MAA, MAF, OHP, OSIPM, or Substitute Care program benefits and lost eligibility for reasons other than moving out of state or turning 19 years old. CEM benefits end when:

(a) The child becomes eligible for CW medical, EXT, MAA, MAF, OHP, OSIPM, or Substitute Care program benefits;

(b) The child turns 19 years of age;

(c) The child moves out of state; or

(d) Benefits are closed voluntarily.

(7) CEC provides eligibility for the OHP-CHP program for non-CAWEM pregnant children who were receiving OHP-CHP and would have otherwise lost eligibility for reasons other than moving out of state or becoming a recipient of private major medical health insurance. CEC eligibility for OHP-CHP ends the day following the end of the month in which the earliest of the following occur:

(a) The pregnancy ends;

(b) The individual moves out of state;

(c) The individual begins receiving private major medical health insurance;

(d) Benefits are closed voluntarily; or

(e) The individual becomes eligible for CW medical, EXT, MAA, MAF, OHP, OSIPM, or Substitute Care program benefits.

(8) For the Authority to enroll a child in the program based on a determination made by an ELA, the child's parent or guardian shall give consent in writing, by telephone, orally, or through electronic signature.

(9) To be eligible for EXT, an individual must have been eligible for and receiving MAA or MAF and became ineligible due to a caretaker relative's increased earned income or due to increased spousal support (OAR 410-200-0440).

(10) To be eligible for MAA or MAF, an individual must be one of the following:

(a) A dependent child who lives with a caretaker relative. However, a dependent child for whom foster care payments are made for more than 30 days is not eligible while the payments are being made;

(b) A caretaker relative of an eligible dependent child. However, a caretaker relative to whom foster care payments are made for more than 30 days is not eligible while the payments are being made;

(c) A caretaker relative of a dependent child, when the dependent child is ineligible for MAA or MAF for one of the following reasons:

(A) The child is receiving SSI;

(B) The child is in foster care but is expected to return home within 30 days; or

(C) The child's citizenship has not been documented;

(d) An essential person. An essential person is a member of the household group who:

(A) Is not required to be in the filing group;

(B) Provides a service necessary to the health or protection of a member of the household group who has a mental or physical disability; and

(C) Is less expensive to include in the benefit group than the cost of purchasing this service from another source;

(e) A parent of an unborn as follows:

(A) For the MAA program:

(i) Any parent whose only child is an unborn child, once the mother's pregnancy has reached the calendar month preceding the month in which the due date falls;

(ii) The father of an unborn child who does not meet the criteria described in subsection (e)(A)(i) of this part may be eligible if there is another dependent child in the household group;

(B) For the MAF program, a mother whose only child is an unborn child, once the mother's pregnancy has reached the calendar month preceding the month in which the due date falls.

(11) To be eligible for any OHP program in sections (12) through (15), an individual may not be:

(a) Receiving SSI benefits;

(b) Eligible for Medicare, except that this requirement does not apply to the OHP-OPP program;

(c) Receiving Medicaid through any other program concurrently.

(12) To be eligible for the OHP-OPC program, an individual must be less than 19 years of age.

(13) To be eligible for the OHP-OP6 program, a child must be less than six years of age and not eligible for OHP-OPC.

(14) To be eligible for the OHP-OPP program, an individual must:

(a) Be pregnant;

(b) Be within the time period through the end of the calendar month in which the 60th day following the last day of the pregnancy falls; or

(c) Be an infant under age one.

(15) To be eligible for the OHP-CHP program, an individual must be under 19 years of age and must:

(a) Not be eligible for the OHP-OPC, OHP-OPP, or OHP-OP6 programs; and

(b) Not be covered by any private major medical health insurance. An individual may be eligible for OHP-CHP if the private major medical health insurance is not accessible as outlined in section (4).

(16) Effective July 1, 2004, the OHP-OPU program is closed to new applicants. Except as provided in subsections (a) and (b) of this section, a new applicant may not be found eligible for the OHP-OPU program:

(a) An individual is not a new applicant if the Department determines that the individual is continuously eligible for medical assistance as follows:

(A) The individual is eligible for and receiving benefits under the OHP-OPU program on June 30, 2004, and the Department determines that the individual continues after that date to meet the eligibility requirements for the OHP-OPU program;

(B) The individual is eligible for and receiving benefits under the CAWEM program on June 30, 2004 and is eligible for the CAWEM program based on the OHP-OPU program, and the Department determines that the individual continues to meet the eligibility requirements for the OHP-OPU program except for citizenship or alien status requirements;

(C) The eligibility of the individual ends under the BCCM, CEC, CEM, EXT, GAM, HKC, MAA, MAF, OHP-CHP, OHP-OPC, OHP-OPP, OSIPM, REFM, or Substitute Care program, or the related CAWEM program; or because the individual has left the custody of the Oregon Youth Authority (OYA); and at that time the Department determines that the individual meets the eligibility requirements for the OHP-OPU program;

(D) The individual is a child in the custody of the Department whose eligibility for Medicaid ends because of the child's age and at that time the Department determines that the individual meets the eligibility requirements for the OHP-OPU program;

(E) The Department determines that the individual was continuously eligible for the OHP-OPU program on or after June 30, 2004 under paragraphs (A) to (D) of this section;

(b) An individual who is not continuously eligible under subsection (a) is not a new applicant if the individual:

(A) Has eligibility end under the BCCM, CEC, CEM, EXT, HKC, MAA, MAF, OHP-CHP, OHP-OPP, OHP-OPU, OSIPM, REFM, or Substitute Care program, or the related CAWEM program; because the individual has left the custody of the OYA; or is a child in the custody of the Department whose eligibility for Medicaid ends due to the child's age;

(B) Established a Date of Request prior to the eligibility ending date in paragraph (A) of this section; and

(C) Meets the eligibility requirements for the OHP-OPU program or the related CAWEM program within either the month of the Date of Request or, if ineligible in the month of the Date of Request, the following month.

(17) To be eligible for the OHP-OPU program, an individual must meet the requirements listed in section (16) and be 19 years of age or older and may not be pregnant. Additionally, and individual must meet the following requirements:

(a) Must be currently receiving Medicaid or CHIP benefits when determined eligible for OHP- OPU;

(b) Must not be covered by any private major medical health insurance. An individual may be eligible for OHP-CHP if the private major medical health insurance is not accessible as outlined in section (4);

(c) May not have been covered by private major medical health insurance during the six months preceding the effective date for starting medical benefits. The six-month waiting period is waived if:

(A) Any of the criteria in section (4) are met;

(B) The individual has a condition that, without treatment, would be life-threatening or would cause permanent loss of function or disability;

(C) The individual's health insurance premium was reimbursed because the individual was receiving Medicaid, and the Department or the Authority found the premium was cost-effective;

(D) The individual's health insurance was subsidized through FHIAP or the Office of Private Health Partnerships in accordance with ORS 414.231, 414.826, 414.831, and 414.839; or

(E) A member of the individual's household group was a victim of domestic violence.

(18) To be eligible for the Substitute Care program, an individual must meet the specific eligibility requirements for Substitute Care found in OAR 410-200-0405.

(19) Except for OHP-CHP and CEC, a pregnant woman who is eligible for and receiving benefits through any program listed in this rule remains eligible through the end of the calendar month in which the 60th day following the last day of the pregnancy falls.

(20) A child who becomes ineligible for the OHP program because of age while receiving in-patient medical services remains eligible until the end of the month in which he or she no longer receives those services if he or she is receiving in-patient medical services on the last day of the month in which the age requirement is no longer met.

Stat. Auth.: ORS 411.402, 411.404, , 413.042 & 414.534

Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, 413.038, 414.025, 414.231, 414.440, 414.534, 414.536 & 414.706

Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14; DMAP 20-2014, f. & cert. ef. 3-28-14; DMAP 67-2014(Temp), f. 11-14-14, cert. ef. 11-15-14 thru 5-13-15; DMAP 3-2015, f. & cert. ef. 1-30-15

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Rule Caption: Amending Prior Authorization Approval Criteria Guide

Adm. Order No.: DMAP 4-2015(Temp)

Filed with Sec. of State: 2-3-2015

Certified to be Effective: 2-3-15 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:

The Authority is amending this rule to update the Oregon Medicaid Fee for Service Prior Authorization Criteria Guide found at http://www.oregon.gov/oha/healthplan/Pages/pharmacy-policy.aspx based on the P&T (Pharmacy and Therapeutic) Committee recommendations.

Rules Coordinator: Sandy Cafourek—(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 February 3, 2015, incorporated in rule by reference and found on our Web page at: http://www.oregon.gov/oha/healthplan/Pages/pharmacy-policy.aspx

(4) The Authority may require PA for individual drugs and categories of drugs to ensure medically appropriate use or to address potential client safety risk associated with the particular drug or category of drug, as rec-

ommended by the Pharmacy & Therapeutics Committee (P&T) and adopted by the Authority in this rule (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; DMAP 4-2015(Temp), f. & cert. ef. 2-3-15 thru 6-26-15

Rule Caption: Revise OHP Exclusions, Definitions, Copayment Table, and Codification Corrections
Adm. Order No.: DMAP 5-2015
Filed with Sec. of State: 2-10-2015
Certified to be Effective: 2-10-15
Notice Publication Date: 9-1-2014
Rules Amended: 410-120-0000
Subject: Revising the General Rules and correcting a technical error that changed "Emergency Medical Condition" to "NEMT medical condition." This filing changes it back.
Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-120-0000
Acronyms and Definitions

Identification of acronyms and definitions within this rule specifically pertain to their use within the Oregon Health Authority (Authority), Division of Medical Assistance Programs (Division), or the Addictions and Mental Health Division (AMH) administrative rules, applicable to the medical assistance program. This rule does not include an exhaustive list of Division acronyms and definitions. For more information, see Oregon Health Plan (OHP) program OAR 410-141-0000, Acronyms and Definitions; 410-200-0015, General Definitions; and any appropriate governing acronyms and definitions in the Department of Human Services (Department) chapter 411 or 413 administrative rules; or contact the Division.

(1) "Abuse" means provider practices that are inconsistent with sound fiscal, business, or medical practices and result in an unnecessary cost to the Authority or in reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care. It also includes recipient practices that result in unnecessary cost to the Authority.

(2) "Acupuncturist" means a person licensed to practice acupuncture by the relevant state licensing board.

(3) "Acupuncture Services" means services provided by a licensed acupuncturist within the scope of practice as defined under state law.

(4) "Acute" means a condition, diagnosis, or illness with a sudden onset and that is of short duration.

(5) "Acquisition Cost" means, unless specified otherwise in individual program administrative rules, the net invoice price of the item, supply, or equipment plus any shipping or postage for the item.

(6) "Addiction and Mental Health Division (AMH)" means a division within the Authority that administers mental health and addiction programs and services.

(7) "Adequate Record Keeping" means documentation that supports the level of service billed. See 410-120-1360, Requirements for Financial, Clinical, and Other Records, and the individual provider rules.

(8) "Administrative Medical Examinations and Reports" means examinations, evaluations, and reports, including copies of medical records, requested on the DMAP 729 form through the local Department branch office or requested or approved by the Authority to establish client eligibility for a medical assistance program or for casework planning.

(9) "Advance Directive" means an individual's instructions to an appointed person specifying actions to take in the event that the individual is no longer able to make decisions due to illness or incapacity.

(10) "Adverse Event" means an undesirable and unintentional, though not unnecessarily unexpected, result of medical treatment.

(11) "Aging and People with Disabilities (APD)" means the division in the Department of Human Services (Department) that administers programs for seniors and people with disabilities. This division was formerly named "Seniors and People with Disabilities (SPD)."

(12) "All-Inclusive Rate" or "Bundled Rate" means the nursing facility rate established for a facility. This rate includes all services, supplies, drugs, and equipment as described in OAR 411-070-0085 and in the Division's Pharmaceutical Services program administrative rules and the Home Enteral/Parenteral Nutrition and IV Services program administrative rules, except as specified in OAR 410-120-1340, Payment.

(13) "Allied Agency" means local and regional governmental agency and regional authority that contracts with the Authority or Department to provide the delivery of services to covered individuals (e.g., local mental health authority, community mental health program, Oregon Youth Authority, Department of Corrections, local health departments, schools, education service districts, developmental disability service programs, area agencies on aging (AAAs), federally recognized American Indian tribes).

(14) "Alternative Care Settings" means sites or groups of practitioners that provide care to members under contract with a PHP or CCO,

including urgent care centers, hospice, birthing centers, out-placed medical teams in community or mobile health care facilities, long-term care facilities, and outpatient surgical centers.

(15) "Ambulance" means a specially equipped and licensed vehicle for transporting sick or injured persons that meets the licensing standards of the Authority or the licensing standards of the state in which the ambulance provider is located.

(16) "Ambulatory Payment Classification" means a reimbursement method that categorizes outpatient visits into groups according to the clinical characteristics, the typical resource use, and the costs associated with the diagnoses and the procedures performed. The groups are called Ambulatory Payment Classifications (APCs).

(17) "Ambulatory Surgical Center (ASC)" means a facility licensed as an ASC by the Authority.

(18) "American Indian/Alaska Native (AI/AN)" means a member of a federally recognized Indian tribe, band, or group, and an Eskimo or Aleut or other Alaska native enrolled by the Secretary of the Interior pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. 1601, or a person who is considered by the Secretary of the Interior to be an Indian for any purpose.

(19) "American Indian/Alaska Native (AI/AN) Clinic" means a clinic recognized under Indian Health Services (IHS) law or by the Memorandum of Agreement between IHS and the Centers for Medicare and Medicaid Services (CMS).

(20) "Ancillary Services" means services supportive of or necessary for providing a primary service, such as anesthesiology, which is an ancillary service necessary for a surgical procedure.

(21) "Anesthesia Services" means administration of anesthetic agents to cause loss of sensation to the body or body part.

(22) "Area Agency on Aging (AAA)" means the designated entity with which the Department contracts to meet the requirements of the Older Americans Act and ORS Chapter 410 in planning and providing services to the elderly or elderly and disabled population.

(23) "Atypical Provider" means an entity able to enroll as a billing provider (BP) or rendering provider for medical assistance programs related non-health care services but that does not meet the definition of health care provider for National Provider Identification (NPI) purposes.

(24) "Audiologist" means a person licensed to practice audiology by the State Board of Examiners for Speech Pathology and Audiology.

(25) "Audiology" means the application of principles, methods, and procedures of measurement, testing, appraisal, prediction, consultation, counseling, and instruction related to hearing and hearing impairment for the purpose of modifying communicative disorders involving speech, language, auditory function, including auditory training, speech reading and hearing aid evaluation, or other behavior related to hearing impairment.

(26) "Automated Voice Response (AVR)" means a computer system that provides information on clients' current eligibility status from the Division by computerized phone or web-based response.

(27) "Benefit Package" means the package of covered health care services for which the client is eligible.

(28) "Billing Agent or Billing Service" means third party or organization that contracts with a provider to perform designated services in order to facilitate an Electronic Data Interchange (EDI) transaction on behalf of the provider.

(29) "Billing Provider (BP)" means a person, agent, business, corporation, clinic, group, institution, or other entity who submits claims to or receives payment from the Division on behalf of a rendering provider and has been delegated the authority to obligate or act on behalf of the rendering provider.

(30) "Buying Up" means the practice of obtaining client payment in addition to the Division or managed care plan payment to obtain a non-covered service or item. (See 410-120-1350 Buying Up.)

(31) "By Report (BR)": means services designated, as BR requires operative or clinical and other pertinent information to be submitted with the billing as a basis for payment determination. This information must include an adequate description of the nature and extent of need for the procedure. Information such as complexity of symptoms, final diagnosis, pertinent physical findings, diagnostic and therapeutic procedures, concurrent problems, and follow-up care will facilitate evaluation.

(32) "Case Management Services" means services provided to ensure that CCO members obtain health services necessary to maintain physical, mental, and emotional development and oral health. Case management services include a comprehensive, ongoing assessment of medical, mental health, substance use disorder or dental needs plus the development and implementation of a plan to obtain or make referrals for needed medical, mental, chemical dependency, or dental services, referring members to community services and supports that may include referrals to Allied Agencies.

(33) "Child Welfare (CW)" means a division within the Department responsible for administering child welfare programs, including child abuse investigations and intervention, foster care, adoptions, and child safety.

(34) "Children's Health Insurance Program (CHIP)" means a federal and state funded portion of the Oregon Health Plan (OHP) established by Title XXI of the Social Security Act and administered by the Authority.

(35) "Chiropractor" means a person licensed to practice chiropractic by the relevant state licensing board.

(36) "Chiropractic Services" means services provided by a licensed chiropractor within the scope of practice as defined under state law and federal regulation.

(37) "Citizen/Alien-Waived Emergency Medical (CAWEM)" means aliens granted lawful temporary resident status or lawful permanent resident status under the Immigration and Nationality Act are eligible only for emergency services and limited service for pregnant women. Emergency services for CAWEM are defined in OAR 410-120-1210 (3)(f).

(38) "Claimant" means a person who has requested a hearing.

(39) "Client" means an individual found eligible to receive OHP health services. "Client" is inclusive of members enrolled in PHPs, PCMs, and CCOs.

(40) "Clinical Nurse Specialist" means a registered nurse who has been approved and certified by the Board of Nursing to provide health care in an expanded specialty role.

(41) "Clinical Social Worker" means a person licensed to practice clinical social work pursuant to state law.

(42) "Clinical Record" means the medical, dental, or mental health records of a client or member.

(43) "Comfort Care" means medical services or items that give comfort or pain relief to an individual who has a terminal Illness, including the combination of medical and related services designed to make it possible for an individual with terminal Illness to die with dignity and respect and with as much comfort as is possible given the nature of the illness.

(44) "Contested Case Hearing" means a proceeding before the Authority under the Administrative Procedures Act when any of the following contests an action:

(a) A client or member or their representative;

(b) A PHP or CCO member's provider; or

(c) A PHP or CCO.

(45) "Contiguous Area" means the area up to 75 miles outside the border of the State of Oregon.

(46) "Contiguous Area Provider" means a provider practicing in a contiguous area.

(47) "Continuing Treatment Benefit" means a benefit for clients who meet criteria for having services covered that were either in a course of treatment or scheduled for treatment the day immediately before the date the client's benefit package changed to one that does not cover the treatment.

(48) "Coordinated Care Organization (CCO)" as defined in OAR 410-141-0000.

(49) "Co-Payments" means the portion of a claim or medical, dental, or pharmaceutical expense that a client must pay out of their own pocket to a provider or a facility for each service. It is usually a fixed amount that is paid at the time service is rendered. (See 410-120-1230 Client Copayment.)

(50) "Cost Effective" means the lowest cost health service or item that, in the judgment of Authority staff or its contracted agencies, meets the medical needs of the client.

(51) "Cover Oregon" means the state's health insurance exchange that will help individuals find out if they qualify for Medicaid, CHIP, or health insurance coverage for themselves, their families, and their employees.

(52) "Covered Services" means medically appropriate health services described in ORS Chapter 414 and applicable administrative rules that the legislature funds, based on the Prioritized List of Health Services.

(53) "Current Dental Terminology (CDT)" means a listing of descriptive terms identifying dental procedure codes used by the American Dental Association.

(54) "Current Procedural Terminology (CPT)" means the physicians' CPT is a listing of descriptive terms and identifying codes for reporting medical services and procedures performed by physicians and other health care providers.

(55) "Date of Receipt of a Claim" means the date on which the Authority receives a claim as indicated by the Internal Control Number

(ICN) assigned to a claim. Date of receipt is shown as the Julian date in the 5th through 7th position of the ICN.

(56) "Date of Service" means the date on which the client receives medical services or items, unless otherwise specified in the appropriate provider rules. For items that are mailed or shipped by the provider, the date of service is the date on which the order was received, the date on which the item was fabricated, or the date on which the item was mailed or shipped.

(57) "Dental Emergency Services" means dental services provided for severe tooth pain, unusual swelling of the face or gums, or an avulsed tooth.

(58) "Dental Services" means services provided within the scope of practice as defined under state law by or under the supervision of a dentist or dental hygienist.

(59) "Dentist" means a person licensed to practice dentistry pursuant to state law of the state in which he or she practices dentistry or a person licensed to practice dentistry pursuant to federal law for the purpose of practicing dentistry as an employee of the federal government.

(60) "Denturist" means a person licensed to practice denture technology pursuant to state law.

(61) "Denturist Services" means services provided within the scope of practice as defined under state law by or under the personal supervision of a denturist.

(62) "Dental Hygienist" means a person licensed to practice hygiene under the direction of a licensed professional within the scope of practice pursuant to state law.

(63) "Dental Hygienist with an Expanded Practice Permit" means a person licensed to practice dental hygiene services as authorized by the Board of Dentistry with an Expanded Practice Dental Hygienist Permit (EPDHP) pursuant to state law.

(64) "Dentally Appropriate" means services that are required for prevention, diagnosis, or treatment of a dental condition and that are:

(a) Consistent with the symptoms of a dental condition or treatment of a dental condition;

(b) Appropriate with regard to standards of good dental practice and generally recognized by the relevant scientific community and professional standards of care as effective;

(c) Not solely for the convenience of the client or a provider of the service;

(d) The most cost effective of the alternative levels of dental services that can be safely provided to a client.

(65) "Department of Human Services (Department or DHS)" means the agency established in ORS Chapter 409, including such divisions, programs and offices as may be established therein.

(66) "Department Representative" means a person who represents the Department and presents the position of the Department in a hearing.

(67) "Diagnosis Code" means as identified in the International Classification of Diseases, 9th revision, Clinical Modification (ICD-9-CM). The primary diagnosis code is shown in all billing claims, unless specifically excluded in individual provider rules. Where they exist, diagnosis codes shall be shown to the degree of specificity outlined in OAR 410-120-1280, Billing.

(68) "Diagnosis Related Group (DRG)" means a system of classification of diagnoses and procedures based on the ICD-9-CM.

(69) "Division of Medical Assistance Programs (Division)" means a division within the Authority. The Division is responsible for coordinating the medical assistance programs within the State of Oregon including the Oregon Health Plan (OHP) Medicaid demonstration, the State Children's Health Insurance Program (SCHIP-Title XXI), and several other programs.

(70) "Durable Medical Equipment, Prosthetics, Orthotics and Medical Supplies (DMEPOS)" means equipment that can stand repeated use and is primarily and customarily used to serve a medical purpose. Examples include wheelchairs, respirators, crutches, and custom built orthopedic braces. Medical supplies are non-reusable items used in the treatment of illness or injury. Examples of medical supplies include diapers, syringes, gauze bandages, and tubing.

(71) "Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Services (aka, Medicheck)" mean the Title XIX program of EPSDT services for eligible clients under age 21. It is a comprehensive child health program to assure the availability and accessibility of required medically appropriate health care services and to help Authority clients and their parents or guardians effectively use them.

(72) "Electronic Data Interchange (EDI)" means the exchange of business documents from application to application in a federally mandated format or, if no federal standard has been promulgated, using bulk transmission processes and other formats as the Authority designates for EDI transactions. For purposes of rules 407-120-0100 through 407-120-0200, EDI does not include electronic transmission by web portal.

(73) "EDI Submitter" means an individual or an entity authorized to establish an electronic media connection with the Authority to conduct an EDI transaction. An EDI submitter may be a trading partner or an agent of a trading partner.

(74) "Electronic Verification System (EVS)" means eligibility information that has met the legal and technical specifications of the Authority in order to offer eligibility information to enrolled providers of the Division.

(75) "Emergency Department" means the part of a licensed hospital facility open 24 hours a day to provide care for anyone in need of emergency treatment.

(76) "EMT Medical Condition" means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson who possesses an average knowledge of health and medicine could reasonably expect the absence of immediate medical attention to result in placing the health of the individual (or with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part. An emergency medical condition is determined based on the presenting symptoms (not the final diagnosis) as perceived by a prudent layperson (rather than a health care professional) and includes cases in which the absence of immediate medical attention would not in fact have had the adverse results described in the previous sentence. (This definition does not apply to clients with CAWEM benefit package. CAWEM emergency services are governed by OAR 410-120-1210(3)(f)(B)).

(77) "Emergency Medical Transportation" means transportation necessary for a client with an emergency medical condition as defined in this rule and requires a skilled medical professional such as an Emergency Medical Technician (EMT) and immediate transport to a site, usually a hospital, where appropriate emergency medical service is available.

(78) "Emergency Services" means health services from a qualified provider necessary to evaluate or stabilize an emergency medical condition, including inpatient and outpatient treatment that may be necessary to assure within reasonable medical probability that the patient's condition is not likely to materially deteriorate from or during a client's discharge from a facility or transfer to another facility.

(79) "Evidence-Based Medicine" means the conscientious, explicit, and judicious use of current best evidence in making decisions about the care of individual patients. The practice of evidence-based medicine means integrating individual clinical expertise with the best available external clinical evidence from systematic research. By individual clinical expertise we mean the proficiency and judgment that individual clinicians acquire through clinical experience and clinical practice. Increased expertise is reflected in many ways, but especially in more effective and efficient diagnosis and in the more thoughtful identification and compassionate use of individual patients' predicaments, rights, and preferences in making clinical decisions about their care. By best available external clinical evidence we mean clinically relevant research, often from the basic sciences of medicine, but especially from patient-centered clinical research into the accuracy and precision of diagnostic tests (including the clinical examination), the power of prognostic markers, and the efficacy and safety of therapeutic, rehabilitative, and preventive regimens. External clinical evidence both invalidates previously accepted diagnostic tests and treatments and replaces them with new ones that are more powerful, more accurate, more efficacious, and safer. (Source: BMJ 1996; 312:71-72 (13 January)).

(80) "False Claim" means a claim that a provider knowingly submits or causes to be submitted that contains inaccurate, misleading, or omitted information and such inaccurate, misleading, or omitted information would result, or has resulted, in an overpayment.

(81) "Family Planning Services" means services for clients of child bearing age (including minors who can be considered to be sexually active) who desire such services and that are intended to prevent pregnancy or otherwise limit family size.

(82) "Federally Qualified Health Center (FQHC)" means a federal designation for a medical entity that receives grants under Section 329, 330, or 340 of the Public Health Service Act or a facility designated as an FQHC by Centers for Medicare and Medicaid (CMS) upon recommendation of the U.S. Public Health Service.

(83) "Fee-for-Service Provider" means a health care provider who is not reimbursed under the terms of an Authority contract with a Coordinated Care Organization or Prepaid Health Plan (PHP). A medical provider par-

ticipating in a PHP or a CCO may be considered a fee-for-service provider when treating clients who are not enrolled in a PHP or a CCO.

(84) "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 mental condition, substance use disorder condition, or physical condition as documented in the member's clinical record. Flexible Services may include, but are not limited to: Respite care, partial hospitalization, subacute psychiatric care, family support services, parent psychosocial skills development, peer services, and other non-traditional services identified.

(85) "Flexible Service Approach" means the delivery of any coordinated care service in a manner or place different from the traditional manner or place of service delivery. A flexible service approach may include delivering coordinated care services at alternative sites such as schools, residential facilities, nursing facilities, members' homes, emergency rooms, offices of the Department and the Authority, and other community settings offering flexible clinic hours, coordinated care services through outreach or a home-based approach, and using peers, paraprofessionals, community health workers, peer wellness specialists, or personal health navigators who are culturally competent to engage difficult-to-reach members.

(86) "Fraud" means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to him or some other person. It includes any act that constitutes fraud under applicable federal or state law.

(87) "Fully Dual Eligible" means for the purposes of Medicare Part D coverage (42 CFR 423.772), Medicare clients who are also eligible for Medicaid, meeting the income and other eligibility criteria adopted by the Department for full medical assistance coverage.

(88) "General Assistance (GA)" means medical assistance administered and funded 100 percent with State of Oregon funds through OHP.

(89) "Healthcare Common Procedure Coding System (HCPCS)" means a method for reporting health care professional services, procedures, and supplies. HCPCS consists of the Level 1 — American Medical Association's Physician's Current Procedural Terminology (CPT), Level II — National codes, and Level III — Local codes. The Division uses HCPCS codes; however, the Division uses Current Dental Terminology (CDT) codes for the reporting of dental care services and procedures.

(90) "Health Care Professionals" means individuals with current and appropriate licensure, certification, or accreditation in a medical, mental health, or dental profession who provide health services, assessments, and screenings for clients within their scope of practice, licensure, or certification.

(91) "Health Evidence Review Commission" means a commission that, among other duties, develops and maintains a list of health services ranked by priority from the most to the least important representing the comparative benefits of each service to the population served.

(92) "Health Insurance Portability and Accountability Act (HIPAA) of 1996 (HIPAA)" means the federal law (Public Law 104-191, August 21, 1996) with the legislative objective to assure health insurance portability, reduce health care fraud and abuse, enforce standards for health information, and guarantee security and privacy of health information.

(93) "Health Maintenance Organization (HMO)" means a public or private health care organization that is a federally qualified HMO under Section 1310 of the U.S. Public Health Services Act. HMOs provide health care services on a capitated, contractual basis.

(94) "Health Plan New/non-categorical client (HPN)" means an individual who is 19 years of age or older, is not pregnant, is not receiving Medicaid through another program, and who must meet all eligibility requirements to become an OHP client.

(95) "Hearing Aid Dealer" means a person licensed by the Board of Hearing Aid Dealers to sell, lease, or rent hearing aids in conjunction with the evaluation or measurement of human hearing and the recommendation, selection, or adaptation of hearing aids.

(96) "Home Enteral Nutrition" means services provided in the client's place of residence to an individual who requires nutrition supplied by tube into the gastrointestinal tract as described in the Home Enteral/Parenteral Nutrition and IV Services program provider rules.

(97) "Home Health Agency" means a public or private agency or organization that has been certified by Medicare as a Medicare home health agency and that is licensed by the Authority as a home health agency in Oregon and meets the capitalization requirements as outlined in the Balanced Budget Act (BBA) of 1997.

(98) "Home Health Services" means part-time or intermittent skilled nursing services, other therapeutic services (physical therapy, occupational therapy, speech therapy), and home health aide services made available on a visiting basis in a place of residence used as the client's home.

(99) "Home Intravenous Services" means services provided in the client's place of residence to an individual who requires that medication (antibiotics, analgesics, chemotherapy, hydrational fluids, or other intravenous medications) be administered intravenously as described in the Home Enteral/Parenteral Nutrition and IV Services program administrative rules.

(100) "Home Parenteral Nutrition" means services provided in the client's residence to an individual who is unable to absorb nutrients via the gastrointestinal tract, or for other medical reasons, requires nutrition be supplied parenterally as described in the Home Enteral/Parenteral Nutrition and IV Services program administrative rules.

(101) "Hospice" means a public agency or private organization or subdivision of either that is primarily engaged in providing care to terminally ill individuals and is certified by the federal Centers for Medicare and Medicaid Services as a program of hospice services meeting current standards for Medicare and Medicaid reimbursement and Medicare Conditions of Participation and is currently licensed by the Oregon Health Authority (Authority), Public Health Division.

(102) "Hospital" means a facility licensed by the Office of Public Health Systems as a general hospital that meets requirements for participation in OHP under Title XVIII of the Social Security Act. The Division does not consider facilities certified by CMS as long-term care hospitals, long-term acute care hospitals, or religious non-medical facilities as hospitals for reimbursement purposes. Out-of-state hospitals will be considered hospitals for reimbursement purposes if they are licensed as a short term acute care or general hospital by the appropriate licensing authority within that state and if they are enrolled as a provider of hospital services with the Medicaid agency within that state.

(103) "Hospital-Based Professional Services" means professional services provided by licensed practitioners or staff based on a contractual or employee/employer relationship and reported as a cost on the Hospital Statement of Reasonable Cost report for Medicare and the Calculation of Reasonable Cost (division 42) report for the Division.

(104) "Hospital Dentistry" means dental services normally done in a dental office setting, but due to specific client need (as detailed in OAR chapter 410 division 123) are provided in an ambulatory surgical center or inpatient or outpatient hospital setting under general anesthesia (or IV conscious sedation, if appropriate).

(105) "Hospital Laboratory" means a laboratory providing professional technical laboratory services as outlined under laboratory services in a hospital setting as either an inpatient or outpatient hospital service whose costs are reported on the hospital's cost report to Medicare and to the Division.

(106) "Indian Health Care Provider" means an Indian health program or an urban Indian organization.

(107) "Indian Health Program" means any Indian Health Service (IHS) facility, any federally recognized tribe or tribal organization, or any FQHC with a 638 designation.

(108) "Indian Health Service (IHS)" means an operating division (OPDIV) within the U.S. Department of Health and Human Services (HHS) responsible for providing medical and public health services to members of federally recognized tribes and Alaska Natives.

(109) "Indigent" means for the purposes of access to the Intoxicated Driver Program Fund (ORS 813.602), individuals with-out health insurance coverage, public or private, who meet standards for indigence adopted by the federal government as defined in 813.602(5).

(110) "Individual Adjustment Request Form (DMAP 1036)" means a form used to resolve an incorrect payment on a previously paid claim, including underpayments or overpayments.

(111) "Inpatient Hospital Services" means services that are furnished in a hospital for the care and treatment of an inpatient. (See Division Hospital Services program administrative rules in chapter 410, division 125 for inpatient covered services.)

(112) "Institutional Level of Income Standards (ILIS)" means three times the amount SSI pays monthly to a person who has no other income and who is living alone in the community. This is the standard used for Medicaid eligible individuals to calculate eligibility for long-term nursing care in a nursing facility, Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID), and individuals on ICF/IID waivers or eligibility for services under Aging and People with Disabilities (APD) Home and Community Based Services program.

(113) "Institutionalized" means a patient admitted to a nursing facility or hospital for the purpose of receiving nursing or hospital care for a period of 30 days or more.

(114) "International Classification of Diseases, 9th Revision, Clinical Modification (ICD-9-CM) (including volumes 1, 2, and 3, as revised annually)" means a book of diagnosis codes used for billing purposes when treating and requesting reimbursement for treatment of diseases.

(115) "Laboratory" means a facility licensed under ORS 438 and certified by CMS, Department of Health and Human Services (DHHS), as qualified to participate under Medicare and to provide laboratory services (as defined in this rule) within or apart from a hospital. An entity is considered to be a laboratory if the entity derives materials from the human body for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or impairment of or the assessment of the health of human beings. If an entity performs even one laboratory test, including waived tests for these purposes, it is considered to be a laboratory under the Clinical Laboratory Improvement Act (CLIA).

(116) "Laboratory Services" means those professional and technical diagnostic analyses of blood, urine, and tissue ordered by a physician or other licensed practitioner of the healing arts within his or her scope of practice as defined under state law and provided to a patient by or under the direction of a physician or appropriate licensed practitioner in an office or similar facility, hospital, or independent laboratory.

(117) "Licensed Direct Entry Midwife" means a practitioner who has acquired the requisite qualifications to be registered or legally licensed to practice midwifery by the Public Health Division.

(118) "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.

(119) "Managed Care Organization (MCO)" means a contracted health delivery system providing capitated or prepaid health services, also known as a Prepaid Health Plan (PHP). An MCO is responsible for providing, arranging, and making reimbursement arrangements for covered services as governed by state and federal law. An MCO may be a Chemical Dependency Organization (CDO), Fully Capitated Health Plan (FCHP), Dental Care Organization (DCO), Mental Health Organization (MHO), or Physician Care Organization (PCO).

(120) "Maternity Case Management" means a program available to pregnant clients. The purpose of maternity case management is to extend prenatal services to include non-medical services that address social, economic, and nutritional factors. For more information refer to the Division's Medical-Surgical Services program administrative rules.

(121) "Medicaid" means a joint federal and state funded program for medical assistance established by Title XIX of the Social Security Act as amended and administered in Oregon by the Authority.

(122) "Medical Assistance Eligibility Confirmation" means verification through the Electronic Verification System (EVS), AVR, Secure Web site or Electronic Data Interchange (EDI), or an authorized Department or Authority representative.

(123) "Medical Assistance Program" means a program for payment of health services provided to eligible Oregonians, including Medicaid and CHIP services under the OHP Medicaid Demonstration Project and Medicaid and CHIP services under the State Plan.

(124) "Medical Care Identification" means the card commonly called the "medical card" or medical ID issued to clients (called the Oregon Health ID starting Aug. 1, 2012).

(125) "Medical Services" means care and treatment provided by a licensed medical provider directed at preventing, diagnosing, treating, or correcting a medical problem.

(126) "Medical Transportation" means transportation to or from covered medical services.

(127) "Medically Appropriate" means services and medical supplies that are required for prevention, diagnosis, or treatment of a health condition that encompasses physical or mental conditions or injuries and that are:

(a) Consistent with the symptoms of a health condition or treatment of a health condition;

(b) Appropriate with regard to standards of good health practice and generally recognized by the relevant scientific community, evidence-based medicine, and professional standards of care as effective;

(c) Not solely for the convenience of an OHP client or a provider of the service or medical supplies; and

(d) The most cost effective of the alternative levels of medical services or medical supplies that can be safely provided to a Division client or Primary Care Manager (PCM) member in the PHP's or PCM's judgment.

(128) "Medicare" means a federally administered program offering health insurance benefits for persons aged 65 or older and certain other aged or disabled persons. This program includes:

(a) Hospital Insurance (Part A) for inpatient services in a hospital or skilled nursing facility, home health care, and hospice care; and

(b) Medical Insurance (Part B) for physicians' services, outpatient hospital services, home health care, end-stage renal dialysis, and other medical services and supplies;

(c) Prescription drug coverage (Part D) means covered Part D drugs that include prescription drugs, biological products, insulin as described in specified paragraphs of section 1927(k) of the Social Security Act, and vaccines licensed under section 351 of the Public Health Service Act. It also includes medical supplies associated with the injection of insulin. Part D covered drugs prohibit Medicaid Title XIX Federal Financial Participation (FFP). For limitations, see the Division's Pharmaceutical Services program administrative rules in chapter 410, division 121.

(129) "Medicare Advantage" means an organization approved by CMS to offer Medicare health benefits plans to Medicare beneficiaries.

(130) "Medicheck for Children and Teens" means services also known as Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) services. The Title XIX program of EPSDT services is for eligible clients under age 21. It is a comprehensive child health program to assure the availability and accessibility of required medically appropriate health care services and to help Authority clients and their parents or guardians effectively use them.

(131) "Member" means an OHP client enrolled with a pre-paid health plan or coordinated care organization.

(132) "Mental Health Case Management" means services provided to CCO members who require assistance to ensure access to mental health benefits and services from local, regional, or state allied agencies or other service providers. Services provided may include: Advocating for the CCO member's treatment needs; providing assistance in obtaining entitlements based on mental or emotional disability; referring CCO members to needed services or supports; accessing housing or residential programs; coordinating services, including educational or vocational activities; and establishing alternatives to inpatient psychiatric services.

(133) "National Correct Coding Initiative (NCCI)" means the Centers for Medicare and Medicaid Services (CMS) developed the National Correct Coding Initiative (NCCI) to promote national correct coding methodologies and to control improper coding leading to inappropriate payment.

(134) "National Drug Code or (NDC)" means a universal number that identifies a drug. The NDC number consists of 11 digits in a 5-4-2 format. The Food and Drug Administration assigns the first five digits to identify the manufacturer of the drug. The manufacturer assigns the remaining digits to identify the specific product and package size. Some packages will display less than 11 digits, but the number assumes leading zeroes.

(135) "National Provider Identification (NPI)" means federally directed provider number mandated for use on HIPAA covered transactions; individuals, provider organizations, and subparts of provider organizations that meet the definition of health care provider (45 CFR 160.103) and who conduct HIPAA covered transactions electronically are eligible to apply for an NPI. Medicare covered entities are required to apply for an NPI.

(136) "Naturopathic physician" means a person licensed to practice naturopathic medicine by the Oregon Board of Naturopathic Medicine.

(137) "Naturopathic Services" means services provided within the scope of practice as defined under state law and by rules of the Oregon Board of Naturopathic Medicine..

(138) "Non-covered Services" means services or items for which the Authority is not responsible for payment or reimbursement. Non-covered services are identified in:

(a) OAR 410-120-1200, Excluded Services and Limitations; and

(b) 410-120-1210, Medical Assistance Benefit Packages and Delivery System;

(c) 410-141-0480, OHP Benefit Package of Covered Services;

(d) 410-141-0520, Prioritized List of Health Services; and

(e) Any other applicable Division administrative rules.

(139) "Non-Emergent Medical Transportation Services (NEMT)"means transportation to or from a source of covered service, that does not involve a sudden, unexpected occurrence which creates a medical crisis requiring emergency medical services as defined in OAR 410-120-0000(76) and requiring immediate transportation to a site, usually a hospital, where appropriate emergency medical care is available.

(140) "Non-Paid Provider" means a provider who is issued a provider number for purposes of data collection or non-claims-use of the Provider Web Portal (e.g., eligibility verification).

(141) "Nurse Anesthetist, C.R.N.A." means a registered nurse licensed in the State of Oregon as a CRNA who is currently certified by the National Board of Certification and Recertification for Nurse Anesthetists.

(142) "Nurse Practitioner" means a person licensed as a registered nurse and certified by the Board of Nursing to practice as a nurse practitioner pursuant to state law.

(143) "Nurse Practitioner Services" means services provided within the scope of practice of a nurse practitioner as defined under state law and by rules of the Board of Nursing.

(144) "Nursing Facility" means a facility licensed and certified by the Department and defined in OAR 411-070-0005.

(145) "Nursing Services" means health care services provided to a patient by a registered professional nurse or a licensed practical nurse under the direction of a licensed professional within the scope of practice as defined by state law.

(146) "Nutritional Counseling" means counseling that takes place as part of the treatment of a person with a specific condition, deficiency, or disease such as diabetes, hypercholesterolemia, or phenylketonuria.

(147) "Occupational Therapist" means a person licensed by the State Board of Examiners for Occupational Therapy.

(148) "Occupational Therapy" means the functional evaluation and treatment of individuals whose ability to adapt or cope with the task of living is threatened or impaired by developmental deficiencies, physical injury or illness, the aging process, or psychological disability. The treatment utilizes task-oriented activities to prevent or correct physical and emotional difficulties or minimize the disabling effect of these deficiencies on the life of the individual.

(149) "Ombudsman Services" means advocacy services provided by the Authority to clients whenever the client is reasonably concerned about access to, quality of, or limitations on the health services provided.

(150) "Oregon Health ID" means a card the size of a business card that lists the client name, client ID (prime number), and the date it was issued.

(151) "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

(152) "Optometric Services" means services provided within the scope of practice of optometrists as defined under state law.

(153) "Optometrist" means a person licensed to practice optometry pursuant to state law.

(154) "Oregon Health Authority (Authority)" means the agency established in ORS Chapter 413 that administers the funds for Titles XIX and XXI of the Social Security Act. It is the single state agency for the administration of the medical assistance program under ORS chapter 414. For purposes of these rules, the agencies under the authority of the Oregon Health Authority are the Public Health Division, the Addictions and Mental Health Division, and the Division of Medical Assistance Programs.

(155) "Oregon Youth Authority (OYA)" means the state department charged with the management and administration of youth correction facilities, state parole and probation services, and other functions related to state programs for youth corrections.

(156) "Out-of-State Providers" means any provider located outside the borders of the State of Oregon:

(a) Contiguous area providers are those located no more than 75 miles from the border of the State of Oregon;

(b) Non-contiguous area providers are those located more than 75 miles from the borders of the State of Oregon.

(157) "Outpatient Hospital Services" means services that are furnished in a hospital for the care and treatment of an outpatient. For information on outpatient-covered services, see the Division's Hospital Services administrative rules found in chapter 410, division 125.

(158) "Overdue Claim" means a valid claim that is not paid within 45 days of the date it was received.

(159) "Overpayment" means a payment made by the Authority to a provider in excess of the correct Authority payment amount for a service. Overpayments are subject to repayment to the Authority.

(160) "Overuse" means use of medical goods or services at levels determined by Authority medical staff or medical consultants to be medically unnecessary or potentially harmful.

(161) "Paid Provider" means a provider who is issued a provider number for purposes of submitting medical assistance program claims for payment by the Authority.

(162) "Panel" means the Hearing Officer Panel established by section 3, chapter 849, Oregon Laws 1999.

(163) "Payment Authorization" means authorization granted by the responsible agency, office, or organization for payment prior or subsequent to the delivery of services, as described in these General Rules and the appropriate program rules. See the individual program rules for services requiring authorization.

(164) "Peer Review Organization (PRO)" means an entity of health care practitioners of services contracted by the state to review services ordered or furnished by other practitioners in the same professional field.

(165) "Pharmaceutical Services" means services provided by a pharmacist, including medications dispensed in a pharmacy upon an order of a licensed practitioner prescribing within his or her scope of practice.

(166) "Pharmacist" means a person licensed to practice pharmacy pursuant to state law.

(167) "Physical Capacity Evaluation" means an objective, directly observed measurement of a person's ability to perform a variety of physical tasks combined with subjective analysis of abilities of the person.

(168) "Physical Therapist" means a person licensed by the relevant state licensing authority to practice physical therapy.

(169) "Physical Therapy" means treatment comprising exercise, massage, heat or cold, air, light, water, electricity, or sound for the purpose of correcting or alleviating any physical or mental disability, or the performance of tests as an aid to the assessment, diagnosis, or treatment of a human being. Physical therapy may not include radiology or electrosurgery.

(170) "Physician" means a person licensed to practice medicine pursuant to state law of the state in which he or she practices medicine or a person licensed to practice medicine pursuant to federal law for the purpose of practicing medicine under a contract with the federal government. A physician may be an individual licensed under ORS 677 or ORS 685.

(171) "Physician Assistant" means a person licensed as a physician assistant in accordance with ORS 677. Physician assistants provide medical services under the direction and supervision of an Oregon licensed physician according to a practice description approved by the Board of Medical Examiners.

(172) "Physician Services" means services provided within the scope of practice as defined under state law by or under the personal supervision of a physician.

(173) "Podiatric Services" means services provided within the scope of practice of podiatrists as defined under state law.

(174) "Podiatrist" means a person licensed to practice podiatric medicine pursuant to state law.

(175) "Post-Payment Review" means review of billings or other medical information for accuracy, medical appropriateness, level of service, or for other reasons subsequent to payment of the claim.

(176) "Practitioner" means a person licensed pursuant to state law to engage in the provision of health care services within the scope of the practitioner's license or certification.

(177) "Premium Sponsorship" means premium donations made for the benefit of one or more specified Division clients (See 410-120-1390).

(178) "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)

(179) "Primary Care Dentist (PCD)" means a dental practitioner who is responsible for supervising and coordinating initial and primary dental care within their scope of practice for their members.

(180) "Primary Care Provider (PCP)" means any enrolled medical assistance provider who has responsibility for supervising, coordinating, and providing initial and primary care within their scope of practice for identified clients. PCPs initiate referrals for care outside their scope of practice, consultations, and specialist care and assure the continuity of medically appropriate client care. A Federally qualified PCP means a physician with a specialty or subspecialty in family medicine, general internal medicine, or pediatric medicine as defined in OAR 410-130-0005.

(181) "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.

(182) "Prioritized List of Health Services" means the listing of conditions and treatment pairs developed by the Health Evidence Review Commission for the purpose of administering OHP.

(183) "Private Duty Nursing Services" means nursing services provided within the scope of license by a registered nurse or a licensed practical nurse under the general direction of the patient's physician to an individual who is not in a health care facility.

(184) "Provider" means an individual, facility, institution, corporate entity, or other organization that supplies health services or items, also termed a rendering provider, or bills, obligates, and receives reimbursement on behalf of a rendering provider of services, also termed a billing provider (BP). The term provider refers to both rendering providers and BP unless otherwise specified.

(185) "Provider Organization" means a group practice, facility, or organization that is:

(a) An employer of a provider, if the provider is required as a condition of employment to turn over fees to the employer; or

(b) The facility in which the service is provided, if the provider has a contract under which the facility submits claims; or

(c) A foundation, plan, or similar organization operating an organized health care delivery system, if the provider has a contract under which the organization submits the claim; and

(d) Such group practice, facility, or organization is enrolled with the Authority, and payments are made to the group practice, facility, or organization;

(e) An agent if such entity solely submits billings on behalf of providers and payments are made to each provider. (See Subparts of Provider Organization.)

(186) "Public Health Clinic" means a clinic operated by a county government.

(187) "Public Rates" means the charge for services and items that providers, including hospitals and nursing facilities, made to the general public for the same service on the same date as that provided to Authority clients.

(188) "Qualified Medicare Beneficiary (QMB)" means a Medicare beneficiary as defined by the Social Security Act and its amendments.

(189) "Qualified Medicare and Medicaid Beneficiary (QMM)" means a Medicare beneficiary who is also eligible for Division coverage.

(190) "Quality Improvement" means the efforts to improve the level of performance of a key process or processes in health services or health care.

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

(192) "Radiological Services" means those professional and technical radiological and other imaging services for the purpose of diagnosis and treatment ordered by a physician or other licensed practitioner of the healing arts within the scope of practice as defined under state law and provided to a patient by or under the direction of a physician or appropriate licensed practitioner in an office or similar facility, hospital, or independent radiological facility.

(193) "Recipient" means a person who is currently eligible for medical assistance (also known as a client).

(194) "Recreational Therapy" means recreational or other activities that are diversional in nature (includes, but is not limited to, social or recreational activities or outlets).

(195) "Recoupment" means an accounts receivable system that collects money owed by the provider to the Authority by withholding all or a portion of a provider's future payments.

(196) "Referral" means the transfer of total or specified care of a client from one provider to another. As used by the Authority, the term referral also includes a request for a consultation or evaluation or a request or approval of specific services. In the case of clients whose medical care is contracted through a Prepaid Health Plan (PHP), or managed by a Primary Care Physician, a referral is required before non-emergency care is covered by the PHP or the Authority.

(197) "Remittance Advice (RA)" means the automated notice a provider receives explaining payments or other claim actions. It is the only notice sent to providers regarding claim actions.

(198) "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.

(199) "Request for Hearing" means a clear expression in writing by an individual or representative that the person wishes to appeal a Department or Authority decision or action and wishes to have the decision considered by a higher authority.

(200) "Representative" means an individual who can make OHP-related decisions for a client who is not able to make such decisions themselves.

(201) "Retroactive Medical Eligibility" means eligibility for medical assistance granted to a client retroactive to a date prior to the client's application for medical assistance.

(202) "Ride" means non-emergent medical transportation services for a client either to or from a location where covered services are provided. "Ride" does not include client-reimbursed medical transportation or emergency medical transportation in an ambulance.

(203) "Rural" means a geographic area that is ten or more map miles from a population center of 30,000 people or less.

(204) "Sanction" means an action against providers taken by the Authority in cases of fraud, misuse, or abuse of Division requirements.

(205) "School Based Health Service" means a health service required by an Individualized Education Plan (IEP) during a child's education program that addresses physical or mental disabilities as recommended by a physician or other licensed practitioner.

(206) "Self-Sufficiency" means the division in the Department of Human Services (Department) that administers programs for adults and families.

(207) "Service Agreement" means an agreement between the Authority and a specified provider to provide identified services for a specified rate. Service agreements may be limited to services required for the special needs of an identified client. Service agreements do not preclude the requirement for a provider to enroll as a provider.

(208) "Sliding Fee Schedule" means a fee schedule with varying rates established by a provider of health care to make services available to indigent and low-income individuals. The sliding-fee schedule is based on ability to pay.

(209) "Social Worker" means a person licensed by the Board of Clinical Social Workers to practice clinical social work.

(210) "Speech-Language Pathologist" means a person licensed by the Oregon Board of Examiners for Speech Pathology.

(211) "Speech-Language Pathology Services" means the application of principles, methods, and procedure for the measuring, evaluating, predicting, counseling, or instruction related to the development and disorders of speech, voice, or language for the purpose of preventing, habilitating, rehabilitating, or modifying such disorders in individuals or groups of individuals.

(212) "State Facility" means a hospital or training center operated by the State of Oregon that provides long-term medical or psychiatric care.

(213) "Subparts (of a Provider Organization)" means for NPI application, subparts of a health care provider organization would meet the definition of health care provider (45 CFR 160.103) if it were a separate legal entity and if it conducted HIPAA-covered transactions electronically or has an entity do so on its behalf and could be components of an organization or separate physical locations of an organization.

(214) "Subrogation" means right of the state to stand in place of the client in the collection of third party resources (TPR).

(215) "Supplemental Security Income (SSI)" means a program available to certain aged and disabled persons that is administered by the Social Security Administration through the Social Security office.

(216) "Surgical Assistant" means a person performing required assistance in surgery as permitted by rules of the State Board of Medical Examiners.

(217) "Suspension" means a sanction prohibiting a provider's participation in the medical assistance programs by deactivation of the provider's Authority-assigned billing number for a specified period of time. No payments, Title XIX, or State Funds will be made for services provided during the suspension. The number will be reactivated automatically after the suspension period has elapsed.

(218) "Targeted Case Management (TCM)" means activities that will assist the client in a target group in gaining access to needed medical, social, educational, and other services. This includes locating, coordinating, and monitoring necessary and appropriate services. TCM services are often provided by allied agency providers.

(219) "Termination" means a sanction prohibiting a provider's participation in the Division's programs by canceling the provider's Authority-

assigned billing number and agreement. No payments, Title XIX, or state funds will be made for services provided after the date of termination. Termination is permanent unless:

(a) The exceptions cited in 42 CFR 1001.221 are met; or

(b) Otherwise stated by the Authority at the time of termination.

(220) "Third Party Liability (TPL), Third Party Resource (TPR), or Third party payer" means a medical or financial resource that, under law, is available and applicable to pay for medical services and items for an Authority client.

(221) "Transportation" means medical transportation.

(222) "Type A Hospital" means a hospital identified by the Office of Rural Health as a Type A hospital.

(223) "Type B AAA" means an AAA administered by a unit or combination of units of general purpose local government for overseeing Medicaid, financial and adult protective services, and regulatory programs for the elderly or the elderly and disabled.

(224) "Type B AAA Unit" means a Type B AAA funded by Oregon Project Independence (OPI), Title III—Older Americans Act, and Title XIX of the Social Security Act.

(225) "Type B Hospital" means a hospital identified by the Office of Rural Health as a Type B hospital.

(226) "Urban" means a geographic area that is less than ten map miles from a population center of 30,000 people or more.

(227) "Urgent Care Services" means health services that are medically appropriate and immediately required to prevent serious deterioration of a client's health that are a result of unforeseen illness or injury.

(228) "Usual Charge (UC)" means the lesser of the following unless prohibited from billing by federal statute or regulation:

(a) The provider's charge per unit of service for the majority of non-medical assistance users of the same service based on the preceding month's charges;

(b) The provider's lowest charge per unit of service on the same date that is advertised, quoted, or posted. The lesser of these applies regardless of the payment source or means of payment;

(c) Where the provider has established a written sliding fee scale based upon income for individuals and families with income equal to or less than 200 percent of the federal poverty level, the fees paid by these individuals and families are not considered in determining the usual charge. Any amounts charged to third party resources (TPR) are to be considered.

(229) "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.

(230) "Valid Claim" means an invoice received by the Division or the appropriate Authority or Department office for payment of covered health care services rendered to an eligible client that:

(a) Can be processed without obtaining additional information from the provider of the goods or services or from a TPR; and

(b) Has been received within the time limitations prescribed in these General Rules (OAR 410 division 120).

(231) "Vision Services" means provision of corrective eyewear, including ophthalmological or optometric examinations for determination of visual acuity and vision therapy and devices.

(232) "Volunteer" (for the purposes of NEMT) means an individual selected, trained and under the supervision of the Department who is providing services on behalf of the Department in a non-paid capacity except for incidental expense reimbursement under the Department Volunteer Program authorized by ORS 409.360.

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 414.065

Hist.: AFS 5-1981, f. 1-23-81, ef. 3-1-81; AFS 33-1981, f. 6-23-81, ef. 7-1-81; AFS 47-1982, f. 4-30-82 & AFS 52-1982, f. 5-28-82, ef. 5-1-82, for providers located in the geographical areas covered by the branch offices of North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 57-1982, f. 6-28-82, ef. 7-1-82; AFS 81-1982, f. 8-30-82, ef. 9-1-82; AFS 4-1984, f. & ef. 2-1-84; AFS 12-1984, f. 3-16-84, ef. 4-1-84; AFS 13-1984(Temp), f. & ef. 4-2-84; AFS 37-1984, f. 8-30-84, ef. 9-1-84; AFS 24-1985, f. 4-24-85, ef. 6-1-85; AFS 13-1987, f. 3-31-87, ef. 4-1-87; AFS 7-1988, f. & cert. ef. 2-1-88; AFS 69-1988, f. & cert. ef. 12-5-88; HR 2-1990, f. 2-12-90, cert. ef. 3-1-90, Renumbered from 461-013-0005; HR 25-1991(Temp), f. & cert. ef. 7-1-91; HR 41-1991, f. & cert. ef. 10-1-91; HR 32-1993, f. & cert. ef. 11-1-93; HR 2-1994, f. & cert. ef. 2-1-94; HR 31-1994, f. & cert. ef. 11-1-94; HR 40-1994, f. 12-30-94, cert. ef. 1-1-95; HR 5-1997, f. 1-31-97, cert. ef. 2-1-97; HR 21-1997, f. & cert. ef. 10-1-97; OMAP 20-1998, f. & cert. ef. 7-1-98; OMAP 10-1999, f. & cert. ef. 4-1-99; OMAP 31-1999, f. & cert. ef. 10-1-99; OMAP 11-2000, f. & cert. ef. 6-23-00; OMAP 35-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 42-2002, f. & cert. ef. 10-1-02; OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 62-2003, f. 9-8-03, cert. ef.10-1-03; OMAP 67-2004, f. 9-14-04, cert. ef. 10-1-04; OMAP 10-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 39-2005, f. 9-2-05, cert. ef. 10-1-05; OMAP 65-2005, f. 11-30-05, cert. ef. 1-1-06; OMAP 15-2006, f. 6-12-06, cert. ef. 7-1-06; OMAP 45-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 24-2007 f. 12-11-07 cert. ef. 1-1-08; DMAP 34-2008, f. 11-26-08, cert. ef. 12-1-08; DMAP 13-2009 f. 6-12-09, cert. ef. 7-1-09; DMAP 11-2011, f. 6-29-11, cert. ef. 7-1-11; DMAP 36-2011, f. 12-13-11, cert. ef. 1-1-12; DMAP 11-2012(Temp), f. & cert. ef. 3-16-12 thru 9-11-12; DMAP 28-2012, f. 6-21-12, cert. ef. 7-1-12; DMAP 49-2012, f. 10-31-12, cert. ef. 11-1-12; DMAP 37-2013(Temp), f. 6-27-13, cert. ef. 7-1-13 thru 12-24-13; DMAP 71-2013, f. & cert. ef. 12-27-13; DMAP 57-2014, f. 9-26-14, cert. ef. 10-1-14; DMAP 5-2015, f. & cert. ef. 2-10-15

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Rule Caption: Income Eligibility Guidelines for OCCS Medical Programs
Adm. Order No.: DMAP 6-2015(Temp)
Filed with Sec. of State: 2-13-2015
Certified to be Effective: 3-1-15 thru 8-27-15
Notice Publication Date:
Rules Amended: 410-200-0315
Subject: Every year the Federal Poverty Levels (FPL) are adjusted and published to the Federal Register. A number of OCCS medical programs and income disregards are based on percentages of the FPL and must be updated now that the FPLs have been published and align with Cover Oregon's implementation timeline.
Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-200-0315
Standards and Determining Income Eligibility

(1) MAGI-based income not specifically excluded is countable, and its value is used in determining the eligibility and benefit level of an applicant or beneficiary.

(2) MAGI-based income is considered available on the date it is received or the date a member of the household group has a legal right to the payment and the legal ability to make it available, whichever is earlier, except as follows:

(a) Income usually paid monthly or on some other regular payment schedule is considered available on the regular payment date if the date of payment is changed because of a holiday or weekend;

(b) Income withheld or diverted at the request of an individual is considered available on the date the income would have been paid without the withholding or diversion;

(c) An advance or draw of earned income is considered available on the date it is received.

(3) In determining financial eligibility for each applicant, the sum of the budget month MAGI-based income of all household group members is combined and compared to the applicable income standard for the family size. If the income is at or below the MAGI income standard, the individual meets the financial eligibility requirements. Except as provided in section (4)(a), if income exceeds the MAGI income standard, the individual is ineligible.

(4) This section applies to MAGI Medicaid/CHIP programs:

(a) If an individual is ineligible for MAGI Medicaid based solely on income and would otherwise be eligible for MAGI CHIP or be referred to the Exchange for APTC, a disregard equivalent to five percentage points of the federal poverty level for the applicable family size shall be applied to the household group's income. If the resulting amount is below the income standard for the applicable program and family size, the individual meets the financial eligibility requirements in the following programs:

(A) The MAGI Parent or Other Caretaker Relative Program;

(B) The MAGI Child Program;

(C) The MAGI Adult Program; and

(D) The MAGI Pregnant Woman Program;

(b) If an individual is ineligible for MAGI CHIP based solely on income and would otherwise be referred to the Exchange for APTC, a disregard equivalent to five percentage points of the federal poverty level for the applicable family size shall be applied to the household group's income. If the resulting amount is below the income standard for the applicable program and family size, the individual meets the financial eligibility requirements in the MAGI CHIP;

(c) The MAGI income standard for the MAGI Parent or Other Caretaker-Relative program is set as follows: [Table not included. See ED. NOTE.]

(d) Effective March 1, 2015, the MAGI income standard for the MAGI Child Program and the MAGI Adult Program is set at 133 percent of the FPL as follows. If an individual's household group income exceeds the income standard for their family size, the appropriate disregard for their family size described in section (4) (a) shall be applied: [Table not included. See ED. NOTE.]

(e) Effective March 1, 2015, the MAGI income standard for the MAGI Pregnant Woman Program and for MAGI Child Program recipients

under age one is set at 185 percent FPL. If an individual's household group income exceeds the income standard for their family size, the appropriate disregard for their family size described in section (4) (a) shall be applied: [Table not included. See ED. NOTE.]

(f) Effective March 1, 2015, the MAGI income standard for the MAGI CHIP program is set through 300 percent of FPL as follows. If a child's household group income exceeds the income standard for their family size, and the child would be otherwise ineligible for MAGI CHIP, the appropriate disregard for their family size described in section (5) (a) (B) shall be applied: [Table not included. See ED. NOTE.]

(g) When the Department makes an ELE determination and the child meets all MAGI CHIP or MAGI Child Program nonfinancial eligibility requirements, the household size determined by the Department is used to determine eligibility regardless of the family size. The countable income of the household is determined by the ELA. A child is deemed eligible for MAGI CHIP or MAGI Child Program as follows:

(A) Effective March 1, 2015, if the MAGI-based income of the household group is below 163 percent of the 2015 federal poverty level as listed below, the Department deems the child eligible for the MAGI Child Program; [Table not included. See ED. NOTE.]

(B) If the MAGI-based income of the household group is at or above 163 percent of the FPL through 300 percent of the FPL as listed in section (4) (f) of this rule, the Agency deems the child eligible for MAGI CHIP.

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

Stat. Auth.: ORS 411.402, 411.404 & 413.042

Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, 414.025, 414.231, 414.440, 414.706

Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14; DMAP 20-2014, f. & cert. ef. 3-28-14; DMAP 25-2014(Temp), f. & cert. ef. 4-14-14 thru 10-11-14; DMAP 53-2014, f. & cert. ef. 9-23-14; DMAP 67-2014(Temp), f. 11-14-14, cert. ef. 11-15-14 thru 5-13-15; DMAP 3-2015, f. & cert. ef. 1-30-15; DMAP 6-2015(Temp), f. 2-13-15, cert. ef. 3-1-15 thru 8-27-15

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Oregon Health Authority, Office for Oregon Health Policy and Research Chapter 409

Rule Caption: Amendments and Adoption to the Patient-Centered Primary Care Home Program rules.
Adm. Order No.: OHP 2-2015
Filed with Sec. of State: 1-16-2015
Certified to be Effective: 2-1-15
Notice Publication Date: 12-1-2014
Rules Adopted: 409-055-0045
Rules Amended: 409-055-0010, 409-055-0030, 409-055-0040
Subject: Amendments relating to the recognition criteria for the Patient-Centered Primary Care Home (PCPCH) Program to add a new "3 STAR" Designation.
Rules Coordinator: Zarie Haverkate—(503) 373-1574

409-055-0010
Definitions

The following definitions apply to OAR 409-055-0000 to 409-055-0090:

(1) "Administrator" means the administrator or designee of The Office for Oregon Health Policy and Research as defined in ORS 442.011.

(2) "Authority" means the Oregon Health Authority.

(3) "CHIPRA Core Measure Set" means the initial core set of children's health care quality measures released by the Centers for Medicare and Medicaid Services in 2009 for voluntary use by Medicaid and CHIP programs.

(4) "NCQA" means National Committee for Quality Assurance.

(5) "Office" means the Office for Oregon Health Policy and Research.

(6) "Patient Centered Medical Home (PCMH)" means a practice or provider who has been recognized as such by the National Committee for Quality Assurance.

(7) "Patient-Centered Primary Care Home (PCPCH)" means a health care team or clinic defined in ORS 414.655, meets the standards pursuant to OAR 409-055-0040, and has been recognized through the process pursuant to OAR 409-055-0040.

(8) "Personal Health Information" means demographic information, medical history, test and laboratory results, insurance information and other data that is collected by a health care professional to identify an individual and determine appropriate care.

(9) "Practice" means an individual, facility, institution, corporate entity, or other organization which provides direct health care services or items, also termed a performing provider, or bills, obligates and receives reimbursement on behalf of a performing provider of services, also termed a billing provider (BP). The term provider refers to both performing providers and BP(s) unless otherwise specified.

(10) "Program" means Patient-Centered Primary Care Home Program.

(11) "Program website" means www.primarycarehome.oregon.gov.

(12) "Provider" means an individual, facility, institution, corporate entity, or other organization which provides direct health care services or items, also termed a performing provider, or bills, obligates and receives reimbursement on behalf of a performing provider of services, also termed a billing provider (BP). The term provider refers to both performing providers and BP(s) unless otherwise specified.

(13) "Recognition" means the process through which the Authority determines if a practice has met the Oregon Patient-Centered Primary Care Home Standards.

(14) "Recognized" means that the Authority has affirmed that a practice meets the Oregon Patient-Centered Primary Care Home Standards.

(15) "Tier" means the level of Patient-Centered Primary Care Home at which the Authority has scored a practice.

(16) "Verification" means the process that Office for Oregon Health Policy and Research shall conduct to ensure that a practice has submitted accurate information to the Authority for purposes of Patient-Centered Primary Care Home recognition.

(17) "3 STAR" means a designation assigned to Patient-Centered Primary Care Homes meeting advanced PCPCH criteria

Stat. Auth: ORS 413.042, 414.655 & 442.210

Stats. Implemented: 413.042, 414.655 & 442.210

Hist.: OHP 6-2011(Temp), f. 9-29-11, cert. ef. 10-1-11 thru 3-15-12; OHP 2-2012, f. 2-29-12, cert. ef. 3-1-12; OHP 2-2015, f. 1-16-15, cert. ef. 2-1-15

409-055-0030
Practice Application and Recognition Process

(1) Practices, or other entities on behalf of the practice, that wish to be recognized as a PCPCH shall submit a PCPCH Recognition Application electronically to the Authority via the Program's online application system found on the Program website or by mail to the address posted on the Program website. The application shall include the quantitative data described in OAR 409-055-0040.

(2) The Authority shall review the application within 60 days of its submission to determine whether it is accurate, complete, and meets the recognition requirements. If the application is incomplete the applicant will be notified in writing of the information that is missing and when it must be submitted.

(3) The Authority shall review a complete application within 60 days of submission. If the Authority determines that the applicant has met the requirements of these rules the Authority shall:

(a) Inform the applicant in writing that the application has been approved as a recognized PCPCH,

(b) Assign a Tier level, and

(c) Include the effective recognition date.

(4) The Authority shall maintain instructions and criteria for submitting a PCPCH Recognition Application posted on the Program website.

(5) The Authority may deny PCPCH recognition if an applicant does not meet the requirements of these rules.

(6) A Practice may request that the Authority reconsider the denial of PCPCH recognition or reconsider the assigned tier level. A request for reconsideration must be submitted in writing to the Authority within 90 days of the date of the denial or approval letter and must include a detailed explanation of why the practice believes the Authority's decision is in error along with any supporting documentation. The Authority shall inform the practice in writing whether it has reconsidered its decision.

(7) Practices submitting applications on or after September 3, 2013 must apply to renew their recognition once every two years. Recognition will expire two years from the effective date of recognition that was issued by the Authority.

(a) At the Authority's discretion a 30-day grace period may be allowed for PCPCHs to submit their renewal application without having a lapse in recognition status.

(b) If a PCPCH believes that it meets the criteria to be recognized at a higher tier or increase it's point threshold by at least 15 points, it may request to have its tier status reassessed by re-submitting an application not more than once every six months. The Authority may grant exceptions to the six month time period for good cause shown.

Stat. Auth: ORS 413.042, 414.655 & 442.210

Stats. Implemented: 413.042, 414.655 & 442.210

Hist.: OHP 6-2011(Temp), f. 9-29-11, cert. ef. 10-1-11 thru 3-15-12; OHP 2-2012, f. 2-29-12, cert. ef. 3-1-12; OHP 7-2012(Temp), f. & cert. ef. 10-4-12 thru 4-1-13; OHP 5-2013, f. 3-22-13, cert. ef. 4-1-13; OHP 6-2013, f. 8-23-13, cert. ef. 9-3-13; OHP 9-2013, f. 10-1-13, cert. ef. 1-1-14; OHP 2-2015, f. 1-16-15, cert. ef. 2-1-15

409-055-0040
Recognition Criteria

(1) The PCPCH recognition criteria are divided into "Must-Pass" measures and other measures that place the practice on a scale of maturity or 'tier' that reflect basic to more advanced PCPCH functions.

(2) Must-Pass and 5 point measures focus on foundational PCPCH elements that should be achievable by most practices in Oregon with significant effort, but without significant financial outlay.

(3) 10 and 15 point measures reflect intermediate and advanced functions.

(4) Except for the 10 Must-Pass measures, each measure is assigned a point value. A practice must meet the following point allocation criteria to be recognized as a PCPCH:

(a) Tier 1: 30–60 points and all 10 Must-Pass Measures

(b) Tier 2: 65–125 points and all 10 Must-Pass Measures

(c) Tier 3: 130 points or more and all 10 Must-Pass Measures

(5) The Authority shall calculate a practice's point score through the recognition process described in OAR 409-055-0030.

(6) Table 1, incorporated by reference, contains the detailed list of Measures and corresponding point assignments.

(7) Table 2, incorporated by reference, contains a detailed list of the PCPCH Quality Measures.

(8) Measure specifications, thresholds for demonstrating improvement, and benchmarks for quantitative data elements are available on the Program website.

(9) National Committee for Quality Assurance (NCQA) recognition shall be acknowledged in the Authority's PCPCH recognition process; however, a practice is not required to use its NCQA recognition to meet the Oregon PCPCH standards. A practice that does not wish to use its NCQA recognition to meet the Oregon PCPCH standards must indicate so during the PCPCH application process and submit a complete PCPCH application.

(10) A practice seeking Oregon PCPCH recognition based on its NCQA recognition must:

(a) Submit a PCPCH application and evidence of its NCQA recognition along with its application;

(b) Comply with Table 3, incorporated by reference, for NCQA PCMH practices using 2008 NCQA criteria; or

(c) Comply with Table 4, incorporated by reference, for NCQA PCMH practices using 2011 NCQA criteria.

(11) The Authority may designate a practice as a 3 STAR Patient-Centered Primary Care Home for implementing multiple advanced PCPCH criteria as described in OAR 409-055-0045.

[ED. NOTE: Tables reference are available from the agency.]
Stat. Auth: ORS 413.042, 414.655 & 442.210
Stats. Implemented: 413.042, 414.655 & 442.210
Hist.: OHP 6-2011(Temp), f. 9-29-11, cert. ef. 10-1-11 thru 3-15-12; OHP 2-2012, f. 2-29-12, cert. ef. 3-1-12; OHP 9-2013, f. 10-1-13, cert. ef. 1-1-14; OHP 2-2015, f. 1-16-15, cert. ef. 2-1-15

409-055-0045
3 STAR Designation

(1) The Authority shall award 3 STAR designations to practices implementing multiple advanced PCPCH measures.

(2) A practice seeking 3 STAR designation, must meet the following criteria:

(a) Be recognized as a Tier 3 PCPCH under the Measures in Table 1, adopted and incorporated by reference;

(b) Attest to 275 points or more on the PCPCH application; and

(c) Attest to 11 or more of the 13 PCPCH Measures in Table 5, adopted and incorporated by reference.

(3) The Authority shall review PCPCH applications of practices attesting to the Measures in Table 1, to determine which practices meet the criteria in section (2) of this rule

(4) The Authority shall notify a practice meeting 3 STAR designation criteria in writing of their eligibility.

(5) The Authority shall contact the eligible practice to schedule an on-site verification visit as described in OAR 409-055-0060.

(6) A practice seeking 3 STAR designation must comply with an on-site verification site visit.

(7) The Authority shall award 3 STAR designation to a practice after verifying the practice meets all 3 STAR designation criteria.

(8) 3 STAR designation is valid for the duration of the practice's current PCPCH recognition as described in OAR 409-055-0030(7).

[ED. NOTE: Tables reference are available from the agency.]
Stat. Auth: ORS 413.042, 414.655 & 442.210
Stats. Implemented: 413.042, 414.655 & 442.210
Hist.: OHP 2-2015, f. 1-16-15, cert. ef. 2-1-15

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Oregon Health Authority, Public Health Division
Chapter 333

Rule Caption: Patient notification of choice by practitioners as required by the passage of SB 683 (2013)
Adm. Order No.: PH 2-2015
Filed with Sec. of State: 1-16-2015
Certified to be Effective: 1-16-15
Notice Publication Date: 12-1-2014
Rules Amended: 333-072-0215
Rules Repealed: 333-072-0215(T)
Subject: The Oregon Health Authority, Public Health Division is amending OAR 333-072-0215 relating to notice of patient choice in response to the passage of SB 683 during the 2013 legislative session.

The Authority needs to amend this rule to set forth the form and manner for health practitioners to provide notice of patient choice related to referrals for diagnostic tests, health care services or treatment.

The amended rule provides for written or oral notice of patient choice at the time the patient establishes care and that notice must also be posted in a conspicuous place. The rule sets forth the information that must be provided. When health practitioners choose to provide notice at the time of referral, the rule sets forth the information that the practitioner must provide. Practitioners must document all oral notices. Implementation of this rule will ensure that health care consumers are aware of their right to choose care providers.

This permanent filing replaces a temporary rule filed on July 28, 2014.
Rules Coordinator: Brittany Sande—(971) 673-1291

333-072-0215
Requirements for Notification of Patient Choice

(1) A referral for a diagnostic test or health care treatment or service shall be based on the patient's clinical needs and personal health choices.

(2) A health practitioner may not deny, limit or withdraw a referral solely because the patient chooses to have the diagnostic test or health care treatment or service at a facility other than the one recommended by the health practitioner.

(3) A health practitioner or the practitioner's designee shall provide written or oral notice of patient choice at the time the patient establishes care with the practitioner. The notice shall include the following:

(a) The patient has a choice and when referred to a facility for a diagnostic test or health care treatment or service the patient may receive the diagnostic test or health care treatment or service at a facility other than the one recommended by the health practitioner.

(b) If the patient chooses to have the diagnostic test, health care treatment or service at a facility different from the one recommended by a practitioner, the patient is responsible for determining the extent or limitation of coverage for the diagnostic test, health care treatment or service at the facility chosen by the patient.

(c) A health practitioner may not deny, limit or withdraw a referral solely because the patient chooses to have the diagnostic test or health care treatment or service at a facility other than the one recommended by the health practitioner.

(4) Health practitioners shall also post notice of patient choice in a conspicuous place. The posted notice shall include the information set forth in subsections (3)(a) and (b) of this rule.

(5) At the time of referral health practitioners may provide written or oral notice of patient choice. The notice shall include the information set forth in subsection (3)(a) of this rule.

(6) Practitioners must document all oral notifications.

Stat. Auth.: ORS 441.098
Stats. Implemented: ORS 441.098

Hist.: PH 15-2014, f. & cert. ef. 6-2-14; PH 21-2014(Temp), f. & cert. ef. 7-28-14 thru 1-24-15; PH 22-2014(Temp), f. & cert. ef. 8-7-14 thru 1-24-15; PH 2-2015, f.& cert. ef. 1-16-15

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Rule Caption: Amendment of Outpatient Renal Dialysis Facility Administrative Rules and Table
Adm. Order No.: PH 3-2015
Filed with Sec. of State: 1-16-2015
Certified to be Effective: 2-1-15
Notice Publication Date: 12-1-2014
Rules Amended: 333-700-0004, 333-700-0017, 333-700-0120, 333-700-0130
Subject: The Oregon Health Authority, Public Health Division, Health Care Regulation and Quality Improvement program is permanently amending OAR chapter 333, division 700 pertaining to outpatient renal dialysis facilities. The rule amendments update referenced codes and standards; change some dialysis facility construction requirements; clarify "Table 1: Required Frequency of Water Testing in Oregon Dialysis Facilities" (OAR 333-700-0120) to resolve conflict between federal and state water testing requirements for home patients; clarify the applicability of OAR 333-700-0130; and modify the OAR 333-700-0017 requirement that the Division conduct an on-site licensing survey in coordination with the State Fire Marshal's Office to instead mandate an on-site certification survey only when required to do so by Centers for Medicare & Medicaid Services ("CMS") regulations.
Rules Coordinator: Brittany Sande—(971) 673-1291

333-700-0004
Referenced Codes and Standards

This rule lists the codes and standards referenced in OAR 333-700-0000 through 333-700-0130. If conflicts exist among the provisions of the codes and standards listed in this rule, the most restrictive provisions shall apply. The following codes and standards are hereby adopted by reference:

(1) American Society of Heating, Refrigeration and Air-Conditioning Engineers (ASHRAE) Standard 170-2008 "Ventilation of Health Care Facilities";

(2) Association for the Advancement of Medical Instrumentation (AAMI) publication, "Dialysate for Hemodialysis," approved by the American National Standards Institute (ANSI), ANSI/AAMI RD 52:2004;

(3) Association for the Advancement of Medical Instrumentation (AAMI) publication, "Reuse of Hemodialyzers," Third Edition ANSI/AAMI RD 47:2002/A1:2003;

(4) National Fire Protection Association, NFPA 90A Standard for Installation of Air-Conditioning and Ventilating Systems, 2012 Edition;

(5) National Fire Protection Association, NFPA 99 Standard for Healthcare Facilities, 1999 Edition or 2012 Edition. Note: If the 2012 Edition of NFPA 99 is used, the 2012 Edition of NFPA 101 must also be used;

(6) National Fire Protection Association, NFPA 101 Life Safety Code, 2000 Edition or 2012 Edition.

NOTE: If the 2012 Edition of NFPA 101 is used, the 2012 Edition of NFPA 99 must also be used;

(7) National Fire Protection Association, NFPA 110 Standard for Emergency and Standby Power Systems, 2013 Edition;

(8) Oregon Electrical Specialty Code, 2014 Edition;

(9) Oregon Energy Efficiency Specialty Code, 2014 Edition;

(10) Oregon Mechanical Specialty Code, 2014 Edition;

(11) Oregon Plumbing Specialty Code, 2014 Edition;

(12) Oregon Structural Specialty Code, 2014 Edition; and

(13) Oregon Fire Code, 2014 Edition.

Stat. Auth.: ORS 441.015, 441.025 & 441.060
Stats. Implemented: ORS 441.025 & 441.060
Hist.: PH 4-2012, f. 3-30-12, cert. ef. 4-1-12; PH 3-2015, f. 1-16-15, cert. ef. 2-1-15

333-700-0017
Application Review

(1) In reviewing an application for an outpatient renal dialysis facility the Division shall:

(a) Verify compliance with the applicable sections of ORS chapters 441 and 442, and OAR chapter 333, division 700;

(b) Conduct an on-site licensing survey; and

(c) Conduct an on-site certification survey and verify compliance with the Conditions for Coverage if the applicant has requested Medicare and Medicaid certification.

(2) In determining whether to license an outpatient renal dialysis facility, the Division shall only consider factors relating to the health and safety of individuals to be cared for at the facility and the ability of the operator of the facility to safely operate the facility. The Division shall not consider whether the facility is or shall be a governmental, charitable or other nonprofit institution or whether it is or shall be an institution for profit.

Stat. Auth.: ORS 441.015 & 441.025
Stats. Implemented: ORS 441.022 & 442.025
Hist.: PH 4-2012, f. 3-30-12, cert. ef. 4-1-12; PH 3-2015, f. 1-16-15, cert. ef. 2-1-15

333-700-0120
Physical Environment Requirements

(1) The physical environment in which dialysis services are furnished must afford a functional, clean, sanitary, safe, and comfortable setting for patients, staff, and the public. At minimum, the facility shall satisfy the following requirements:

(a) Hot water used for hand washing shall have a water temperature between 105 and 120 degrees Fahrenheit;

(b) All facilities shall have a smoke detection system;

(c) At least one type 2A:10B:C fire extinguisher shall be installed for every eight patient stations in locations that are readily accessible to staff;

(d) All interior and exterior materials and surfaces and all equipment necessary for the health, safety and comfort of patients shall be kept clean and in good repair. Examples include, but are not limited to: floors, walls, roofs, ceiling, windows, furnishings and equipment;

(e) Floor surfaces shall be relatively level and free of tripping hazards;

(f) All buildings shall be maintained in good condition with sound structural integrity;

(g) The facility shall be in compliance with local codes, laws and ordinances; and

(h) Minimum egress requirements shall include:

(A) Door latching that is classified as simple hardware;

(B) Exit signs from all common locations of the facility;

(C) Exit illumination with alternate power source; and

(D) The means of egress shall be free of obstructions.

(2) The physical structure in which dialysis services are furnished must be constructed, equipped, and maintained to ensure the safety of patients, staff, and the public.

(3) All electrical and other equipment used in the facility must be maintained free of defects that could be a potential hazard to patients or personnel. There must be an established program of preventive maintenance of equipment used in dialysis and related procedures in the facility. Facilities shall follow the manufacturers' recommendations for preventive maintenance for all equipment.

(4) The areas used by patients shall be maintained in good repair and kept free of hazards such as those created by damaged or defective parts of the building.

(5) The facility must be able to demonstrate that water and equipment used for dialysis meets the water and dialysate quality standards and equipment requirements found in the Association for the Advancement of Medical Instrumentation (AAMI) publication, "Dialysate for hemodialysis."

(6) Any adverse results identified by the water quality monitoring system shall be addressed and corrected immediately. Documentation of these corrections shall be maintained in a designated area for review.

(7) Testing of the water in dialysis facilities must comply with the requirements of Table 1 of this rule.

(8) Treatment areas shall be designed and equipped to provide adequate and safe dialysis therapy, as well as privacy and comfort for patients. The space for treating each patient must be sufficient to accommodate medically necessary emergency equipment and personnel to treat the patient in the event of an emergency. There must be sufficient space in the facility for safe storage of dialysis supplies.

(9) Chronic dialysis patients shall be dialyzed in chairs that can be reclined so that the patient's head is lower than his/her feet, except when the patient is dialyzed in a hospital bed.

(10) There shall be a nursing station or staff monitoring station from which all patients receiving dialysis can be continuously monitored during the course of treatment.

(11) Heating and ventilation systems shall be capable of maintaining adequate and comfortable temperatures.

(12) Each facility utilizing a central-batch delivery system must provide, either on the premises or through affiliation agreement or arrangement sufficient individual delivery systems for the treatment of any patient requiring special dialysis solutions.

(13) Minimum emergency preparedness requirements are as follows:

(a) Each facility shall develop, maintain, update, train, and exercise an emergency preparedness plan that protects all individuals in the event of an emergency, in accordance with the Oregon Fire Code, as defined by the Department of State Police, Office of State Fire Marshal in Oregon Administrative Rules chapter 837, division 40.

(b) Each facility shall conduct at least two emergency preparedness drills every year that document and demonstrate that employees have practiced their specific duties and assignments, as outlined in the emergency preparedness plan.

(c) The emergency preparedness plan shall include the contact information for the local emergency management office. Each facility shall have documentation that the local emergency management office has been contacted and that the facility has a list of local hazards identified in the county hazard vulnerability analysis.

(d) The emergency preparedness plan shall address all local hazards that have been identified by the local emergency management office. Potential hazards include, but are not limited to:

(A) Chemical emergencies;

(B) Dam failure;

(C) Earthquake;

(D) Fire;

(E) Flood;

(F) Hazardous material;

(G) Heat;

(H) High wind/Tornado;

(I) Landslide;

(J) Nuclear power plant emergency;

(K) Pandemic;

(L) Terrorism;

(M) Thunderstorms; and

(N) Tsunamis (for coastal areas only).

(e) The emergency preparedness plan shall address the availability of sufficient supplies for staff and patients to shelter in place or at an agreed upon alternative location for a minimum of two days, in coordination with local emergency management, under all of the following conditions:

(A) Extended power outage;

(B) Running water is unavailable;

(C) Replacement of food or supplies is unavailable;

(D) Staff members do not report to work as scheduled; and

(E) The patient is unable to return to pre-treatment shelter.

(f) The emergency preparedness plan shall address evacuation, including:

(A) Each individual staff member's duties while vacating the building, transporting, and housing residents;

(B) Method and source of transportation;

(C) Planned relocation sites;

(D) Method by which each patient shall be identified by name and facility of origin to people unknown to them;

(E) Method for tracking and reporting the physical location of specific patients until a different entity assumes responsibility for the patient; and

(F) Notification to the Division about the status of the evacuation.

(g) The emergency preparedness plan shall address the clinical and medical needs of the patients, including:

(A) Storage of and continued access to medical records necessary to obtain care and treatment of patients, and the use of paper forms to be used for the transfer of care or to maintain care on-site when electronic systems are not available;

(B) Continued access to pharmaceuticals, medical supplies and equipment, including during and after an evacuation; and

(C) Alternative staffing plans to meet the needs of the patients when scheduled staff members are unavailable. Alternative staffing plans may include, but are not limited to, on-call staff, the use of travelers, the use of management staff, or the use of other emergency personnel.

(h) The emergency preparedness plan shall be made available to the Division upon request and during licensing and certification surveys. Each plan shall be re-evaluated and revised if there is a significant change in the facility's physical environment, its staffing levels or the number of patients it serves and when otherwise necessary.

(i) The facility shall post a plan for evacuation of patients, staff and visitors in case of fire or other emergencies.

(j) Fire drills shall be completed at least once every six months. The facility shall document the participation of staff and patients in fire drills and vary the timing of fire drills during each calendar year to include all shifts. If a fire drill indicates procedural problems, records shall show what corrective action has been implemented.

(k) Employees shall receive initial and ongoing training in the use of fire extinguishers. The facility shall document this training. Documentation shall include verification that fire extinguishers are checked at least once every month to ensure they are operational.

(l) The staff must be familiar with the use of all equipment and procedures to handle medical and non-medical emergencies.

(m) Each patient shall be informed of his or her respective role during a medical and non-medical emergency, including what to do, where to go, and who to contact if a medical or non-medical emergency occurs.

(n) The facility must have a backup water treatment plan that can be demonstrated to meet Association for the Advancement of Medical Instrumentation (AAMI) standards.

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

Stat. Auth.: ORS 441.015 & 441.025

Stats. Implemented: ORS 441.025

Hist.: PH 7-2003, f. & cert. ef. 6-6-03; PH 13-2008, f. & cert. ef. 8-15-08; PH 4-2012, f. 3-30-12, cert. ef. 4-1-12; PH 3-2015, f. 1-16-15, cert. ef. 2-1-15

333-700-0130

Construction Requirements

(1) Applicability. This rule shall apply to:

(a) All outpatient renal dialysis facilities that apply for an initial license from the Division on or after February 1, 2015; and

(b) All outpatient renal dialysis facilities that propose a major alteration and submit plans to the Division on or after February 1, 2015. In the event of a major alteration, this rule shall apply only to the areas to be altered and not to other areas of the facility.

(2) All facilities subject to this rule must comply with all applicable Oregon state building codes, occupancy Business Group B, Ambulatory Care Facility.

(3) Minimum facility requirements are as follows:

(a) Facility Location & Accessibility.

(A) The facility shall be located to allow for prompt access by ambulances and buses, including wheelchair-lift equipped vehicles, without the need for patients to traverse across vehicular pathways or parking areas. If this requirement cannot be satisfied, the project sponsor shall propose an alternate plan showing that patient safety shall not be compromised;

(B) The dialysis unit shall be located in a separate building or section of the facility that is free of traffic by non-related persons;

(C) Accessible parking shall be provided for patients and visitors that complies with the Oregon Structural Specialty Code;

(D) Building access and all patient use areas shall be designed and constructed in accordance with chapter 11 of the Oregon Structural Specialty Code for accessibility; and

(E) Corridors, doorways, and stairways serving the unit shall be sized to allow at least one exit route for emergency medical personnel to transport a patient by stretcher to an ambulance.

(b) Treatment Areas.

(A) Dialysis stations must meet the following minimum criteria:

(i) Individual patient treatment areas shall be at least 80 square feet in size with a minimum of 4 feet 0 inches of open space available at the foot of the recliner or hospital bed;

(ii) Hand washing stations that are readily available for staff use shall be provided within the treatment area. At a minimum, one hand washing station shall be provided for every four patients and appropriately located to facilitate hand washing between each patient contact;

(B) Patient care staff station(s) shall be located within the dialysis treatment area. Each station shall be no higher than 3 feet 8 inches and allow visual observation of all patients; and

(C) To prevent contact transmission of infectious materials, the treatment area must include an Isolation Room that meets the following minimum requirements:

(i) Provides a door and walls that go to the floor, but not necessarily the ceiling, and allows for visual monitoring of the patient;

(ii) Accommodates only one patient; and

(iii) Contains a hand washing station located in each patient room.

(4) To ensure adequate patient support, the facility shall provide the following:

(a) Adequate waiting space with a minimum seating capacity of one seat or wheelchair space for every two patient stations;

(b) An accessible toilet for patients that is convenient to the waiting room and includes an emergency nurse call annunciated to the patient care staff station;

(c) Dedicated space for a patient scale; and

(d) Dedicated space for wheelchair storage.

(5) To ensure adequate general support areas, the facility shall provide the following:

(a) Clean supply room with space for bulk storage of necessary medical supplies. If the room is used to prepare patient care supplies, it must contain a hand washing station and work counter;

(b) Soiled holding room or area for medical waste storage that includes a mechanism to sanitize hands;

(c) Secure medications storage that includes a dedicated refrigerator and hand washing station;

(d) Emergency cart and equipment storage located close to the patient treatment area, readily accessible by staff, and not located in an exit path;

(e) Access to a janitor closet with a floor sink or service sink and adequate space for cleaning supplies within or close to the unit;

(f) Adequate equipment storage and service room or area. Space allocated for bio-medical interventions shall not be in proximity to patients while they are undergoing dialysis;

(g) When dialyzer reprocessing is practiced, space for reuse equipment, work counter and hand washing station. Additional sinks shall be provided as defined by the facility's reprocessing program;

(h) Solution mixing and preparation area for central concentrate delivery system or individual preparation, sized to meet the facility's needs;

(i) Dedicated space for central or individual water treatment equipment with waste drain sized to meet equipment requirements;

(j) Dedicated staff toilet that includes a hand washing station within or near the treatment area;

(k) If a home training program is offered, the facility shall provide separate, 120 square foot training room(s) each with a hand washing station, counter space and separate drain for fluid disposal that is constructed to prevent cross-contamination of the hand washing station. In addition, at least one convenient program office and general support space shall be provided to meet program needs, and an emergency nurse call, annunciated at the patient care staff station, or the home training office, shall be provided in each home training room;

(l) Staff office; and

(m) Consultation space available for private conferences with patients and their families.

(6) Minimum facility finish requirements are as follows:

(a) Wall materials in all patient treatment areas shall be cleanable;

(b) Water treatment area walls and floors shall be designed and constructed to prevent water from migrating to other areas during normal operating conditions; and

(c) All soiled holding room, medical waste storage area, and janitor closet flooring shall be seamless with an integral coved wall base.

(7) Minimum maintenance and housekeeping requirements are as follows:

(a) All building components and equipment shall be maintained in good repair and free from obvious hazards to patients and staff; and

(b) All dialysis equipment shall be maintained in accordance with the manufacturer's recommendations, and each dialysis machine shall be cleaned after each use in accordance with the facility's written policies and procedures.

(8) Minimum mechanical and plumbing requirements are as follows:

(a) All heating, ventilation and cooling systems shall comply with the Oregon Mechanical Specialty Code and shall be maintained in full compliance;

(b) Hot water used for hand washing shall have a water temperature between 105 and 120 degrees Fahrenheit; and

(c) All water treatment and dialysate concentrate equipment and distribution systems shall be in compliance with Association for the Advancement of Medical Instrumentation standards at all times. Floor drain(s) shall also be provided in these area(s):

(A) No dead end loops or unused branches are allowed in the purified water distribution system;

(B) Product water distribution system shall be constructed of materials that do not contribute chemicals, such as aluminum, copper, lead, and zinc or bacterial contaminants to the purified water;

(C) When used, storage tanks shall have a conical or bowl shaped base and shall drain from the lowest point of the base;

(d) If piped-in oxygen or vacuum systems are included, they shall be installed in accordance with chapter 4 of the National Fire Protection Association, NFPA 99 and the Oregon Plumbing Specialty Code;

(e) Dialyzer reuse space, if provided, shall not recirculate air, and shall be provided with an exhaust to the outside as required for the reprocessing methods utilized;

(f) To minimize patient discomfort, heating, cooling and ventilation systems shall be designed to minimize drafts and temperature changes at treatment stations; and

(g) Hand washing stations shall be trimmed with fittings that are operable without use of the hands. Note: wrist blade controls are not considered to be operable without the use of hands.

(9) Minimum electrical requirements are as follows:

(a) All electrical installations shall comply with the Oregon Electrical Specialty Code and shall be maintained in full compliance;

(b) Emergency power for evacuation lighting, the fire alarm system and the dedicated receptacle for the emergency cart shall be provided. Lighting levels at patient stations, staff support stations and paths of egress shall be five-foot candles minimum for a minimum of 90 minutes;

(c) Provisions shall be made to allow connection to an alternate power source. The point of connection shall be immediately accessible to the exterior. The alternate power source shall provide on-going power for the lighting required in subsection (9)(b) of this rule and continued provision of dialysis services;

(d) An independent ground fault interrupter shall be provided for each dialysis machine; and

(e) Hospital-grade electrical outlets shall be provided for all dialysis equipment connections.

(10) Minimum structural, Fire & Life Safety Code and maintenance requirements are as follows:

(a) The facility shall be constructed to comply with the Oregon Structural Specialty Code and shall be maintained in full compliance;

(b) All dialysis treatment spaces shall be located on the ground floor unless the space to be licensed qualifies as a "Business Group B, Ambulatory Care Facility" occupancy class under the Oregon Structural Specialty Code and, if certified by the Centers for Medicare and Medicaid, is certified as an "Ambulatory Health Care Occupancy" under the National Fire Protection Association, NFPA 101 Life Safety Code;

(c) The facility shall not be located adjacent to a "hazardous occupancy" as defined under the Oregon Structural Specialty Code unless the space to be licensed qualifies as a "Business Group B, Ambulatory Care Facility" occupancy class under the Oregon Structural Specialty Code and, if certified by the Centers for Medicare and Medicaid, is certified as an "Ambulatory Health Care Occupancy" under the National Fire Protection Association, NFPA 101 Life Safety Code; and

(d) All interior and exterior materials and surfaces and all equipment necessary for the health, safety and comfort of patients shall be kept clean and in good repair. Examples include, but are not limited to: floors, walls, roofs, ceiling, windows, furnishings and equipment.

Stat. Auth.: ORS 441.015, 441.025 & 441.060
Stats. Implemented: ORS 441.025 & 441.060
Hist.: PH 7-2003, f. & cert. ef. 6-6-03; PH 13-2005, f. 8-10-05, cert. ef. 8-15-05; PH 4-2012, f. 3-30-12, cert. ef. 4-1-12; PH 3-2015, f. 1-16-15, cert. ef. 2-1-15

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Rule Caption: Medical Marijuana Dispensary Program Rule Revisions
Adm. Order No.: PH 4-2015
Filed with Sec. of State: 1-28-2015
Certified to be Effective: 1-28-15
Notice Publication Date: 12-1-2014
Rules Amended: 333-008-1010, 333-008-1020, 333-008-1040, 333-008-1050, 333-008-1060, 333-008-1070, 333-008-1080, 333-008-1090, 333-008-1100, 333-008-1110, 333-008-1120, 333-008-1150, 333-008-1160, 333-008-1170, 333-008-1180, 333-008-1190, 333-008-1200, 333-008-1210, 333-008-1220, 333-008-1225, 333-008-1230, 333-008-1260, 333-008-1275, 333-008-1280
Subject: The Oregon Health Authority is permanently amending administrative rules in chapter 333, division 8 for the Medical Marijuana Dispensary Program to make a number of clarifications and housekeeping changes; introduce two new forms for attesting that no schools are within 1,000 feet of a proposed dispensary, and that a provisionally approved dispensary is fully compliant; add a fee for changing Person Responsible for Facility (PRF) to cover background check costs; and make minor changes to the approval process. The amendments are based on Rules Advisory Committee, staff, and participant feedback, and are intended to reduce confusion and streamline agency processes.
Rules Coordinator: Brittany Sande—(971) 673-1291

333-008-1010
Definitions

For the purposes of OAR 333-008-1000 through 333-008-1400 the following definitions apply:

(1) "Agricultural land" means land that is located within an exclusive farm use zone as that term is described in ORS 215.203.

(2) "Attended primarily by minors" means that a majority of the students are minors.

(3) "Authority" means the Oregon Health Authority.

(4) "Batch" means a quantity of usable marijuana of a single strain or a number of immature plants transferred at one time to a facility by a person authorized by a patient to transfer usable marijuana to a registered facility.

(5) "Business day" means Monday through Friday excluding legal holidays.

(6) "Career school" means any private proprietary professional, technical, business or other school instruction, organization or person that offers any instruction or training for the purpose or purported purpose of instructing, training or preparing persons for any profession at a physical location attended primarily by minors.

(7) "Conviction" means an adjudication of guilt upon a verdict or finding entered in a criminal proceeding in a court of competent jurisdiction.

(8)(a) "Designated primary caregiver" means an individual 18 years of age or older who has significant responsibility for managing the well-being of a person who has been diagnosed with a debilitating medical condition and who is designated as such on that person's application for a registry identification card or in other written notification to the Authority.

(b) "Designated primary caregiver" does not include the person's attending physician.

(9) "Domicile" means the place of abode of an individual where the person intends to remain and to which, if absent, the individual intends to return.

(10) "Edible" means a product made with marijuana that is intended for ingestion.

(11) "Elementary school" means a learning institution containing any combination of grades Kindergarten through 8 or age level equivalent.

(12)(a) "Employee" means any person, including aliens, employed for remuneration or under any contract of hire, written or oral, express or implied, by an employer.

(b) "Employee" does not include a person who volunteers or donates services performed for no remuneration or without expectation or contemplation of remuneration as the adequate consideration for the services performed for a religious or charitable institution or a governmental entity.

(13) "Facility" means a medical marijuana facility.

(14) "Farm use" has the meaning given that term in ORS 215.203.

(15) "Finished product" means a usable marijuana product including but not limited to edible products, ointments, concentrates and tinctures. A finished product does not mean dried marijuana flowers.

(16) "Grower" has the same meaning as "person responsible for a marijuana grow site."

(17) "Grow site" means a specific location registered by the Authority and used by the grower to produce marijuana for medical use by a specific patient.

(18)(a) "Immature marijuana plant or immature plant" means a marijuana plant that has no flowers, is less than 12 inches in height, and less than 12 inches in diameter.

(b) A seedling or start that does not meet all three criteria in subsection (18)(a) is a mature plant.

(19) "Macroscopic screening" means visual observation without the aid of magnifying lens(es).

(20) "Microscopic screening" means visual observation with a minimum magnification of 40x.

(21) "Minor" means an individual under the age of 18.

(22) "Oregon Medical Marijuana Program" or "OMMP" means the program operated and administered by the Authority that registers patients, designated primary caregivers, and growers.

(23) "Patient" has the same meaning as "registry identification cardholder."

(24) "Person" means an individual.

(25) "Person responsible for a marijuana grow site" means a person who has been selected by a patient to produce medical marijuana for the patient, and who has been registered by the Authority for this purpose and has the same meaning as "grower".

(26) "Person responsible for a medical marijuana facility" or "PRF" means an individual who owns, operates, or otherwise has legal responsibility for a facility and who meets the qualifications established in these rules and has been approved by the Authority.

(27) "Pesticide" means any substance or mixture of substances, intended to prevent, destroy, repel, or mitigate any pest.

(28) "Premises" means a location registered by the Authority under these rules and includes all areas at the location that are used in the business operated at the location, including offices, kitchens, rest rooms and storerooms, including all public and private areas where individuals are permitted to be present.

(29) "Random sample" means an amount of usable marijuana taken from a batch in which different fractions of the usable marijuana have an equal probability of being represented.

(30) "Registry identification cardholder" means a person who has been diagnosed by an attending physician with a debilitating medical condition and for whom the use of medical marijuana may mitigate the symptoms or effects of the person's debilitating medical condition, and who has been issued a registry identification card by the Authority.

(31) "Remuneration" means compensation resulting from the employer-employee relationship, including wages, salaries, incentive pay, sick pay, compensatory pay, bonuses, commissions, stand-by pay, and tips.

(32) "Resident" means an individual who has a domicile within this state.

(33) "Restricted area" means a secure area where usable marijuana and immature plants are present.

(34) "Safe" means:

(a) A metal receptacle with a locking mechanism capable of storing all usable marijuana at a registered facility that:

(A) Is rendered immobile by being securely anchored to a permanent structure of the building; or

(B) Weighs more than 750 pounds.

(b) A vault; or

(c) A refrigerator or freezer capable of being locked for storing edibles or other finished products that require cold storage that:

(A) Is rendered immobile by being securely anchored to a permanent structure of the building; or

(B) Weighs more than 750 pounds.

(35) "Secondary school" means a learning institution containing any combination of grades 9 through 12 or age level equivalent and includes those institutions that provide junior high schools which include 9th grade.

(36) "Secure area" means a room:

(a) With doors that are kept locked and closed at all times except when the doors are in use; and

(b) Where access is only permitted as authorized in these rules.

(37) "Single strain" means a pure breed or hybrid variety of Cannabis reflecting similar or identical combinations of properties such as appearance, taste, color, smell, cannabinoid profile, and potency.

(38) "These rules" means OAR 333-008-1000 through 333-008-1400.

(39) "Usable marijuana" has the meaning given that term is ORS 475.302 and includes "finished product".

(40) "Valid testing methodology" means a scientifically valid testing methodology described in a published national or international reference and validated by the testing laboratory.

(41) "Vault" means an enclosed area that is constructed of steel-reinforced or block concrete and has a door that contains a multiple-position combination lock or the equivalent, a relocking device or equivalent, and a steel plate with a thickness of at least one-half inch.

Stat. Auth.: ORS 475.314 & 475.338
Stats. Implemented: ORS 475.314
Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14; PH 4-2015, f. & cert. ef. 1-28-15

333-008-1020
Application for Medical Marijuana Facility Registration

(1) A PRF wishing to apply to register a facility must provide to the Authority:

(a) An application on a form prescribed by the Authority;

(b) The applicable fee as specified in OAR 333-008-1030;

(c) Documentation that demonstrates the facility is registered as a business or has filed an application to register as a business with the Office of the Secretary of State;

(d) Documentation that shows the current zoning of the location of the proposed facility;

(e) Documentation, on a form prescribed by the Authority, with the applicant's affirmation that the proposed facility is not within 1,000 feet of

the real property comprising a public or private elementary, secondary or career school;

(f) Information and fingerprints required for a criminal background check in accordance with OAR 333-008-1130; and

(g) Proof that the PRF resides in Oregon in accordance with OAR 333-008-1120(1)(a).

(2) An application for the registration of a facility must be submitted by a PRF electronically via the Authority's website, http://mmj.oregon.gov. The documentation required in subsections (1)(c) through (g) of this rule may be submitted electronically to the Authority or may be mailed. If documentation is mailed, it must be postmarked within five calendar days of the date the application was submitted electronically to the Authority or the application will be considered to be incomplete. If documentation is submitted electronically it must be received by the Authority by 5 p.m. Pacific Standard Time (PST) within five calendar days of the date the application was submitted electronically to the Authority or the application will be considered incomplete. Applicable fees must be paid online at the time of application.

(3) Applications will be reviewed in the order they are received by the Authority. An application is considered received as of the date and time that payment of fees is authorized by the entity that issued the credit or debit card used by the PRF to pay the fees.

(4) The Authority shall return an incomplete application to the person that submitted the application. A person may re-submit an application that was returned as incomplete at any time. An application that is returned as incomplete must be treated by the Authority as if it was never received. An application is considered incomplete if:

(a) An application does not contain all the requested information in the form;

(b) The applicant does not submit the required documentation described in subsections (1)(c) through (g) of this rule; or

(c) The application and registration fees are not paid.

(5) A PRF who wishes to register more than one location must submit a separate application, registration fees, and all documentation described in section (1) of this rule for each location.

(6) At the time of application the PRF will be asked, by the Authority, to sign an authorization waiving the confidentiality of the location of the facility and permitting the Authority to make the location and name of the facility public if the facility is registered.

Stat. Auth.: ORS 475.314 & 475.338
Stats. Implemented: ORS 475.314
Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14; PH 4-2015, f. & cert. ef. 1-28-15

333-008-1040
Application Review

(1) Once the Authority has determined that an application is complete it will review an application to the extent necessary to determine compliance with ORS 475.314 and these rules.

(2) The Authority may, in its discretion, prior to acting on an application:

(a) Contact the applicant and request additional documentation or information;

(b) Inspect the premises of the proposed facility; and

(c) Verify any information submitted by the applicant.

(3) Prior to making a decision whether to approve or deny an application the Authority must:

(a) Ensure that the criminal background check process has been completed and review the results;

(b) Contact the OMMP and obtain documentation of whether the location of the facility is the same location as a registered grow site under OAR 333-008-0025;

(c) Review documentation submitted by the applicant to determine, based on the information provided by the applicant, whether the proposed facility is located within 1,000 feet of the real property comprising a public or private elementary, secondary or career school;

(d) Review the list of registered facilities to determine whether any registered facilities are within 1,000 feet of the proposed facility; and

(e) Verify that the business that operates the facility is registered with the Office of the Secretary of State.

(4) If during the review process the Authority determines that the application or supporting documentation contains intentionally false or misleading information the Authority must return the application to the applicant as incomplete.

(5) If the proposed facility is in compliance with ORS 475.314(3)(a) through (d) and the PRF has passed the criminal background check and resides in Oregon, the Authority must notify the applicant in writing that the dispensary and PRF have met the initial criteria for registration. Within 60 days of the Authority's notification the applicant must submit a form, prescribed by the Authority, that the proposed facility and PRF are in compliance with these rules, including but not limited to:

(a) Installation of a security system, including a video surveillance system, and alarm system that are all operational, and installation of a safe in accordance with OAR 333-008-1140 through 333-008-1180;

(b) Having policies and procedures as required by OAR 333-008-1200 and training for employees on the policies and procedures;

(c) Identification of at least one laboratory that will perform the testing required in OAR 333-008-1190;

(d) Having a fully operational electronic data management system in accordance with OAR 333-008-1210; and

(e) Having packaging and labeling that complies with OAR 333-008-1220 and 333-008-1225.

(6) If the Authority does not receive the form described in section (5) of this rule within 60 days of the applicant being notified that the dispensary and PRF met initial criteria for registration, the applicant's application will be returned as incomplete.

Stat. Auth.: ORS 475.314 & 475.338
Stats. Implemented: ORS 475.314
Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14; PH 4-2015, f. & cert. ef. 1-28-15

333-008-1050
Approval of Application

(1) If the Authority receives the form required to be submitted under OAR 333-008-1040(5) the Authority must perform a site visit within 30 days of receiving the form to determine whether the PRF and facility are in compliance with these rules.

(2) If, after the site visit the Authority determines that the facility is in compliance with these rules the Authority must provide the applicant with proof of registration that includes a unique registration number, and notify the PRF in writing that the facility may operate.

(3) If, after the site visit the Authority determines that the facility is not in compliance with these rules the Authority may:

(a) Give the PRF 10 business days to come into compliance;

(b) Propose to deny the facility's registration in accordance with OAR 333-008-1275(2); or

(c) Consider the application to be incomplete.

(4) A facility that has been registered must display proof of registration in a prominent place inside the facility so that proof of registration is easily visible to individuals authorized to transfer usable marijuana and immature plants to the facility and individuals who are authorized to receive a transfer of usable marijuana and immature plants from the facility at all times when usable marijuana or immature plants are being transferred.

(5) A registered facility may not use the Authority or the OMMP name or logo except to the extent that information is contained on the proof of registration on any signs at the facility, on its website, or in any advertising or social media.

(6) A facility's registration is only valid for the location indicated on the proof of registration and is only issued to the PRF that is listed on the application or subsequently approved by the Authority.

(7) A facility's registration may not be transferred to another location.

Stat. Auth.: ORS 475.314 & 475.338
Stats. Implemented: ORS 475.314
Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14; PH 4-2015, f. & cert. ef. 1-28-15

333-008-1060
Denial of Application

(1) The Authority must deny an application if:

(a) An application, supporting documentation provided by the PRF, or other information obtained by the Authority shows that the qualifications for a facility in ORS 475.314 or these rules have not been met; or

(b) The PRF has been:

(A) Convicted for the manufacture or delivery of a controlled substance in Schedule I or Schedule II within five years from the date the application was received by the Authority; or

(B) Convicted more than once for the manufacture or delivery of a controlled substance in Schedule I or Schedule II; or

(C) Prohibited by a court from participating in the OMMP.

(2) If the PRF that is identified in the application is not qualified to be a PRF, the Authority will permit a change of PRF form to be submitted in accordance with OAR 333-008-1120, along with the applicable criminal

background check fee. If the proposed PRF is not qualified to be a PRF, the Authority must deny the application in accordance with section (1) of this rule.

(3) If the Authority intends to deny an application for registration it must issue a Notice of Proposed Denial in accordance with ORS 183.411 through 183.470.

Stat. Auth.: ORS 475.314 & 475.338
Stats. Implemented: ORS 475.314
Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14; PH 4-2015, f. & cert. ef. 1-28-15

333-008-1070
Expiration and Renewal of Registration

(1) A facility's registration expires one year following the date of application approval.

(2) If a PRF wishes to renew the facility's registration, the person must submit to the Authority within 60 calendar days of the registration's expiration:

(a) An application renewal form prescribed by the Authority;

(b) The required renewal fees;

(c) Forms required for the Authority to do a criminal background check on the PRF.

(3) A PRF that does not submit timely renewal documentation in accordance with section (2) of this rule may not operate the facility if the previous registration expires prior to the Authority issuing a renewed registration. The facility will remain registered until a renewal is either issued or denied, but the facility may not operate with an expired registration.

(4) If a PRF does not submit a renewal form and the required renewal fees prior to the registration's expiration, the registration is expired and is no longer valid, and the PRF may reapply for registration.

Stat. Auth.: ORS 475.314 & 475.338
Stats. Implemented: ORS 475.314
Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14; PH 4-2015, f. & cert. ef. 1-28-15

333-008-1080
Notification of Changes

(1) A PRF must notify the Authority within 10 calendar days of any of the following:

(a) The PRF's conviction for the manufacture or delivery of a controlled substance in Schedule I or Schedule II;

(b) The issuance of a court order that prohibits the PRF from participating in the OMMP;

(c) A decision to change the PRF;

(d) A decision to permanently close the facility at that location;

(e) A decision to move to a new location;

(f) A change in ownership;

(g) A change in the person's residency;

(h) The location of a public or private elementary, secondary or career school attended primarily by minors within 1,000 feet of the facility;

(i) Any structural changes within the facility that will result in a change to the secure or restricted areas, or entrances or exits to the facility; and

(j) The theft of usable marijuana or immature plants.

(2) The notification required in section (1) of this rule must include a description of what has changed or the event and any documentation necessary for the Authority to determine whether the facility is still in compliance with ORS 474.314 and these rules including but not limited to, as applicable:

(a) A copy of the criminal judgment or order;

(b) A copy of the court order prohibiting the PRF from participating in the OMMP;

(c) The location of the school that has been identified as being within 1,000 feet of the facility;

(d) The information required in OAR 333-008-1120 and 333-008-1130 to determine the residency of the new PRF and to perform the criminal background check; or

(e) A copy of the police report documenting that the theft of usable marijuana or immature plants was reported to law enforcement.

(3) Failure of the PRF to notify the Authority in accordance with this rule may result in revocation of a facility's registration.

Stat. Auth.: ORS 475.314 & 475.338
Stats. Implemented: ORS 475.314
Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14; PH 4-2015, f. & cert. ef. 1-28-15

333-008-1090
Required Closures

A facility may not receive transfers of usable marijuana or immature plants or transfer usable marijuana or immature plants if:

(1) The PRF is convicted for the manufacture or delivery of a controlled substance in Schedule I or Schedule II;

(2) The PRF changes and the Authority has not:

(a) Performed a criminal background check on the proposed PRF in accordance with OAR 333-008-1130;

(b) Determined whether the individual is a resident of Oregon; and

(c) Provided written approval that the new PRF meets the requirements of ORS 475.314.

(3) The PRF has been ordered by the court not to participate in the OMMP; or

(4) A public or private elementary, secondary or career school attended primarily by minors is found to be within 1,000 feet of the registered facility.

Stat. Auth.: ORS 475.314 & 475.338
Stats. Implemented: ORS 475.314
Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14; PH 4-2015, f. & cert. ef. 1-28-15

333-008-1100
Business Qualifications for Medical Marijuana Facility Registration

A facility must maintain a current registration as a business with the Office of the Secretary of State in order to receive or maintain registration.

Stat. Auth.: ORS 475.314 & 475.338
Stats. Implemented: ORS 475.314
Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14; PH 4-2015, f. & cert. ef. 1-28-15

333-008-1110
Locations of Medical Marijuana Facilities

(1) In order to be registered a facility must be located in an area that is zoned by the local governing agency for commercial, industrial or mixed use or as agricultural land.

(2) Registration by the Authority is not a guarantee that a facility is permitted to operate under applicable land use or other local government laws where the facility is located.

(3) A facility may not be located:

(a) At the same address as a registered marijuana grow site;

(b) Within 1,000 feet of the real property comprising a public or private elementary, secondary or career school attended primarily by minors; or

(c) Within 1,000 feet of another medical marijuana facility.

(4) For purposes of implementing ORS 475.314(3)(c), the Authority will consider a location to be a school if it has at least the following characteristics:

(a) Is a public or private elementary, secondary or career school as those terms are defined OAR 333-008-1010;

(b) There is a building or physical space where students gather together for education purposes on a regular basis;

(c) A curriculum is provided;

(d) Attendance at the location meets Oregon's mandatory attendance law, ORS 339.010 or an exemption under ORS 339.030(1)(a); and

(e) Faculty is present to teach or guide student education.

(5) For purposes of determining the distance between a facility and a school referenced in subsection (3)(b) of this rule, "within 1,000 feet" means a straight line measurement in a radius extending for 1,000 feet or less in any direction from the closest point anywhere on the boundary line of the real property comprising an existing public or private elementary, secondary or career school to the closest point of the premises of a facility. If any portion of the premises of a proposed or registered facility is within 1,000 feet of a public or private elementary, secondary or career school it may not be registered.

(6) For purposes of determining the distance between a facility and another registered facility "within 1,000 feet" means a straight line measurement in a radius extending for 1,000 feet or less in every direction from the closest point anywhere on the premises of a registered facility to the closest point anywhere on the premises of a proposed facility. If any portion of the premises of a proposed facility is within 1,000 feet of a registered facility it may not be registered.

(7) In order to be registered a facility must operate at a particular location as specified in the application and may not be mobile.

Stat. Auth.: ORS 475.314 & 475.338
Stats. Implemented: ORS 475.314
Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14; PH 4-2015, f. & cert. ef. 1-28-15

333-008-1120
Person Responsible for a Medical Marijuana Facility (PRF)

(1) A PRF must:

(a) Be a resident of Oregon. Residency may be proved by submitting to the Authority:

(A) A valid Oregon driver's license, a valid Oregon identification card that includes a photograph of the person, a valid passport, or a valid military identification card that includes a photograph of the person; and

(B) Copies of utility bills, rental receipts, mortgage statements or similar documents that contain the name and address of the domicile of the PRF.

(b) Have legal authority to act on behalf of the facility; and

(c) Be responsible for ensuring the facility complies with applicable laws, if registered.

(2) A PRF may not:

(a) Have been convicted in any state for the manufacture or delivery of a controlled substance in Schedule I or Schedule II within five years from the date of application; or

(b) Have been convicted more than once in any state for the manufacture or delivery of a controlled substance in Schedule I or Schedule II.

(3) A PRF is accountable for any intentional or unintentional action of its owners, officers, managers, employees or agents, with or without the knowledge of the PRF, who violate ORS 475.314 or these rules.

(4) If a PRF no longer meets the criteria of a PRF the Authority shall inform the PRF and the owner of the facility if different that:

(a) The PRF may no longer serve in that capacity;

(b) In order to remain registered, a change of PRF form must be submitted along with a criminal background check fee of $35; and

(c) The facility may not operate until the Authority has approved a PRF.

(5) If the Authority is notified that a change of PRF is needed, the current PRF is no longer able to serve as the PRF, or the PRF has been or will be removed by the owner of a facility, the owner of the facility must submit a change of PRF form to the Authority within 10 business days of the notification or the Authority will begin proceedings to revoke the registration of the facility.

(6) If the PRF of record for the facility is no longer serving in that capacity the facility may not operate until a new PRF has been approved by the Authority.

Stat. Auth.: ORS 475.314 & 475.338
Stats. Implemented: ORS 475.314
Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14; PH 4-2015, f. & cert. ef. 1-28-15

333-008-1150
Alarm System for Registered Facilities

(1) Prior to being registered a PRF must ensure that the facility has a fully operational security alarm system, installed by an alarm installation company, on all facility entry or exit points and perimeter windows.

(2) The security alarm system for the registered facility must:

(a) Be able to detect movement inside the registered facility;

(b) Be programmed to notify a security company that will notify the PRF or his or her designee in the event of a breach; and

(c) Have at least two operational "panic buttons" located inside the registered facility that are linked with the alarm system that notifies a security company.

Stat. Auth.: ORS 475.314 & 475.338
Stats. Implemented: ORS 475.314
Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14; PH 4-2015, f. & cert. ef. 1-28-15

333-008-1160
Video Surveillance Equipment for Registered Facilities

(1) Prior to being registered a PRF must ensure that a fully operational video surveillance recording system is installed in the facility.

(2) Video surveillance equipment must, at a minimum:

(a) Consist of:

(A) Digital or network video recorders;

(B) Cameras capable of meeting the requirements of OAR 333-008-1170 and this rule;

(C) Video monitors;

(D) Digital archiving devices; and

(E) A color printer capable of producing still photos.

(b) Be equipped with a failure notification system that provides prompt notification to the PRF or employees of any prolonged surveillance interruption or failure; and

(c) Have sufficient battery backup to support a minimum of one hour of recording time in the event of a power outage.

(3) All video surveillance equipment and recordings must be stored in a locked secure area that is accessible only to the PRF, authorized employees of the registered facility and the Authority.

Stat. Auth.: ORS 475.314 & 475.338
Stats. Implemented: ORS 475.314
Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14; PH 4-2015, f. & cert. ef. 1-28-15

333-008-1170
Required Camera Coverage and Camera Placement for Registered Facilities

(1) Prior to being registered a PRF must ensure that the facility has camera coverage for:

(a) All secure and restricted access areas described in OAR 333-008-1140;

(b) All point of sale areas;

(c) All points of entry to or exit from secure and restricted access areas; and

(d) All points of entry to or exit from the registered facility.

(2) A PRF must ensure that cameras are placed so that they capture clear and certain images of any individual and activity occurring:

(a) Within 15 feet both inside and outside of all points of entry to and exit from the registered facility; and

(b) Anywhere within secure or restricted areas on the facility premises.

Stat. Auth.: ORS 475.314 & 475.338
Stats. Implemented: ORS 475.314
Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14; PH 4-2015, f. & cert. ef. 1-28-15

333-008-1180
Video Recording Requirements for Registered Facilities

(1) A PRF must ensure that all cameras are continuously monitored by motion sensor video equipment or similar technology 24 hours a day when usable marijuana or immature plants are on the premises of the facility.

(2) A PRF must ensure that:

(a) All surveillance recordings are kept for a minimum of 30 calendar days and are in a format that can be easily accessed for viewing;

(b) The surveillance system has the capability to produce a color still photograph from any camera image;

(c) The date and time is embedded on all surveillance recordings without significantly obscuring the picture;

(d) Video recordings are archived in a format that ensures authentication of the recording as a legitimately-captured video and guarantees that no alterations of the recorded image has taken place; and

(e) Video surveillance records and recordings are available upon request to the Authority for the purpose of ensuring compliance with ORS 475.314 and these rules.

Stat. Auth.: ORS 475.314 & 475.338
Stats. Implemented: ORS 475.314
Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14; PH 4-2015, f. & cert. ef. 1-28-15

333-008-1190
Testing

(1) Prior to being registered a PRF must have documentation that identifies at least one laboratory that will do the testing in accordance with these rules and identify who will do the testing for immature plants.

(2) A PRF must ensure that usable marijuana and immature plants are tested for pesticides, mold and mildew in accordance with this rule prior to the usable marijuana or immature plants being transferred to a patient or a designated primary caregiver. A PRF may accept test results from a grower or other individual for flowers or other usable plant material if:

(a) The grower or other individual provides a copy of the test results;

(b) The PRF can demonstrate that the grower or other individual took random samples from the batch to be tested; and

(c) The PRF can demonstrate that the batch from where samples were taken were sealed and not tampered with from the time samples for testing were taken and when they were delivered to the facility.

(3) Upon usable marijuana being transferred to a registered facility in accordance with OAR 333-008-1230, the PRF must ensure the usable marijuana is segregated into batches, that each batch is placed in an individual container or bag, and that a label is attached to the container or bag that includes at least the following information:

(a) A unique identifier;

(b) The name of the person who transferred it; and

(c) The date the usable marijuana was received by the registered facility.

(4) Sampling. A PRF must ensure that random samples from each batch are taken in an amount necessary to conduct the applicable test, that the samples are labeled with the batch's unique identifier, and submitted for testing.

(5) Testing. A PRF must ensure that each sample is tested for pesticides, mold, and mildew and for an analysis of the levels of tetrahydrocannabinol (THC) and cannabidiol (CBD).

(a) Immature Plants. An immature plant may be tested for pesticides, mold or mildew by conducting a macroscopic or microscopic screening to determine if the plant has visible pesticide residue, mold or mildew. Testing for mold and mildew on immature plants must be done at least every 30 calendar days.

(b) Flowers or other usable marijuana plant material. Usable marijuana in the form of flowers or other plant material must be:

(A) Tested for pesticides, mold and mildew using valid testing methodologies and macroscopic or microscopic screening may not be used;

(B) Tested for pesticides by testing for the following analytes:

(i) Chlorinated Hydrocarbons;

(ii) Organophosphates;

(iii) Carbamates; and

(iv) Pyrethroids; and

(C) Analyzed, using valid testing methodologies, to determine the levels of THC and CBD.

(c) Finished Products. If a facility receives a transfer of a pre-packaged finished product the facility may, in lieu of testing the finished product, obtain from the individual who transferred the finished product, lab results that show the usable marijuana in the finished product was tested in accordance with this rule, and that the finished product was tested for levels of THC and CBD.

(6) Laboratory Requirements. A PRF must ensure that all testing, except for testing of immature plants, is done by a third party or in-house laboratory that:

(a) Uses valid testing methodologies; and

(b) Has a Quality System for testing of pesticides, mold and mildew that is compliant with the:

(A) 2005 International Organization for Standardization 17025 Standard; or

(B) 2009 National Environmental Laboratory Accreditation Conference Institute TNI Standards.

(7) Macroscopic or microscopic screening of immature plants must be conducted by a person who has a minimum of a bachelor's degree in horticulture, botany, plant pathology, or microbiology but is not required to be done by a laboratory.

(8) Testing Results. A laboratory must provide testing results to the PRF signed by an official of the laboratory who can attest to the accuracy of the results, and that includes the levels of pesticides, mold or mildew detected and the levels of THC and CBD.

(a) If an immature plant has visible pesticide residue, mold or mildew it must be deemed to test positive and must be returned to the person who transferred the immature plant to the registered facility.

(b) A sample of usable marijuana shall be deemed to test positive for mold and mildew if the sample has levels that exceed the maximum acceptable counts in **Appendix A**.

(c) A sample of usable marijuana shall be deemed to test positive for pesticides with a detection of more than 0.1 parts per million of any pesticide.

(9) If an immature plant or sample of usable marijuana tests positive for pesticides, mold or mildew based on the standards in this rule the PRF must ensure the entire batch from which the sample was taken is returned to the person who transferred the immature plant or usable marijuana to the registered facility and must document how many or how much was returned, to whom, and the date it was returned.

(10) A registered facility may perform its own testing as long as the testing complies with this rule.

(11) The PRF may permit laboratory personnel or other persons authorized to do testing access to secure or restricted access areas of the registered facility where usable marijuana or immature plants are stored. The PRF must log the date and time in and out of all such persons.

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

Stat. Auth.: ORS 475.314 & 475.338

Stats. Implemented: ORS 475.314

Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 8-2014(Temp), f. 2-19-14, cert. ef. 2-21-13 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14; PH 4-2015, f. & cert. ef. 1-28-15

333-008-1200
Operation of Registered Facilities

(1) A PRF must ensure that a registered facility does not permit:

(a) A minor to be present in any area of a registered facility where usable marijuana or immature plants are present, even if the minor is a patient or an employee; and

(b) Consumption, ingestion, inhalation or topical application of usable marijuana anywhere on the premises of the registered facility, except that an employee of a registered facility who is a patient may consume usable marijuana during his or her work shift on the premises of the registered facility as necessary for his or her medical condition, if the employee is:

(A) Alone and in a closed room if the usable marijuana is being smoked;

(B) Not visible to patients or caregivers on the premises of the registered facility to receive a transfer of usable marijuana or an immature plant; and

(C) Not visible to the public outside the facility.

(2) A PRF must ensure that a registered facility uses an Oregon Department of Agriculture licensed and certified scale to weigh all usable marijuana.

(3) The following persons are the only persons permitted in any area of a registered facility where usable marijuana or immature plants are present, and only in accordance with these rules, as applicable:

(a) A PRF;

(b) An owner of a registered facility;

(c) An employee of the registered facility;

(d) Laboratory personnel in accordance with OAR 333-008-1190;

(e) A contractor authorized by the PRF to be on the premises of a registered facility;

(f) A patient, designated primary caregiver, or growers;

(g) An authorized employee or authorized contractor of the Authority;

(h) Other government officials that have jurisdiction over some aspect of the registered facility or that otherwise have authority to be on the premises of the registered facility; and

(i) A governmental official authorized by the Authority to be on the premises if accompanied by an Authority representative and the facility has been provided notice and has agreed to permit the governmental official access.

(4) A PRF must have written detailed policies and procedures and training for employees on the policies and procedures that, at a minimum, cover the following:

(a) Security;

(b) Testing;

(c) Transfers of usable marijuana and plants to and from the facility;

(d) Operation of a registered facility;

(e) Required record keeping;

(f) Labeling; and

(g) Violations and enforcement.

Stat. Auth.: ORS 475.314 & 475.338

Stats. Implemented: ORS 475.314

Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14; PH 4-2015, f. & cert. ef. 1-28-15

333-008-1210
Record Keeping

(1) A PRF must ensure that the following information is documented and maintained electronically in a manner that can easily be shared with the Authority or accessed by the Authority:

(a) All Authorization to Transfer forms, including the date on which a form was received;

(b) Any written notifications from a patient with regard to any change in status as required by ORS 475.309(7)(a)(B) or (10)(a);

(c) Any revocation of an Authorization to Transfer form;

(d) All transfer information required in OAR 333-008-1230 and 333-008-1245;

(e) Documentation of the costs of doing normal and customary business used to establish the reimbursement amounts for transfers of usable marijuana or immature plants, including costs related to transferring, handling, securing, insuring, testing, packaging and processing usable marijuana and immature marijuana plants and the cost of supplies, utilities and rent or mortgage.

(f) The amount of money paid by a registered facility to a grower for each transfer of usable marijuana or immature plants;

(g) The amount of money paid by each patient or designated primary caregiver for a transfer of usable marijuana or an immature plant;

(h) The laboratory reports of all testing and other information required to be documented in OAR 333-008-1190; and

(i) All other information required to be documented and retained by these rules.

(2) The PRF must ensure that information required to be documented pursuant to section (1) of this rule is maintained in a safe and secure manner that protects the information from unauthorized access, theft, fire, or other destructive forces, and is easily retrievable for inspection by the Authority upon request, either at the registered facility or online.

(3) A PRF must ensure that a registered facility uses an electronic data management system for the recording of transfers of usable marijuana and immature plants. The system must meet the following minimum requirements:

(a) Record the information required to be documented in this rule and OAR 333-008-1230 and 333-008-1245;

(b) Provide for off-site or secondary backup system;

(c) Assign a unique transaction number for each transfer to or from the registered facility;

(d) Monitor date of testing and testing results;

(e) Track products by unique transaction number through the transfer in, testing and transfer out processes;

(f) Generate transaction and other reports requested by the Authority viewable in PDF format;

(g) Produce reports, including but not limited to inventory reports; and

(h) Provide security measures to ensure patient and grower records are kept confidential.

(4) Documents and information required to be maintained in these rules must be retained by the PRF for at least one year.

(5) A PRF must provide the Authority with any documentation required to be maintained in these rules upon request, in the format requested by the Authority, or permit the Authority access to such documentation on-site.

Stat. Auth.: ORS 475.314 & 475.338
Stats. Implemented: ORS 475.314
Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14; PH 4-2015, f. & cert. ef. 1-28-15

333-008-1220
Labeling

(1) Prior to transferring usable marijuana a PRF must ensure that a label is affixed to the usable marijuana that includes but is not limited to:

(a) Flowers or other usable plant material:

(A) Percentage of THC and CBD;

(B) Weight in grams;

(C) Testing batch number and date tested;

(D) Who performed the testing; and

(E) Description of the product (strain).

(b) Finished product:

(A) THC and CBD potency;

(B) The weight or volume of usable marijuana in the packaged finished product in grams, milligrams, or milliliters, as applicable;

(C) Testing batch number and date tested;

(D) Who performed the testing; and

(E) Warning label in accordance with section (2) of this rule.

(2) If the registered facility transfers a finished product, the PRF must ensure that the finished product has a warning label on the outside of the packaging that includes the following: "WARNING: MEDICINAL PRODUCT — KEEP OUT OF REACH OF CHILDREN" in bold capital letters, in a font size that is larger than the type-size of the other printing on the label such that it is easy to read and prominently displayed on the product.

Stat. Auth.: ORS 475.314 & 475.338
Stats. Implemented: ORS 475.314
Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14; PH 4-2015, f. & cert. ef. 1-28-15

333-008-1225
Packaging

(1) For purposes of this rule:

(a) "Child-resistant safety packaging" means:

(A) Containers designed and constructed to be significantly difficult for children under five years of age to open and not difficult for adults to use properly;

(B) Opaque so that the product cannot be seen from outside the packaging;

(C) Closable for any product intended for more than a single use or containing multiple servings; and

(D) Labeled in accordance with OAR 333-008-1220.

(b) "Container" means a sealed, hard or soft-bodied receptacle in which a tetrahydrocannabinol-infused product is placed prior to being transferred to a patient or caregiver.

(c) "Packaged in a manner not attractive to minors" means the tetrahydrocannabinol-infused product is not in a container that is brightly colored, depicts cartoons or images other than the logo of the facility, unless the logo of the facility depicts cartoons, in which case only the name of the facility is permitted.

(2) A registered facility may not transfer any tetrahydrocannabinol-infused product that is meant to be swallowed or inhaled, unless the product is:

(a) In child-resistant safety packaging; and

(b) Packaged in a manner that is not attractive to minors.

Stat. Auth.: ORS 475.314
Stats. Implemented: ORS 475.314
Hist.: PH 9-2014(Temp), f. & cert. ef. 4-1-14 thru 9-27-14; PH 25-2014, f. & cert. ef. 9-24-14; PH 4-2015, f. & cert. ef. 1-28-15

333-008-1230
Transfers to a Registered Facility

(1) A patient may authorize usable marijuana or immature marijuana plants to be transferred to a registered facility by signing an Authorization to Transfer form prescribed by the Authority. A patient may authorize transfers to more than one registered facility. A separate form must be provided for each registered facility. The Authorization must include, but is not limited to, the following information:

(a) The patient's name, OMMP card number and expiration date and contact information;

(b) The name and contact information of the individual who is authorized to transfer the usable marijuana or immature marijuana plants to the registered facility and that individual's OMMP card number and expiration date;

(c) The name and address of the registered facility that is authorized to receive the usable marijuana or immature marijuana plants; and

(d) The date the authorization expires, if earlier than the expiration date of the patient's OMMP card.

(2) Only a patient, the patient's designated primary caregiver, or the patient's grower may be authorized to transfer usable marijuana or immature plants to a registered facility.

(3) The original Authorization to Transfer form must be provided to the registered facility to which a transfer may be made by the patient or person authorized to transfer the usable marijuana or immature plants. The patient should retain a copy of the Authorization to Transfer form for his or her records and provide a copy to the person authorized to transfer the usable marijuana or immature plants.

(4) An Authorization to Transfer form automatically expires on the date the patient's OMMP card expires, unless the patient has specified an earlier expiration date. If the patient renews his or her OMMP card the patient may execute a new Authorization to Transfer form in accordance with this rule.

(5) Once usable marijuana or an immature plant is transferred to a registered facility pursuant to a valid Authorization to Transfer form, the usable marijuana or immature plant is no longer the property of the patient unless the usable marijuana or immature plants are returned by the registered facility.

(6) Prior to a registered facility accepting a transfer of usable marijuana or immature plants the PRF must ensure that:

(a) It has a valid Authorization to Transfer form on file that authorizes the individual that is transferring the usable marijuana or immature plants to make the transfer; and

(b) The individual transferring the usable marijuana or immature plants is the individual authorized to make the transfer.

(7) A PRF must ensure that when a registered facility accepts a transfer of usable marijuana or an immature plant the batch of usable marijuana and each immature plant are segregated in accordance with the testing rule, OAR 333-008-1190 and that the following information is documented, as applicable:

(a) The unique identifier;

(b) The weight in metric units of all usable marijuana received by the registered facility;

(c) The number of immature plants received by the registered facility;

(d) The amount of a finished product received by the registered facility, including, as applicable, the weight in metric units, or the number of units of a finished product;

(e) A description of the form the usable marijuana was in when it was received, for example, oil or an edible product;

(f) Who transferred the usable marijuana or the immature plant, the individual's OMMP card number and expiration date of the card, a copy of the individual's picture identification, the date the usable marijuana or an immature plant was received, and the name of the patient who authorized the transfer; and

(g) The amount of reimbursement paid by the registered facility.

(8) Nothing in these rules requires a PRF or a registered facility to accept a transfer of usable marijuana or immature plants.

(9) A PRF must ensure that:

(a) From the time that a batch or plant has been received by the registered facility until it is tested in accordance with these rules, the usable marijuana and immature plants are segregated, withheld from use, and kept in a secure location so as to prevent the marijuana or plants from becoming contaminated or losing efficacy, or from being tampered with or transferred except that samples may be removed for testing; and

(b) No usable marijuana or immature plants are transferred to a patient or designated primary caregiver until testing has been completed, the registered facility has received a written testing report, and the usable marijuana and immature plants have tested negative for pesticides, mold and mildew.

(10) Usable marijuana and immature plants must be kept on-site at the facility. The Authority may cite a PRF for a violation of these rules if during an inspection it cannot account for its inventory or if the amount of flowers or other usable marijuana plant material at the registered facility is not within five percent of the documented inventory.

Stat. Auth.: ORS 475.314 & 475.338
Stats. Implemented: ORS 475.314
Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14; PH 4-2015, f. & cert. ef. 1-28-15

333-008-1260
Violations

(1) The following are violations of ORS 475.314 or these rules:

(a) A PRF or an employee of a facility failing to cooperate with an inspection;

(b) The submission by a PRF, employee, or owner of a facility of false or misleading information to the Authority;

(c) Transferring usable marijuana or immature plants to an individual who is not a patient or a designated primary caregiver;

(d) Accepting a transfer of usable marijuana or immature plants without a valid authorization from the patient;

(e) Possessing a mature marijuana plant at the registered facility;

(f) Failing to document and maintain information in the manner required by these rules;

(g) Failing to account for flowers or other usable marijuana plant material in accordance with OAR 333-008-1230(10);

(h) Failing to submit a plan of correction in accordance with OAR 333-008-1275;

(i) Failing to comply with an emergency suspension order or final order of the Authority, including failing to pay a civil penalty; or

(j) Failing to comply with ORS 475.314 or any of these rules.

(2) It is a violation of ORS 475.314 and these rules to operate a facility without being registered by the Authority.

Stat. Auth.: ORS 475.314 & 475.338
Stats. Implemented: ORS 475.314
Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14; PH 4-2015, f. & cert. ef. 1-28-15

333-008-1275
Enforcement

(1)(a) Informal Enforcement. If, during an inspection the Authority documents violations of ORS 475.314 or any of these rules, the Authority may issue a written Notice of Violation to the PRF that cites the laws alleged to have been violated and the facts supporting the allegations.

(b) The PRF must submit to the Authority a signed plan of correction within 10 business days from the date the Notice of Violation was mailed to the person. A signed plan of correction will not be used by the Authority as an admission of the violations alleged in the Notice.

(c) A PRF must correct all deficiencies within 10 business days from the date of the Notice, unless an extension of time is requested from the Authority. A request for such an extension shall be submitted in writing and must accompany the plan of correction.

(d) The Authority must determine if a written plan of correction is acceptable. If the plan of correction is not acceptable to the Authority it must notify the PRF in writing and request that the plan of correction be modified and resubmitted no later than 10 business days from the date the letter of non-acceptance was mailed.

(e) If the registered facility does not come into compliance by the date of correction reflected on the plan of correction, the Authority may propose to revoke the registration of the facility or impose civil penalties.

(f) The Authority may conduct an inspection at any time to determine whether a registered facility has corrected the deficiencies in a Notice of Violation.

(2) Formal Enforcement. If, during an inspection or based on other information the Authority determines that a registered facility or PRF is in violation of ORS 475.314 or these rules the Authority may issue:

(a) A Notice of Proposed Revocation in accordance with ORS 183.411 through 183.470.

(b) A Notice of Imposition of Civil Penalties in accordance with ORS 183.745. Civil penalties may be issued for any violation of ORS 475.314 and these rules, not to exceed $500 per violation per day.

(c) An Order of Emergency Suspension pursuant to ORS 183.430.

(3) The Authority must determine whether to use the informal or formal enforcement process based on the nature of the alleged violations, whether there are mitigating or aggravating factors, and whether the PRF or the registered facility has a history of violations.

(4) The Authority must issue a Notice of Proposed Revocation if the:

(a) Facility no longer meets the criteria in ORS 475.314(3)(a) to (d); or

(b) PRF is not a resident of Oregon, has disqualifying criminal convictions as described in OAR 333-008-1120, or a court has issued an order that prohibits the PRF from participating in the OMMP under ORS 475.300 through 475.346 unless a new PRF is approved by the Authority.

(5) The Authority may maintain a civil action against a facility that is operating but not registered in accordance with ORS 475.314 and these rules.

(6) The Authority may revoke the registration of a facility for failure to comply with an ordinance adopted by a city or county pursuant to Oregon Laws 2014, chapter 79, section 2, if the city or county:

(a) Has provided the facility with due process substantially similar to the due process provided to a registration or license holder under the Administrative Procedures Act, ORS 183.413 to 183.470; and

(b) Provides the Authority with a final order that is substantially similar to the requirements for a final order under ORS 183.470 that establishes the facility is in violation of the local ordinance.

(7) The Authority must post a final order revoking the registration of a facility on the Authority's website and provide a copy of the final order to the OMMP.

(8) To the extent permitted by law, if the Authority discovers violations that may constitute criminal conduct or conduct that is in violation of laws within the jurisdiction of other state or local governmental entities, the Authority may refer the matter to the applicable agency.

(9) If the registration of a facility is revoked the PRF must make arrangements to return the usable marijuana and immature plants in amounts still possessed by the facility, to the person who transferred the usable marijuana or immature plants and must document the same.

(10) The Authority is not required to accept the surrender of a registration and may proceed with an enforcement action even if a PRF has surrendered the facility's registration.

Stat. Auth.: ORS 431.262, 475.314 & 475.338
Stats. Implemented: ORS 431.262 & 475.314
Hist.: PH 9-2014(Temp), f. & cert. ef. 4-1-14 thru 9-27-14; PH 25-2014, f. & cert. ef. 9-24-14; PH 4-2015, f. & cert. ef. 1-28-15

333-008-1280
Confidentiality

(1) Any criminal background information received by the Authority about a PRF during the criminal background check process is confidential and is not subject to disclosure without a court order.

(2) The name of a PRF and the address of a registered facility is confidential and is not subject to disclosure without a court order, except as provided in ORS 475.331(2) and section (5) of this rule, or unless a PRF has authorized disclosure.

(3) If an application has been denied, the information submitted to the Authority in an application for registration of a facility is not confidential and may be subject to disclosure under ORS 192.410 through 192.505.

(4) A final order revoking the registration of a facility is not confidential and may be posted on the Authority's website or otherwise made public by the Authority.

(5) Authorized employees of state and local law enforcement agencies may verify with the Authority at all times whether:

(a) A location is the location of a registered facility; or

(b) A person is listed as the PRF of a registered facility.

Stat. Auth.: ORS 475.314 & 475.338

Stats. Implemented: ORS 475.314 & 475.331

Hist.: PH 2-2014(Temp), f. 1-14-14, cert. ef. 1-15-14 thru 7-13-14; PH 20-2014, f. & cert. ef. 7-11-14; PH 4-2015, f. & cert. ef. 1-28-15

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Rule Caption: Hospital Satellite Definition
Adm. Order No.: PH 5-2015
Filed with Sec. of State: 2-6-2015
Certified to be Effective: 2-6-15
Notice Publication Date: 1-1-2015
Rules Amended: 333-500-0010, 333-500-0025, 333-525-0000
Subject: The Oregon Health Authority, Public Health Division, Health Care Regulation and Quality Improvement section is permanently amending administrative rules in chapter 333, divisions 500 and 525 relating to hospitals. Treating persons in psychiatric crisis continues to be an issue for hospitals, health systems and community-based organizations. The 'satellite' definition change will allow a hospital or health system more flexibility to set up psychiatric emergency services in a more efficient and patient centered way and possibly reduce the number of psychiatric patients waiting for care in an emergency department. The overall goal is to provide an opportunity for improved care and prompt access to psychiatric emergency services and inpatient psychiatric care as needed.
Rules Coordinator: Brittany Sande—(971) 673-1291

333-500-0010
Definitions

As used in OAR chapter 333, divisions 500 through 535, unless the context requires otherwise, the following definitions apply:

(1) "Assessment" means a complete nursing assessment, including:

(a) The systematic and ongoing collection of information to determine an individual's health status and need for intervention;

(b) A comparison with past information; and

(c) Judgment, evaluation, or a conclusion that occurs as a result of subsections (a) and (b) of this definition.

(2) "Authentication" means verification that an entry in the patient medical record is genuine.

(3) "Authority" means the Oregon Health Authority.

(4) "Certified Nursing Assistant" (CNA) means a person who is certified by the Oregon State Board of Nursing (OSBN) to assist licensed nursing personnel in the provision of nursing care.

(5) "Chiropractor" means a person licensed under ORS chapter 684 to practice chiropractic.

(6) "Conditions of Participation" mean the applicable federal regulations that hospitals are required to comply with in order to participate in the federal Medicare and Medicaid programs.

(7) "Deemed" means a health care facility that has been inspected by an approved accrediting organization and has been approved by the Centers for Medicare and Medicaid Services (CMS) as meeting CMS Conditions of Participation.

(8) "Discharge" means the release of a person who was an inpatient of a hospital and includes:

(a) The release and transfer of a newborn to another facility, but not a transfer between acute care departments of the same facility;

(b) The release of a person from an acute care section of a hospital for admission to a long-term care section of a facility;

(c) Release from a long-term care section of a facility for admission to an acute care section of a facility;

(d) A patient who has died; and

(e) An inpatient who leaves a hospital for purposes of utilizing non-hospital owned or operated diagnostic or treatment equipment, if the person does not return as an inpatient of the same health care facility within a 24-hour period.

(9) "Direct ownership" has the meaning given the term 'ownership interest' in 42 CFR 420.201.

(10) "Division" means the Public Health Division within the Authority.

(11) "Emergency Medical Services" means medical services that are usually and customarily available at the respective hospital and that must be provided immediately to sustain a person's life, to prevent serious permanent disfigurement or loss or impairment of the function of a bodily member or organ, or to provide care to a woman in labor where delivery is imminent if the hospital is so equipped and, if the hospital is not equipped, to provide necessary treatment to allow the woman to travel to a more appropriate facility without undue risk of serious harm.

(12) "Emergency Psychiatric Services" means mental health services that are usually and customarily available at the respective hospital and that must be provided immediately to prevent harm to the patient or others including but not limited to triage and assessment; observation and supervision; crisis stabilization; crisis intervention; and crisis counseling.

(13) "Financial interest" means a five percent or greater direct or indirect ownership interest.

(14) "Full compliance survey" means a survey conducted by the Division following a complaint investigation to determine a hospital's compliance with the CMS Conditions of Participation.

(15) "Governing body" means the body or person legally responsible for the direction and control of the operation of the hospital.

(16) "Governmental unit" has the meaning given that term in ORS 442.015.

(17) "Health care facility" (HCF) has the meaning given the term in ORS 442.015.

(18) "Health Care Facility Licensing Laws" means ORS 441.005 through 441.990 and its implementing rules.

(19) "Hospital" has the meaning given that term in ORS 442.015.

(20) "Indirect ownership" has the meaning given the term 'indirect ownership interest' in 42 CFR 420.201.

(21) "Licensed" means that the person to whom the term is applied is currently licensed, certified or registered by the proper authority to follow his or her profession or vocation within the State of Oregon, and when applied to a hospital means that the facility is currently licensed by the Authority.

(22) "Licensed nurse" means a nurse licensed under ORS chapter 678 to practice registered or practical nursing.

(23) "Licensed Practical Nurse" means a nurse licensed under ORS chapter 678 to practice practical nursing.

(24) "Major alteration" means any structural change to the foundation, roof, floor, or exterior or load bearing walls of a building, or the extension of an existing building to increase its floor area. Major alteration also means the extensive alteration of an existing building such as to change its function and purpose, even if the alteration does not include any structural change to the building.

(25) "Manager" means a person who:

(a) Has authority to direct and control the work performance of nursing staff;

(b) Has authority to take corrective action regarding a violation of law or a rule or a violation of professional standards of practice, about which a nursing staff has complained; or

(c) Has been designated by a hospital to receive the notice described in ORS 441.174(2).

(26) "Minor alteration" means cosmetic upgrades to the interior or exterior of an existing building, such as but not limited to wall finishes, floor coverings and casework.

(27) "Mobile Satellite" means a MRI, CAT Scan, Lithotripsy Unit, Cath Lab, or other such modular outpatient treatment or diagnostic unit that is capable of being moved, is housed in a vehicle with a vehicle identification number (VIN), and does not remain on a hospital campus for more than 180 days in any calendar year.

(28) "NFPA" means National Fire Protection Association.

(29) "Nurse Midwife/Nurse Practitioner" means a registered nurse certified by the OSBN as a nurse midwife/nurse practitioner.

(30) "Nurse Practitioner" has the meaning given that term in ORS 678.010.

(31) "Nursing staff" means a registered nurse, a licensed practical nurse, or other assistive nursing personnel.

(32) "OB Unit" means a dedicated obstetrical unit that meets the requirements of OAR 333-535-0120.

(33) "On-call" means a scheduled state of availability to return to duty, work-ready, within a specified period of time.

(34) "Oregon Sanitary Code" means the Food Sanitation Rules in OAR 333-150-0000.

(35) "Patient audit" means review of the medical record or physical inspection or interview of a patient.

(36) "Person" has the meaning given that term in ORS 442.015.

(37) "Physician" means a person licensed as a doctor of medicine or osteopathy under ORS chapter 677.

(38) "Physician Assistant" has the meaning given that term in ORS 677.495.

(39) "Plan of correction" means a document executed by a hospital in response to a statement of deficiency issued by the Division that describes with specificity how and when deficiencies of health care licensing laws or conditions of participation shall be corrected.

(40) "Podiatrist" has the same meaning as "podiatric physician and surgeon" in ORS 677.010.

(41) "Podiatry" means the diagnosis or the medical, physical or surgical treatment of ailments of the human foot, except treatment involving the use of a general or spinal anesthetic unless the treatment is performed in a licensed hospital or in a licensed ambulatory surgical center and is under the supervision of or in collaboration with a physician. "Podiatry" does not include the administration of general or spinal anesthetics or the amputation of the foot.

(42) "Public body" has the meaning given that term in ORS 30.260.

(43) "Registered Nurse" means a person licensed under ORS chapter 678 to practice registered nursing.

(44) "Respite care" means care provided in a temporary, supervised living arrangement for individuals who need a protected environment, but who do not require acute nursing care or acute medical supervision.

(45) "Retaliatory action" means the discharge, suspension, demotion, harassment, denial of employment or promotion, or layoff of a nursing staff person directly employed by the hospital, or other adverse action taken against a nursing staff person directly employed by the hospital in the terms or conditions of employment of the nursing staff person, as a result of filing a complaint.

(46) "Satellite" means a building or part of a building owned or leased by a hospital, and operated by a hospital in a geographically separate location from the hospital, with a separate physical address from the hospital but that is within 35 miles from the hospital, through which the hospital provides:

(a) Outpatient diagnostic, therapeutic, or rehabilitative services; or

(b) Psychiatric services including:

(A) Inpatient psychiatric services; and

(B) Emergency psychiatric services.

(47) "Special Inpatient Care Facility" means a facility with inpatient beds and any other facility designed and utilized for special health care purposes that may include but is not limited to a rehabilitation center, a facility for the treatment of alcoholism or drug abuse, a freestanding hospice facility, or an inpatient facility meeting the requirements of ORS 441.065, and any other establishment falling within a classification established by the Division, after determination of the need for such classification and the level and kind of health care appropriate for such classification.

(48) "Stable newborn" means a newborn who is four or more hours post-delivery and who is free from abnormal vital signs, color, activity, muscle tone, neurological status, weight, and maternal-child interaction.

(49) "Stable postpartum patient" means a postpartum mother who is four hours or more postpartum and who is free from any abnormal fluctuations in vital signs, has vaginal flow within normal limits, and who can ambulate, be independent in self-care, and provide care to her newborn infant, if one is present.

(50) "Statement of deficiencies" means a document issued by the Division that describes a hospital's deficiencies in complying with health care facility licensing laws or conditions of participation.

(51) "Survey" means an inspection of a hospital to determine the extent to which a hospital is in compliance with health facility licensing laws and conditions of participation.

Stat. Auth.: ORS 441.025
Stats. Implemented: ORS 441.025
Hist.: HB 183, f. & ef. 5-26-66; HB 209, f. 12-18-68; HD 11, f. 3-16-72, ef. 4-1-72; HD 11-1980, f. & ef. 9-10-80, HD 8-1985, f. & ef. 5-17-85; Renumbered from 333-023-0114; HD 13-1987, f. 9-1-87, ef. 9-15-87; HD 23-1987(Temp), f. 11-27-87, ef. 10-15-87 through 4-15-88; HD 10-1988, f. & cert. ef. 5-27-88; HD 29-1988, f. 12-29-88, cert. ef. 1-1-89, Renumbered from 333-070-0000; HD 21-1993, f. & cert. ef. 10-28-93; HD 30-1994, f. & cert. ef. 12-13-94; OHD 2-2000, f. & cert. ef. 2-15-00; OHD 20-2002, f. & cert. ef. 12-10-02; PH 11-2009, f. & cert. ef. 10-1-09; PH 26-2010, f. 12-14-10, cert. ef. 12-15-10; PH 17-2012, f. 12-20-12, cert. ef. 1-1-13; PH 5-2015, f. & cert. ef. 2-6-15

333-500-0025
Indorsement of Satellite Operations

(1) The Division may indorse, under a hospital's license, a satellite or mobile satellite of a hospital.

(2) In order for a satellite to be indorsed under a hospital's license, the applicant or licensee shall pay the appropriate fee and provide evidence to the Division that:

(a) The satellite meets the requirements in OAR chapter 333, divisions 500 through 535;

(b) The services at the satellite are integrated with the hospital;

(c) The financial operations of the satellite are integrated with the hospital;

(d) The hospital and the satellite have the same governing body;

(e) The satellite is under the ownership and control of the hospital;

(f) Staff at the satellite have privileges at the hospital; and

(g) Medical records of the satellite are integrated with the hospital into a unified system.

(3) A satellite shall be subject to a plans review and must pass life safety code requirements.

(4) In order for a mobile satellite to be indorsed under a hospital's license, the applicant or licensee shall pay the appropriate fee and provide evidence to the Division that:

(a) The mobile satellite is operated in whole or in part by the hospital through lease, ownership or other arrangement;

(b) The services at the mobile satellite are integrated with the hospital;

(c) The financial operations of the mobile satellite are integrated with the hospital;

(d) The mobile satellite is physically separate from the hospital and other buildings on the hospital campus by at least 20 feet; and

(e) It meets the 2000 NFPA 101 Life Safety Code for mobile units.

(5) A mobile satellite shall keep and provide to the Division and the Fire Marshal upon request, a log that shows where the mobile satellite is located every day of the year, and its use. A copy of the log shall be kept in the mobile satellite at all times.

(6) A hospital that has a satellite that provides inpatient services that is indorsed under its license as of October 1, 2009, may continue to have that satellite indorsed under its license. On or after October 1, 2009, a satellite must meet the definition of satellite in OAR 333-500-0010(46) and comply with all other rules related to satellites in order to have a satellite indorsed under a hospital license.

(7) Nothing in these rules is meant to:

(a) Prevent a satellite as defined in OAR 333-500-0010(46) from providing outpatient medical services; and

(b) Permit a hospital to circumvent Certificate of Need administrative rules.

Stat. Auth.: ORS 441.025
Stats. Implemented: ORS 441.020
Hist.: PH 11-2009, f. & cert. ef. 10-1-09; PH 26-2010, f. 12-14-10, cert. ef. 12-15-10; PH 5-2015, f. & cert. ef. 2-6-15

333-525-0000
Mental or Psychiatric Hospital

A hospital classified as mental or psychiatric shall:

(1) Be devoted primarily to the diagnosis and treatment of mentally ill persons.

(2) Have adequate numbers of qualified professional and supportive staff to evaluate patients, formulate written, individualized comprehensive treatment plans, provide active treatment measures, and engage in discharge planning, including:

(a) A clinical director, service chief, or equivalent who:

(A) Is qualified to provide the leadership required for an intensive treatment program;

(B) Meets the training and experience requirements for examination by the American Board of Psychiatry and Neurology or the American Osteopathic Board of Neurology and Psychiatry;

(C) Monitors and evaluates the quality and appropriateness of services and treatment provided by the medical staff; and

(D) Supervises inpatient psychiatric services.

(b) Doctors of medicine or osteopathy and other appropriate professional personnel available to provide necessary medical and surgical diagnostic and treatment services. If medical and surgical diagnostic and treatment services are not available within the hospital, the hospital must have an agreement with an outside source of these services to ensure that they are immediately available or a satisfactory agreement must be established for transferring patients to a licensed hospital.

(c) A director of psychiatric nursing services who:

(A) Is a registered nurse with a master's degree in psychiatric or mental health nursing, or its equivalent from a school of nursing accredited by the National League for Nursing Accrediting Commission, or the Commission on Collegiate Nursing Education, or is qualified by education and experience in the care of the mentally ill; and

(B) Demonstrates competence to participate in interdisciplinary formulation of individual treatment plans; to give skilled nursing care and therapy; and to direct, monitor, and evaluate the nursing care furnished.

(d) Registered nurses, licensed practical nurses, and mental health workers to provide nursing care necessary under each patient's active treatment program and to maintain progress notes on each patient.

(e) The availability of a registered professional nurse 24 hours each day.

(f) The availability of staff to provide other psychological services to meet the needs of the patients.

(g) A director of social services who:

(A) Has a master's degree from an accredited school of social work or is qualified by education and experience in the social services needs of the mentally ill; and

(B) Monitors and evaluates the quality and appropriateness of social services furnished.

(h) At least one staff member with a master's degree in social work if the director of social services does not have such a degree.

(i) Social service staff with responsibilities that include, but are not limited to, participating in discharge planning, arranging for follow-up care, and developing mechanisms for exchange of appropriate information with sources outside the hospital.

(j) Qualified therapists, support personnel, and consultants adequate to provide comprehensive therapeutic activities consistent with each patient's active treatment program.

(k) In a satellite as defined in OAR 333-500-0010(46)(b), the prompt availability of at least one psychiatrist to provide emergency psychiatric services or other psychiatric services to meet the needs of the patients 24 hours each day in person or using telemedicine technology.

(3) Have a therapeutic activities program that is appropriate to the needs and interests of patients and directed toward restoring and maintaining optimal levels of physical and psychosocial functioning.

(4) Maintain medical records in a manner that permits determination of the degree and intensity of the treatment provided to individuals who are furnished services in the institution. Medical records shall stress the psychiatric components of the record, including history of findings and treatment provided for the psychiatric condition for which the patient is hospitalized. A patient's medical record shall include:

(a) The patient's legal status;

(b) The provisional or admitting diagnosis, including the diagnoses of intercurrent diseases as well as the psychiatric diagnoses;

(c) The reasons for admission as stated by the patient or others significantly involved;

(d) The social service records, including reports of interviews with patients, family members, and others, including an assessment of home plans and family attitudes, and community resource contacts as well as a social history;

(e) When indicated, a complete neurological examination recorded at the time of the admission physical examination;

(f) Documentation of all active therapeutic efforts; and

(g) A discharge summary that includes a recapitulation of the patient's hospitalization and recommendations from appropriate services concerning follow-up or aftercare, as well as a brief summary of the patient's condition on discharge.

(5) Have a psychiatrist perform a psychiatric evaluation of each patient that:

(a) Is completed within 60 hours of admission;

(b) Includes a medical history;

(c) Contains a record of mental status;

(d) Notes the onset of illness and the circumstances leading to admission;

(e) Describes attitudes and behavior;

(f) Estimates intellectual functioning, memory functioning, and orientation; and

(g) Includes an inventory of the patient's assets in descriptive, not interpretative, fashion.

(6) Develop a written individual comprehensive treatment plan that is based on an inventory of the patient's strengths and disabilities that includes:

(a) A substantiated diagnosis;

(b) Short-term and long-range goals;

(c) The specific treatment modalities utilized;

(d) The responsibilities of each member of the treatment team; and

(e) Adequate documentation to justify the diagnosis and the treatment and rehabilitation activities carried out.

(7) Ensure that progress notes are recorded by:

(a) The doctor of medicine or osteopathy responsible for the care of the patient; and

(b) Nurses, social workers and, when appropriate, others significantly involved in active treatment modalities.

(8) The frequency of progress notes is determined by the condition of the patient but must be recorded at least weekly for the first two months and at least once a month thereafter and must contain recommendations for revisions in the treatment plan as indicated as well as precise assessment of the patient's progress in accordance with the original or revised treatment plan.

(9) Provide discharge planning.

(10) Comply with the applicable rules of the Authority, Addictions and Mental Health Division, including OAR chapter 309, divisions 31 and 33.

Stat. Auth.: ORS 441.055 & 442.015
Stats. Implemented: ORS 441.055
Hist.: HB 183, f. & ef. 5-26-66; HB 209, f. 12-18-68; HD 17(Temp), f. & ef. 6-19-72; HD 18, f. 7-31-72, ef. 8-15-72; HD 11-1980, f. & ef. 9-10-80; Renumbered from 333-023-0138; HD 29-1988, f. 12-29-88, cert. ef. 1-1-89, Renumbered from 333-073-0000; HD 21-1993, f. & cert. ef. 10-28-93; PH 11-2009, f. & cert. ef. 10-1-09; PH 5-2015, f. & cert. ef. 2-6-15

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Oregon Public Employees Retirement System
Chapter 459

Rule Caption: Remove language that includes time during which employees receive workers' compensation as service for OPSRP.
Adm. Order No.: PERS 2-2015
Filed with Sec. of State: 1-30-2015
Certified to be Effective: 1-30-15
Notice Publication Date: 11-1-2014
Rules Amended: 459-070-0001
Subject: Generally, to be eligible for OPSRP benefits, a person must provide services to a participating PERS employer. ORS 238A.005(7)(b) defines "hour of service" as excluding any hour for which payment is made under a plan maintained solely for the purposes of complying with applicable workers' compensation laws or unemployment compensation laws. However, OAR 459-070-0001(19)(b) currently provides that "service" means a period in which an employee receives a payment of "salary," as defined in ORS 238A.005 or similar payment from workers' compensation or disability. This language is inconsistent with the statute, and the rule modification removes the inconsistent language.
Rules Coordinator: Daniel Rivas—(503) 603-7713

459-070-0001
Definitions

The words and phrases used in divisions 070, 075, 076, and 080 of OAR Chapter 459 have the same meaning given them in ORS 238A.005 to 238A.475, unless otherwise indicated. Specific and additional terms for purposes of divisions 070, 075, 076 and 080 are defined as follows unless context requires otherwise:

(1) "Academic employee of a community college" means an instructor who teaches classes offered for college-approved credit or on a non-credit basis.

(a) Librarians, counselors, and aides in non-teaching positions, tutors, or other non-teaching faculty, and classified, professional or nonprofessional support staff are not academic employees for the purposes of ORS 238A.142, but are subject to the membership requirements under ORS 238A.100 and OAR 459-075-0010.

(b) The governing body of a community college must determine who is an academic employee in its employ under this rule. In making that determination, a community college must consider all disciplines (academic activity) collectively when an employee's assignment includes multiple disciplines.

(2) "Business day" means a day Monday through Friday when PERS is open for business.

(3) "Calendar month" means a full month beginning on the first calendar day of a month and ending on the last calendar day of the same month.

(4) "Calendar year" means 12 consecutive calendar months beginning on January 1 and ending on December 31.

(5) "Employee" has the same meaning as "eligible employee" in ORS 238A.005 and shall be determined in accordance with OAR 459-010-0030.

(a) For the purposes of ORS 238A.005 to 238A.475, the term "employee" includes public officers whether elected or appointed for a fixed term.

(b) The term "employee" does not include:

(A) An individual who performs services for a public employer as a contractor in an independently established business or as an employee of that contractor in accordance with OAR 459-010-0032; or

(B) An individual providing volunteer service to a public employer without compensation for hours of service as a volunteer.

(6) "Employee class" means a group of similarly situated employees whose positions have been designated by their employer in a policy or collective bargaining agreement as having common characteristics.

(7) "Employee contributions" means contributions made to the individual account program by an eligible employee under ORS 238A.330, or on behalf of the employee under ORS 238A.335.

(8) "Final Average Salary" (FAS) has the same meaning given the term in:

(a) ORS 238A.130(1) for OPSRP Pension Program members who are not employed by a local government as defined in ORS 174.116; or

(b) ORS 238A.130(3) for OPSRP Pension Program members who are employed by a local government as defined in ORS 174.116.

(9) "Member" has the same meaning given the term in ORS 238A.005.

(10) "Member account" means the account of a member of the individual account program.

(11) "Member of PERS" has the same meaning as "member" in ORS 238.005, but does not include retired members.

(12) "OPSRP" means the Oregon Public Service Retirement Plan.

(13) "Overtime" means the salary or hours, as applicable, that an employer has designated as overtime.

(14) "Partial year of hire" means a period in the calendar year the employee begins employment after the first working day of the year, and continues employment through December 31.

(15) "Partial year of separation" means a period in the calendar year the employee separates from employment that begins on January 1 of the year, and ends before the last working day of the year.

(16) "Qualifying position" has the same meaning as provided in ORS 238A.005 and means a position designated by the employer as qualifying, including a position in a partial year of hire, partial year of separation, or short segment, except:

(a) A position or concurrent positions in which an employee performs at least 600 hours of service in a calendar year is qualifying regardless of employer designation.

(b) A position in a partial year of separation is qualifying regardless of employer designation if the position is continued from an immediately preceding calendar year in which the employee performed at least 600 hours of service in the position or concurrent positions.

(c) A position with one employer in which the employee is employed for the entire calendar year and fails perform at least 600 hours of service in that position or concurrent positions in the calendar year is non-qualifying regardless of employer designation.

(17) "Salary" has the same meaning given the term in ORS 238A.005 and includes a differential wage payment, as defined in OAR 459-005-0001.

(18) "School employee" has the meaning given the term in ORS 238A.140(7).

(19) "Service" means a period in which an employee:

(a) Is in an employer/employee relationship, as determined in accordance with OAR 459-010-0030; and

(b) Receives a payment of "salary," as defined in ORS 238A.005.

(20) "Short segment" means a period in the calendar year during which the employee is hired after the first working day of the year, and separated from employment before the last working day of the same calendar year.

(21) "Volunteer" means an individual who performs a service for a public employer, and who receives no compensation for the service performed. The term "volunteer" does not include an individual whose compensation received from the same public employer for similar service within the same calendar year exceeds the reasonable market value for such service.

(22) "Working day" means a day that the employer is open for business. Unless the employer communicates this information to PERS, PERS will presume an employer's "working day" is the same as a "business day," as defined in section (2) of this rule.

Stat. Auth.: ORS 238A.450
Stats. Implemented: ORS 238A
Hist.: PERS 4-2004, f. & cert. ef. 2-18-04; PERS 7-2005(Temp), f. & cert. ef. 2-22-05 thru 8-15-05; PERS 11-2005, f. & cert. ef. 6-16-05; PERS 25-2005, f. 12-23-05, cert. ef. 1-1-06; PERS 7-2006, f. & cert. ef. 4-5-06; PERS 17-2007, f. & cert. ef. 11-23-07; PERS 1-2009, f. & cert. ef. 2-12-09; PERS 13-2014, f. & cert. ef. 9-29-14; PERS 2-2015, f. & cert. ef. 1-30-15

Rule Caption: Remove language that could be inconsistent with HB 4155 (2014) regarding recovery of administrative expenses.
Adm. Order No.: PERS 3-2015
Filed with Sec. of State: 1-30-2015
Certified to be Effective: 1-30-15
Notice Publication Date: 11-1-2014
Rules Amended: 459-007-0009
Subject: OAR 459-007-0009 was adopted by the PERS Board on July 25, 2014, as authorized by House Bill 4155 (2014) (now codified at ORS 238.610). The rule establishes procedures for recovering the additional actuarial and auditing costs associated with providing employers information necessary to comply with the new GASB 68 requirements.

The last sentence of OAR 459-007-0009(2) needs to be clarified. As previously adopted, the permanent rule states: "In any year in which earnings on those accounts are not sufficient to recover those costs, employer contribution accounts will be reduced by the amount of those costs." Although ORS 238.610(1)(a) allows for administrative expenses to be deducted from employer accounts, (1)(b) specifically says that administrative costs may be recovered "only from interest earned on employer contributions...." The statute does not specifically allow employer accounts to be reduced. Rather, in practice, there are always earnings throughout the year even though there may be a net loss for a particular year. These GASB 68 costs will be deducted from these employer earnings prior to netting all earnings and losses for the calendar year.

The modifications were adopted as a temporary rule by the Board at the November 21, 2014 meeting, because the rule needed to be in effect before the end of the calendar year for earnings crediting purposes. This item is to adopt the same modifications as a permanent rule.
Rules Coordinator: Daniel Rivas—(503) 603-7713

459-007-0009
Allocating Costs of Compliance with Generally Accepted Accounting Principles

(1) Pursuant to ORS 238.610(1)(b), PERS will provide employers with audited financial data each year to comply with generally accepted accounting principles as established by the Government Accounting and Standards Board (GASB) standards.

(2) Prior to earnings crediting each year, PERS shall compile the actuarial, auditing, and internal staff costs of providing the audited financial data it will provide to employers. Earnings on employer contribution accounts shall be reduced by the amount of those costs.

Stat. Auth.: ORS 238.650 & 238A.450
Stats. Implemented: ORS 238.610(1)(b)
Hist.: PERS 9-2014, f. & cert. ef. 7-25-14; PERS 16-2014(Temp), f. & cert. ef. 11-21-14 thru 5-19-15; PERS 3-2015, f. & cert. ef. 1-30-15

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Oregon State Treasury
Chapter 170

Rule Caption: Amends DMD Fees Rule to include costs associated with Beginning & Expanding Farmer Loan Program.
Adm. Order No.: OST 1-2015
Filed with Sec. of State: 1-22-2015
Certified to be Effective: 1-22-15
Notice Publication Date: 1-1-2015
Rules Amended: 170-061-0015
Subject: Fees for coordination of State agency bond sales by the Oregon State Treasury have remained the same since 2009, while costs for staff of the Debt Management Division have continued to rise. While the Debt Management Division is funded through fees for services, bond-issuing services, bond-issuing state agencies pay any funding shortfall through quarterly billings for centralized debt management services. Raising bond issuance fees to more closely match actual costs will reduce these costs.

The 2013 Legislature approved HB 2700 which established a federal-state, public-private partnership program to assist beginning farmers in obtaining low interest loans through the Beginning and Expanding Loan Program. HB 2700 allows in section 4 for the State

Treasurer to charge administrative expenses of the State Treasurer against proceeds of the eligible revenues of agricultural projects.
Rules Coordinator: Dan McNally—(503) 373-1028

170-061-0015
Fees Charged by the Debt Management Divisions

(1) State agencies. The OST shall charge the following fees in connection with the services, duties and activities of the OST related to bonds issued for state agencies by the State Treasurer:

(a) Agency Bond Issues of $15 million or less. For a single series bond sale of $15 million or less, a state agency will be charged $18,000 per sale. For a bond sale of $15 million or less by a single state agency with multiple series, the state agency will be charged the greater of (i) $18,000 or (ii) $7,500 per series. For a bond sale of $15 million or less by two or more state agencies, each agency will be charged the greater of (i) $9,000 or (ii) $7,500 for each series sold for the agency. This subsection applies to initial offerings, refundings and restructurings. This subsection does not apply if the bond sale is a private placement conduit as described below in subsection (c).

(b) Agency Bond Issues of more than $15 million. For a single series bond sale of more than $15 million, a state agency will be charged $25,000. For a bond sale of more than $15 million by a single state agency with multiple series, the state agency will be charged the greater of (i) $25,000 or (ii) $8,500 per series. For a bond sale of more than $15 million by two or more state agencies, each agency will be charged the greater of (i) $12,500 or (ii) $8,500 for each series sold for the state agency. This subsection applies to initial offerings, refundings and restructurings. This subsection does not apply if the bond sale is a private placement conduit sale described below in subsection (c).

(c) Privately Placed Conduit Bonds are bonds that are payable solely from moneys owed by a party other than the State of Oregon, with no recourse for payment to the State of Oregon, do not have a publicly disseminated official statement or other offering circular, and are sold only to one or more sophisticated investors, accredited investors or qualified institutional buyers. A state agency that privately places conduit bonds will be charged: (i) $6,000 for sales that in aggregate total $5 million or less, (ii) $12,000 for sales that in aggregate total more than $5 million but less than $10 million, or (iii) $18,000 for sales that in aggregate total $10 million or more. Should conduit bonds be sold publicly or use a publicly disseminated official statement then subsection (a) or subsection (b) above applies. This subsection applies to initial offerings, refundings and restructurings.

(d) Tax Anticipation Notes. A state agency shall be charged $35,000 for each sale of tax anticipation notes.

(e) Interest Rate Exchange Agreements. In addition to any other fee, $25,000 will be charged for the review and approval of a state agency's first executed interest rate exchange agreement for a specific bond program of the agency. After the first agreement, a fee of $12,000 will be charged for each executed interest rate exchange agreement subsequently entered into by the agency for the same bond program or indenture. These charges do not include costs such as interest rate exchange advisor fees, rating agency charges or printing costs which are payable by the agency or authority for whom the cost is incurred.

(f) Replacement of Liquidity Providers or SWAP Counter Party Providers. A state agency will be charged $12,000 for activities related to each replacement of a liquidity provider or SWAP counter party provider. These charges do not include costs such as rating agency charges or printing costs which are payable by the agency or authority for whom the cost is incurred.

(2) Public Bodies. OST shall charge the fees set forth below in connection with the services, duties and activities of the OST related to bonds issued by public bodies in Oregon; expenses incurred in reviewing refunding and defeasance plans may be charged against the bond proceeds or may be paid by the public body from such other funds as may be available:

(a) Advance refunding plan application and review. The application fee for submission of an advance-refunding plan is $350. The fee for review and approval of an advance refunding plan is $3,000 per sale of refunding bonds for sales of $2 million or less, and $5,000 per sale of refunding bonds for sales exceeding $2 million. If the plan is not approved or the refunding not completed the review and approval fee will not be charged.

(b) Oregon School Bond Guarantee Program. School Districts that submit an application for participation in the Oregon School Bond Guarantee Program shall submit an application fee of $200 to OST at the time their application is submitted. School Districts whose bonds are guaranteed by the state shall submit to OST, within 10 business days of closing of any guaranteed bonds, a fee equal to .03% (.0003) of the total principal and interest due, assuming the bonds are paid on their regularly scheduled maturity or redemption dates. If bonds are issued as "Qualified Bonds" under OAR 170-063-000 that may be converted to an interest bearing format over and above interest payments that may be due and payable under the original terms of bonds, the fee for such Qualified Bonds shall be equal to .045% (.00045) of the total principal and interest due, assuming the bonds are paid on their regularly scheduled maturity or redemption dates and that there is no conversion to a different interest bearing format than the original terms of the bonds.

(3) Municipal Debt Advisory Commission. OST shall charge the following fees in connection with the services, duties and activities of the OST as staff to the Municipal Debt Advisory Commission.

(a) Administrative Tracking and Reporting fee. Local Government entities shall submit, at the time of closing, a fee equal to:

(A) $800 for bond sales of greater than or equal to $1 million, but less than $8 million,

(B) 0.01% (0.0001) of the principal amount for bond sales of greater than $8 million but, less than $50 million, or

(C) $5,000 for bond sales of $50 million or greater. No fee is charged for a bond sale of less than $1 million.

(b) Overlapping Debt Report fee. Overlapping Debt Reports requested for any date within one year of the request are provided free of charge. For Overlapping Debt Reports requested for any date greater than one year prior to the request date, subsection (c) applies.

(c) Other fees and charges. Fees for specialized reports and services shall be determined by the number of hours spent producing such specialized report or service times the rate of $115 per hour.

(4) Private Activity Bonds.

(a) Current Year Allocation. State agencies or public bodies that submit an application for allocation of the state's private activity bond volume limit ("CAP") for the current year to the Private Activity Bond Committee under OAR 170-071-0005 shall submit an application fee of $200 to OST when their application is submitted. State agencies or public bodies who receive CAP shall pay to OST:

(A) For a bond sale of $10 million or less, a fee equal to $3,000, payable within 10 business days of the closing bond sale,

(B) For a bond sale of more than $10 million, a fee equal to $10,000 payable within 10 business days of the closing bond sale, or

(C) For a Mortgage Credit Certificate program, a fee equal to $2,000, payable within 10 business days of the date of the notice of allocation by OST.

(b) Carry Forward Allocation. State agencies or public bodies that submit an application for carry forward CAP allocation under OAR 170-071-0005(10) shall submit an application fee of $200 to OST when their application is submitted. State agencies or public bodies who receive carry forward CAP shall pay to OST:

(A) For a bond sale of $10 million or less, a fee equal to $3,000 of which the first $500 is payable within 10 days of the date of the notice of allocation by OST, with the balance payable within 30 days of the closing of the first bond sale associated with the allocation,

(B) For a bond sale of more than $10 million, a fee equal to $10,000 of which the first $2,000 is payable within 10 days of the date of the notice of allocation by OST, with the balance payable within 30 days of the closing of the first bond sale associated with the allocation, or

(C) For a Mortgage Credit Certificate program, a fee equal to $2,000, payable within 10 business days of the date of the notice of allocation by OST.

(D) For an agricultural bond issued through the Oregon Business Development Department's Beginning and Expanding Farmer Loan Program and sold to a single insured institution under ORS 706.008, a fee equal to $200 is payable within 10 business days of the closing of the bond sale. For agricultural bonds that will be sold to one or more accredited or sophisticated investors or institutional buyers, or more than one insured institution under ORS 706.008, OST may, at its discretion, charge up to a maximum of $2,000 depending on the complexity of the transaction.

(5) OST may, at its discretion, waive or reduce any fee outlined in sections (1) to (4) based on compelling financial reasons.

Stat. Auth.: ORS 286A.014, 287A.370 & 287A.634
Stats. Implemented: ORS 287A & 286A
Hist.: TD 3-1990, f. & cert. ef. 12-21-90; TD 2-1994, f. & cert. ef. 9-9-94; OST 1-1999, f. & cert. ef. 2-1-99; OST 1-2005, f. & cert. ef. 4-22-05; OST 5-2006, f. & cert. ef. 10-25-06; OST 7-2008, f. & cert. ef. 12-29-08; OST 2-2009, f. & cert. ef. 4-22-09; OST 3-2009, f. & cert. ef. 7-21-09; OST 5-2009(Temp), f. & cert. ef. 10-30-09 thru 4-27-10; OST 1-2010 f. & cert. ef. 1-15-10; OST 2-2010(Temp), f. & cert. ef 1-26-10 thru 7-24-10; OST 4-2010(Temp), f. 6-3-10, cert. ef. 7-1-10 thru 12-27-10; Administrative correction 1-25-11; OST 1-2011, f. & cert. ef. 2-28-11; OST 1-2012(Temp), f. & cert. ef. 1-26-12 thru 7-1-12; Administrative correction 8-1-12; OST 3-2012(Temp), f. & cert. ef. 12-14-12 thru 5-29-13; OST 2-2013, f. &

cert. ef. 4-24-13; OST 3-2014(Temp), f. 8-13-14, cert. ef. 8-15-14 thru 2-11-15; OST 1-2015, f. & cert. ef. 1-22-15

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Oregon University System, Portland State University
Chapter 577

Rule Caption: Amends Population Forecast Rule to temporarily extend the date for issuing proposed forecasts.
Adm. Order No.: PSU 1-2015(Temp)
Filed with Sec. of State: 1-23-2015
Certified to be Effective: 1-23-15 thru 7-21-15
Notice Publication Date:
Rules Amended: 577-050-0050
Subject: Temporarily extends the date by which the Population Research Center must complete and issue proposed forecasts from March 15, 2015 to March 31, 2015.
Rules Coordinator: Diane S. Kirk—(503) 725-2656

577-050-0050
Forecast Process and Deliverables

(1) PRC shall issue written or electronic notice of Proposed and Final forecasts to the Department of Land Conservation and Development (DLCD), to affected local governments, and to members of the public who have requested notice. PRC shall maintain a web site allowing members of the public to request notice of forecast proceedings. Members of the public may request notice using the website or by written notice through the U.S. Mail.

(2) When preparing and issuing a forecast, PRC shall hold a minimum of one public meeting for each group of counties and cities included in the annual increment of the forecast cycle specified in OAR 577-050-0040(7) to gather, consider and, if appropriate, incorporate available data and information about local conditions received from affected local governments and from members of the public.

(3) PRC shall administer a questionnaire to affected local governments and to members of the public who have requested notice under subsection (1) for each forecast period described in OAR 577-050-0040. The questionnaire will compile information regarding local demographic, social, and economic characteristics and conditions. Responses to the survey questionnaire must be provided to PRC within 30 days for consideration in the proposed forecast. Information or documentation requested in the questionnaire may include, but is not limited to:

(a) Observations on changes in age and racial/ethnic composition of population;

(b) Planned new housing development (target population, number of new units and year of completion);

(c) Planned construction of group quarters facilities (type of facility and size);

(d) Likely future employers who have made a commitment to locate new employment generators to the area (including the type and number of employees and type of industry);

(e) Public information on infrastructure currently in place and changes that are expected to occur in the forecast period;

(f) Expected changes to zoning designations or density standards; and

(g) Adopted policies regarding population growth in a city's comprehensive plan.

(4) Upon issuance, Proposed and Final forecasts, and accompanying reports, will be posted to the PRC website. The reports will include:

(a) A methodological statement;

(b) A summary of demographic trends; and

(c) Supporting data utilized in the development of the forecasts.

(5) Proposed forecasts and accompanying reports will be issued by March 31 for each forecast period described in OAR 577-050-0040. Notice of the release of the Proposed forecasts will be provided to DLCD, affected local governments, and members of the public who have requested notice under subsection (1) of this rule.

(6) Final forecasts and accompanying reports will be issued by June 30 for each forecast period described in OAR 577-050-0040. Notice of the release of the Final forecasts will be provided to DLCD, affected local governments, and members of the public who have requested notice under subsection (1) of this rule.

Stat. Auth.: ORS 190 & 195
Stats. Implemented:
Hist.: PSU 1-2014, f. & cert. ef. 6-23-14; PSU 1-2015(Temp), f. & cert. ef. 1-23-15 thru 7-21-15

Oregon University System, Western Oregon University
Chapter 574

Rule Caption: Revisions to special course fees and general service fees.
Adm. Order No.: WOU 1-2015
Filed with Sec. of State: 2-12-2015
Certified to be Effective: 2-12-15
Notice Publication Date: 1-1-2015
Rules Amended: 574-050-0005
Subject: Amendments will allow for increases, additions, and revisions of special course fees and general service fees.
Rules Coordinator: Dawn Brown—(503) 838-8472

574-050-0005
Special Fees for Selected Courses and Some General Services

The Schedule of Fees for Selected Courses and General Services for Western Oregon University are hereby adopted by reference.

NOTE: The publication(s) referred to or incorporated by reference in this rule are available from the Office of the Vice President for Finance and Administration at Western Oregon University.

Stat. Auth.: ORS 351.070 & 351.072
Stats. Implemented: ORS 351.070 & 351.072
Hist.: OCE 1, f. & ef. 7-12-76; OCE 1-1978, f. & ef. 10-27-78; OCE 2-1980, f. & ef. 11-5-80; OCE 1-1981, f. & ef. 1-7-81; OCE 3-1981, f. & ef. 8-7-81; OCE 4-1981, f. & ef. 11-2-81; WOSC 2-1982, f. & ef. 9-17-82; WOSC 1-1983, f. & ef. 10-11-83; WOSC 1-1985, f. & ef. 10-4-85; WOSC 1-1986, f. & ef. 10-15-86; WOSC 1-1987, f. 4-1-87, ef. 9-23-87; WOSC 2-1988, f. & cert. ef. 9-19-88; WOSC 1-1989, f. & cert. ef. 4-18-89; WOSC 2-1989, f. 9-5-89, cert. ef. 9-17-89; WOSC 5-1989, f. & cert. ef. 9-7-89; WOSC 1-1990, f. & cert. ef. 4-18-90; WOSC 2-1990, f. & cert. ef. 9-24-90; WOSC 1-1991, f. & cert. ef. 1-30-91; WOSC 2-1991, f. & cert. ef. 3-22-91; WOSC 4-1991, f. & cert. ef. 5-21-91; WOSC 7-1991, f. & cert. ef. 7-22-91; WOSC 2-1992, f. & cert. ef. 6-16-92; WOSC 3-1992, f. & cert. ef. 8-14-92; WOSC 1-1993, f. & cert. ef. 1-15-93; WOSC 2-1993, f. & cert. ef. 6-18-93; WOSC 3-1993, f. & cert. ef. 7-16-93; WOSC 5-1993, f. & cert. ef. 10-21-93; WOSC 1-1994, f. & cert. ef. 8-12-94; WOSC 1-1995, f. & cert. ef. 8-11-95; WOSC 1-1996, f. & cert. ef. 10-16-96; WOSC 1-1997, f. & cert. ef. 2-27-97; WOU 3-1997, f. & cert. ef. 10-7-97; WOU 1-1998, f. & cert. ef. 1-26-98; WOU 2-1998, f. & cert. ef. 7-24-98; WOU 1-1999, f. & cert. ef. 2-25-99; WOU 2-1999, f. & cert. ef. 7-27-99; WOU 1-2000, f. & cert. ef. 3-16-00; WOU 2-2000, f. & cert. ef. 6-28-00; WOU 1-2001, f. & cert. ef. 3-5-01; WOU 2-2001, f. & cert. ef. 7-30-01; WOU 1-2002, f. 3-12-02, cert. ef. 3-15-02; WOU 2-2002, f. 8-2-02, cert. ef. 8-15-02; WOU 3-2002, f. 10-7-02, cert. ef. 10-15-02; WOU 1-2003, f. & cert. ef. 4-2-03; WOU 2-2003, f. & cert. ef. 8-1-03; WOU 1-2004, f. & cert. ef. 3-24-04; WOU 2-2004, f. & cert. ef. 8-4-04; WOU 1-2005, f. & cert. ef. 3-8-05; WOU 2-2005, f. & cert. ef. 8-4-05; WOU 3-2005, f. & cert. ef. 8-12-05; WOU 1-2006, f. & cert. ef. 3-2-06; WOU 2-2006, f. & cert. ef. 8-7-06; WOU 1-2007, f. & cert. ef. 3-5-07; WOU 2-2007, f. & cert. ef. 7-31-07; WOU 4-2007, f. & cert. ef. 11-1-07; WOU 1-2008, f. & cert. ef. 2-1-08; WOU 2-2008, f. & cert. ef. 9-3-08; WOU 1-2009, f. & cert. ef. 2-13-09; WOU 2-2009, f. & cert. ef. 7-29-09; WOU 1-2010, f. & cert. ef. 1-27-10; WOU 2-2010, f. & cert. ef. 8-4-10; WOU 1-2011, f. & cert. ef. 2-2-11; WOU 2-2011, f. & cert. ef. 5-2-11; WOU 3-2011, f. & cert. ef. 8-5-11; WOU 1-2012, f. & cert. ef. 1-27-12; WOU 2-2012, f. & cert. ef. 7-31-12; WOU 1-2013, f. & cert. ef. 1-28-13; WOU 2-2013, f. & cert. ef. 7-24-13; WOU 1-2014, f. & cert. ef. 1-28-14; WOU 2-2014, f. & cert. ef. 8-5-14; WOU 1-2015, f. & cert. ef. 2-12-15

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Racing Commission
Chapter 462

Rule Caption: Rule implements regulation of pari-mutuel wagering for "instant" or historical racing.
Adm. Order No.: RC 1-2015
Filed with Sec. of State: 2-2-2015
Certified to be Effective: 2-2-15
Notice Publication Date: 1-1-2015
Rules Adopted: 462-200-0700
Subject: Rule allows the agency to govern the Instant Racing 1-2-3 with Pick N Wager. This wager will be offered on a pari-mutuel wagering device with historic races.
Rules Coordinator: Karen Parkman—(971) 673-0208

462-200-0700
Instant Racing 1-2-3 with Pick N

(1) Instant Racing 1-2-3 with Pick N is mutuel wagering which requires selection of the first three finishers for a single contest selected from a historical library of previously run contests that are replayed from a central video server according to the following procedures:

(a) The contest from the historical library is selected at random before the player enters any selection.

(b) The player may examine one or more charts including past performance information showing the relative merits of the contestants as they actually were on the day of the contest.

(c) After examining one or more charts the player has the option to proceed with the selected contest (in which case the player selects three

horses) or to bypass the selected contest (in which case a new contest from the historical library is selected at random and the process begins again).

(d) After the player's selections are registered, the identity of the contest is revealed, a video segment of the contest finish is shown, and the actual official results are displayed.

(e) A player wins by matching some or all of the first three finishers in one of several different ways. Any winnings may be collected instantly.

(f) A player must risk a second unit bet in the wager to qualify for the highest value pool(s) (for example the Pick N, matching the first finisher in N consecutive contests).

(2) Wager Amount:

(a) Acceptable wagering units shall be no lower than $0.05 and no higher than $20.

(b) The player may enter only one or two unit bets per play.

(3) Pool Split: After the applicable takeout has been deducted from the wager, the remaining amount shall be apportioned among several separate pools which have been carried over from previous contests played by all players:

(a) The remaining amount (after takeout) of the first unit bet shall be apportioned among the first unit bet pools, including one pool for each of several ways to win, and to the first Seed Pool when it is below its designated cap amount.

(b) The remaining amount (after takeout) of the second unit bet, if wagered, shall be apportioned among the second unit bet pools (for example the Pick N), and to the second Seed Pool when it is below its designated cap amount.

(4) Ways to Win for the First Unit Bet: For players who risked either one or two unit bets in each wager, some or all of the following ways to win, or other similar ways approved by the Commission, may be declared:

(a) 3 Exact Order: The player's selections correctly match the first three finishers in exact order.

(b) 3 Any Order: The player's selections correctly match the first three finishers in any order.

(c) Top 2 Exact Order: The player's top two selections correctly match the first two finishers in exact order.

(d) 3 to get Top 2: Any of the player's three selections correctly match the first two finishers in any order.

(e) Top Pick Wins Contest: The player's top selection correctly matches the first (winning) finisher.

(f) Any 2 of 3: The player's selections correctly match any two of the first three finishers in any order.

(g) Second Pick Wins Contest: The player's second selection correctly matches the first (winning) finisher.

(h) Any Pick Wins Contest: Any one of the player's selections correctly matches the first (winning) finisher.

(5) Ways to Win for the Second Unit Bet: For players who risked two unit bets in each wager, some or all of the following ways to win, or other similar ways approved by the Commission, may be declared:

(a) Pick N: The player has won the Top Pick Wins Contest pool in N consecutive plays, with two unit bets in each wager. After winning the Pick N pool, the player must start over accumulating wins to be eligible for either the Pick N pool or the Pick N-1 pool again.

(b) Pick N-1: The player has won the Top Pick Wins Contest pool in N-1 consecutive plays, with two unit bets in each wager.

(c) Pick N Consolation: The player has won the Top Pick Wins Contest pool in N-1 consecutive plays and then has lost in the next, with two unit bets in each wager. The Pick N Consolation shall be declared as a way to win only when the Pick N-1 pool has not been.

(6) Payment Calculation:

(a) For each way to win except the Pick N Consolation, the winning price shall be the entire amount in the pool for which the wager qualifies, less the price round-off (breakage).

(b) For the Pick N Consolation, the winning price shall be a designated percentage of the amount in the Pick N pool, less the price round-off (breakage). The remaining amount of the Pick N pool carries forward for the next Pick N winner.

(c) When the first unit bet qualifies to win more than one of its ways to win, only the largest single pool amount qualified for shall be paid.

(d) When the second unit bet qualifies to win more than one of its ways to win, only the largest single pool amount qualified for shall be paid.

(e) When the second unit bet qualifies to win, its winning price shall be added to the winning price from the first unit bet.

(f) Each way to win has a minimum payout amount for winning wagers, which shall be posted.

(g) In the case of a minus pool, the minimum payout amount shall not be less than the amount of one unit bet wagered.

(h) If two players qualify to win the same pool within a short time, the first winner shall be paid the current pool and the second shall be paid the new pool, which begins with the minimum payout amount.

(7) Dead Heat: A contest that has a dead heat for first, second, or third shall not be used for Instant Racing 1-2-3 with Pick N wagering.

(8) Coupled Entries, Mutuel Fields:

(a) A contest involving coupled entries or mutuel fields shall not be used for Instant Racing 1-2-3 with Pick N wagering if there are two or more betting interests live for a single contestant number.

(b) The one remaining live betting interest of a coupled entry or mutuel field shall be represented by its contestant number without a letter. For example, contestant number "1" represents either contestant "1" or "1A".

(9) Seed Pool: To cover the cases when one of the minimum payout amounts is paid, the Seed Pool is accumulated from a designated percent of wagers.

(a) Each time a pool's minimum payout amount is paid in excess of the actual amount available in the pool, the shortfall shall be deducted from the Seed Pool.

(b) After a pool is paid, the actual amount of the pool may be seeded from the Seed Pool to a specified initial amount less than or equal to its minimum payout amount.

(c) While the Seed Pool is below a designated cap amount, the allotments to the other pools are each decreased and the difference shall be allotted to the Seed Pool.

(d) The Seed Pool of the first unit bet shall be kept separate from that of the second unit bet.

(10) Commission Approval:

(a) The takeout rate may not exceed a maximum rate approved by the Commission. Subject to that restriction, the takeout rate shall be set by the race meet licensee and reported to the Commission.

(b) The method of apportioning wagers to each of the pools shall be approved by the Commission.

(c) The method of seeding pools shall be approved by the Commission.

(d) The number of pools and specific "Ways to Win", declared from time to time by the race meet licensee from the list set forth above or other similar ways, shall be approved by the Commission.

(e) When a Pick N Consolation has been declared as a way to win, the percentage of the Pick N pool to be paid as a consolation shall be approved by the Commission.

(f) Should the Instant Racing 1-2-3 with Pick N pools be designated for termination or mandatory distribution on a specific date, a method approved by the Commission shall be used.

(g) The method for selecting contests and past performance charts shall be certified by an independent authority that is approved by the Commission.

(11) Additional Requirements:

(a) Contests shall be randomly selected from a historical library of actual contests that were previously held. Only contests that were held at licensed racetracks may be used. The contests contained in the historical library need not all have the same number of entrants.

(b) The total amount in each mutuel pool shall be posted at all times.

(c) Minimum payouts shall be posted at all times.

(12) Interpretation:

(a) Instant Racing 1-2-3 with Pick N shall be considered a form of interstate simulcast wagering.

(b) In the event of any inconsistency between the provisions of this rule regarding Instant Racing 1-2-3 with Pick N and the provisions of any other rule, the provisions of this rule shall control.

Stat. Auth.: ORS 462.270(3)
Stats. Implemented: SB 1537, ORS 462.010, 462.155 & 462.270(3)
Hist.: RC 1-2015, f. & cert. ef. 2-2-15

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Secretary of State, Archives Division
Chapter 166

Rule Caption: Housekeeping corrections to the City Records Retention Schedule
Adm. Order No.: OSA 1-2015
Filed with Sec. of State: 1-27-2015
Certified to be Effective: 1-27-15
Notice Publication Date: 12-1-2014

Rules Amended: 166-200-0200, 166-200-0235, 166-200-0260, 166-200-0350, 166-200-0370, 166-200-0375, 166-200-0380
Subject: The City Records Retention Schedule was recently adopted. However, during a review after filing and publication of the new retention schedule, a number of corrections were identified as needing to be made to ensure that the schedule is efficient for all to use. These changes

are housekeeping in nature. No records retention periods are being changed with this amendment.
Rules Coordinator: Julie Yamaka—(503) 378-5199

166-200-0200
City Records

This General Schedule prescribes minimum retention periods for public records created and maintained by the cities of Oregon. Retention periods apply to the record copy of all public records, regardless of medium or physical format, created or stored by the above specified agencies. Please note the exceptions to this General Schedule listed in OAR 166-030-0027 before disposing of records. The asterisks (*) found in this schedule indicate that the record may be classified as "vital" or "essential" in the event of a disaster..

Stat. Auth.: ORS 192 & 357
Stats. Implemented: ORS 192.005 - 192.170 & 357.805 - 357.895
Hist.: OSA 2-2014, f. & cert. ef. 8-7-14; OSA 1-2015, f. & cert. ef. 1-27-15

166-200-0235
Administrative

Administrative documents the activities related to the day to day operations of the city.

(1) City Awards and Recognitions — Minimum Retention:

(a) Applications and submitted records, retain 5 years;

(b) Notification of Award, retain 10 years.

(2) Delivery Records (166-200-0110(6), (8)) — Minimum retention: 2 years.

(3) Index/Finding Aid Records (166-200-0010(9)) — Minimum retention: Until superseded or obsolete.

(4) Mailing Lists (166-200-0010(14)) — Minimum retention: Until superseded or obsolete.

(5) Meeting Records, Boards, Commissions, Committee, and Governing Bodies* (166-200-0010(15), (16); 166-200-0095(15), (16); 166-200-0115(13); 166-200-0135(5)) — Minimum retention:

(a) Minutes* (except executive session minutes), agendas, resolutions, indexes, and exhibits (not retained permanently elsewhere in city records) permanently;

(b) Executive session minutes, retain 10 years;

(c) Audio or visual recordings 1 year after minutes prepared and approved;

(d) Other records and exhibits not pertinent to minutes, retain 5 years.

(6) Meeting Records, Staff (166-200-0010(17)) — Minimum retention: 2 years.

(7) Notary Public Log Book (166-200-0010(20)) — Minimum retention: 10 years after date of commission expiration.

(8) Organizational Records (166-200-0010(21)) — Minimum retention: Permanent.

(9) Participant Registration and Attendance Records (166-200-0080(5)) — Minimum retention: 3 years.

(10) Professional Membership Records (166-200-0010(24)) — Minimum retention: 3 years.

(11) Project Files — Minimum retention:

(a) Projects that develop into city sponsored projects (i.e. public works, street improvement, capital construction, etc.) see that section of the schedule for appropriate retention;

(b) All other projects, retain 10 years, destroy.

(12) Publications (166-200-0010(27); 166-200-0030(11); 166-200-0065(7)) — Minimum retention:

(a) Routine, general informational publications retain until superseded or obsolete; 1 year;

(b) Publications documenting special events or information with long term value, retain permanently.

(13) Public Programs Education Records (166-200-0030(10) — Minimum retention: 3 years.

(14) Registered Contractor Lists (166-200-0025(11)) — Minimum retention: Until superseded or obsolete.

(15) Requests and Complaints (166-200-0015(6); 166-200-0110(28)) — Minimum retention: 2 years after last action.

(16) Special Event and Celebration Records (166-200-0010(34)) — Minimum retention:

(a) Records documenting significant aspects of the event, retain permanently;

(b) Other records, retain 2 years after event.

(17) Surveys, Polls, and Questionnaires (166-200-0010(35)) — Minimum retention:

(a) Summary reports and abstracts, retain 3 years;

(b) All other records, retain until summary report is completed or 3 years, whichever is sooner.

Stat. Auth.: ORS 192 & 357
Stats. Implemented: ORS 192.005 - 192.170 & 357.805 - 357.895
Hist.: OSA 2-2014, f. & cert. ef. 8-7-14; OSA 1-2015, f. & cert. ef. 1-27-15

166-200-0260
Compliance

Compliance documents adherence to established statutes, rules, policies and procedures.

(1) Contractor Liability Insurance Verification Records (166-200-0140(2)) — Minimum retention:

(a) If related to city improvement project, retain 10 years after substantial completion, as defined by ORS 12.135(3);

(b) All other records, retain 6 years after expiration.

(2) Contractor Performance Bond Records (166-200-0140(3)) — Minimum retention:

(a) If related to city improvement project retain 10 years after substantial completion, as defined by ORS 12.135(3);

(b) All other bond records, retain 6 years after expiration.

(3) Employee Bond Records* (166-200-0050(12)) — Minimum retention: 6 years after expiration.

Stat. Auth.: ORS 192 & 357
Stats. Implemented: ORS 192.005 - 192.170 & 357.805 - 357.895
Hist.: OSA 2-2014, f. & cert. ef. 8-7-14; OSA 1-2015, f. & cert. ef. 1-27-15

166-200-0350
Public Safety

Public Safety documents the responsibilities for law and code enforcement, fire services, emergency management and jail services. For policy related records see Policy (OAR 166-200-0325)

(1) 9-1-1 Data Management System Records (166-200-0145(2)) — Minimum retention: Until superseded or obsolete.

(2) 9-1-1Operational Logs (166-200-0145(7)) — Minimum retention: 1 year.

(3) 9-1-1 System Error/Malfunction Records (166-200-0145(11)) — Minimum retention: 2 years.

(4) Alarm Records (166-200-0100(2)) — Minimum retention:

(a) Alarm licensing and permit records, retain 3 years after expiration;

(b) All other records, retain 2 years.

(5) Alert and Notification Records (166-200-0030(1)) — Minimum retention: 30 days.

(6) Animal Control Records (166-200-0100(3)) — Minimum retention:

(a) Dog licenses, retain 3 years after expiration;

(b) Other records, retain 2 years.

(7) Arrest Warrant Log Records (166-200-0100(4)) — Minimum retention: Until superseded or obsolete.

(8) Arrest Warrant Records (166-200-0100(5)) — Minimum retention: Until served, recalled or cancelled by the court.

(9) Block Home Program Records (166-200-0100(6)) — Minimum retention:

(a) Approved application records, retain 2 years after withdrawal from program;

(b) Denied application records, retain 2 years.

(10) Booking Records (166-200-0100(7)) — Minimum retention:

(a) Homicides, retain 20 years;

(b) Felonies, retain 10 years;

(c) Misdemeanors, retain 5 years.

(11) Briefing Records (166-200-0145(1)) — Minimum retention: 7 days.

(12) Bulletins From Other Agencies (166-200-0100(8)) — Minimum retention: Until superseded or obsolete.

(13) Civil Preparedness Guidance (CPG) and State and Local Guide (SLG) Records (166-200-0030(2)) — Minimum retention: Until superseded or obsolete.

(14) Community Policing and Problem Solving Records (166-200-0100(9)) — Minimum retention:

(a) Agreements, retain 6 years after expiration;

(b) All other records, retain 2 years.

(15) Computer Inquiry Records (166-200-0100(10)) — Minimum retention: Until superseded or obsolete.

(16) Computer Validation Records (166-200-0100(11)) — Minimum retention: 5 years or until audited by NCIC or other applicable law enforcement network, whichever is shorter.

(17) Controlled Substance Inventory and Tracking Records (166-200-0055(4)) — Minimum retention: 3 years, or until superseded, whichever is longer.

(18) Crime Analysis Records (166-200-0100(13)) — Minimum retention:

(a) Major crime analyses or studies, retain 10 years;

(b) All other records, retain 1 year.

(19) Crime Prevention Community Organization Records (166-200-0100(14)) — Minimum retention: Until superseded or obsolete.

(20) Crime Prevention Program Records (166-200-0100(15)) — Minimum retention:

(a) Significant program records, retain 5 years;

(b) Class enrollment and attendance records, retain 2 years;

(c) All other records, retain 1 year.

(21) Crime Prevention Security Survey Records (166-200-0100(16)) — Minimum retention: 2 years.

(22) Crime Prevention Vacation House Inspection Records (166-200-0100(17)) — Minimum retention: 30 days after inspections end.

(23) Criminal Arrest History Records (166-200-0100(18)) — Minimum retention:

(a) Homicides, retain 20 years;

(b) felonies, retain 10 years;

(c) Misdemeanors, retain 5 years.

(24) Criminal History Dissemination Records (166-200-0100(19)) — Minimum retention: Until case completed or suspended.

(25) Criminal Intelligence Records (166-200-0100(20)) — Minimum retention:

(a) "Permanent files" as defined by OAR 137-090-0080, retain 5 years;

(b) "Temporary files" as defined by OAR 137-090-0080, retain 1 year;

(c) "Working files" as defined by OAR 137-090-0080, retain 30 working days.

(26) Detoxification Confinement Logs (166-200-0100(21) — Minimum retention: 2 years.

(27) Dispatch Incident Records (166-200-0145(3)) — Minimum retention: 2 years.

(28) Emergency and Disaster Incident Records* (166-200-0010(8)) — Minimum retention: Permanent.

(29) Emergency Exercise Records (166-200-0030(4)) — Minimum retention: 3 years after annual or final expenditure report submitted.

(30) Emergency Management Assistance Staff Pattern Records (166-200-0030(8)) — Minimum retention: 3 years after annual or final expenditure report submitted.

(31) Emergency Management Resource Lists (166-200-0030(12)) — Minimum retention: Until superseded or obsolete.

(32) Emergency Medical Incident Records (166-200-0055(5)) — Minimum retention: 10 years.

(33) Emergency Telephone Calls Continuous Audio Tapes (166-200-0100(22); 166-200-0145(5)) — Minimum retention: 7 months Note: Specific recordings of incidents may warrant longer retention for legal reasons.

(34) Enhanced 9-1-1 Service Plans (166-200-0145(4)) — Minimum retention:

(a) Approved plans and amendments, retain 5 years after superseded;

(b) Preliminary plans, drafts, worksheets and supporting materials, retain until plan approved by Oregon Emergency Management.

(35) Expunged or Sealed Records, Police (166-200-0100(24)) — Minimum retention:

(a) Dispose of expunged records according to the directive of the court;

(b) Expungement orders, retain 10 years or according to the directive of the court;

(c) Sealed records, retain 10 years or according to the directive of the court.

(36) Fingerprint Cards (166-200-0100(26)) — SEE ALSO Latent Fingerprint Cards in this section — Minimum retention:

(a) Homicides, retain 20 years;

(b) Felonies, retain 10 years;

(c) Misdemeanors, retain 5 years;

(d) Retain other cards until superseded or obsolete.

(37) Fire and Emergency Medical Services Maps (166-200-0055(8)) - Minimum retention: Until superseded or obsolete.

(38) Fire and Security Alarm System Records (166-200-0055(12)) — Minimum retention: Retain 2 years.

(39) Fire Investigation Records (166-200-0055(13)) — Minimum retention:

(a) Records documenting fires involving loss of life, retain 75 years;

(b) Other records, retain 10 years.

(40) Incident Case File Indexes (166-200-0100(29)) — Minimum retention: Until superseded or obsolete.

(41) Incident Case Files (166-200-0100(30)) — Minimum retention:

(a) Cases involving crimes with no statute of limitations, retain 75 years after case closed;

(b) Protective custody files, retain until minor's age of majority or emancipation;

(c) All other cases, retain until statute of limitations expires.

(42) Informant Case Files (166-200-0100(31)) — Minimum retention: Until superseded or obsolete.

(43) Inmate Accountability Records (166-200-0100(32)) — Minimum retention: 1 year.

(44) Inmate Case File Indexes (166-200-0100(33)) — Minimum retention: Until superseded or obsolete.

(45) Inmate Case Files (166-200-0100(34)) — Minimum retention: 5 years.

(46) Inmate Meal Records (166-200-0100(35)) — Minimum retention: 6 months.

(47) Inmate Medical Records (166-200-0100(36)) — Minimum retention: 7 years.

(48) Inmate Telephone and Mail Logs (166-200-0100(38)) — Minimum retention: 1 year.

(49) Impounded and Abandoned Vehicle Records (166-200-0100(28)) — Minimum retention: Retain records not included in Incident Case File, 2 years after disposition of vehicle.

(50) Inspection and Occupancy Records (166-200-0055(18)) — Minimum retention: Retain current and previous inspection reports or 10 years, whichever is longer.

(51) Internal Investigations Case Files (166-200-0100(40)) — Minimum retention:

(a) Investigations resulting in termination, retain 10 years after employee separation;

(b) Investigations resulting in disciplinary action or exoneration, retain 3 years after resolution;

(c) Unfounded investigations, retain 3 years.

(52) Juvenile Offender/Victim Restitution Records (166-200-0100(41)) — Minimum retention: 5 years after last action, or youth reaches age of majority, whichever is longer.

(53) Juvenile Temporary Custody Records (166-200-0100(42)) — Minimum retention: 3 years.

(54) Latent Fingerprint Cards (166-200-0100(43)) — SEE ALSO Fingerprint Cards in this section — Minimum retention:

(a) Cases involving crimes with no statute of limitations, retain 75 years after case closed;

(b) All other cases, retain 1 year after statute of limitations expires.

(55) Lost and Found Property Records (166-200-0100(45)) — Minimum retention: 2 years after disposition.

(56) Maps, Police (166-200-0100(46)) — Minimum retention: Until superseded or obsolete.

(57) Master 24 Hour Audio Tapes (166-200-0145(5)) — Minimum retention: 7 months.

(58) Master Name Index Records (166-200-0100(47)) — Minimum retention: Until superseded or obsolete.

(59) Master Street Address Guide (MSAG) Maintenance Forms (166-200-0145(6)) — Minimum retention: 2 years.

(60) Mug Shots (166-200-0100(48)) — Minimum retention:

(a) Retain homicides 20 years;

(b) Retain felonies 10 years;

(c) Retain misdemeanors 5 years.

(61) Neighborhood Dispute Resolution Records (166-200-0100(49)) — Minimum retention:

(a) Case records, retain 5 years after last action;

(b) All other records, retain 2 years.

(62) Officer Notes (166-200-0100(50)) — Minimum retention: 2 years.

(63) Officer Weapon Registration Records (166-200-0100(51)) — Minimum retention: Until superseded or obsolete.

(64) Patrol Car Video Files (166-200-0100(52)) — Minimum retention:

(a) Tapes used as evidence, retain until case reaches final disposition;

(b) Tapes used for internal investigations, retain until investigation ends;

(c) All other tapes, retain 30 days.

(65) Pawn Broker and Second Hand Dealer Reports (166-200-0100(53)) — Minimum retention: 2 years.

(66) Peer Court Records (166-200-0100(54)) — Minimum retention:

(a) Case records, retain 5 years after final disposition of case, or youth reaches age of majority, whichever is longer;

(b) Participant guidelines and instructions, retain until superseded or obsolete;

(c) All other records, retain 2 years.

(67) Photo Radar Records (166-200-0100(55), (56)) — Minimum retention:

(a) Photo Radar Logs, retain 3 years;

(b) Photo radar citations issued, retain 2 years;

(c) Photo radar citations not issued, retain 30 days.

(68) Polygraph Records (166-200-0100(57)) — Minimum retention:

(a) Case involving crimes with no statute of limitations, retain 75 years after case closed;

(b) All other cases, retain 1 year after statute of limitations expires.

(69) Premise Information Records (166-200-0145(8)) — Minimum retention: 2 years, or until renewed, superseded, or expired, whichever is sooner.

(70) Property and Evidence Control and Disposition Records (166-200-0100(58)) — Minimum retention:

(a) Cases involving crimes with no statute of limitations, retain 75 years after case closed;

(b) All other cases, retain 1 year after statute of limitations expires.

(71) Property Registration Records (166-200-0100(59)) — Minimum retention: Until registration is expired, superseded, or obsolete.

(72) State Fire Marshal Exemption Records (166-200-0055(20)) — Minimum retention: 2 years after denial, revocation, or expiration of exemption.

(73) Teletype Messages (166-200-0100(61)) — Minimum retention: Retain messages not warranting inclusion in Incident Case Files, or other record series 30 days.

(74) Towed Vehicle Records (166-200-0100(62)) — Minimum retention: 1 year.

(75) Traffic and Other Citation Logs (166-200-0100(63)) — Minimum retention: 1 year.

(76) Traffic and Other Citations (166-200-0100(64)) — Minimum retention: 3 years.

(77) Traffic Violation Warning Records (166-200-0100(65)) — Minimum retention: 1 year.

(78) Used Firearm Transfer Records (166-200-0100(66)) — Minimum retention: 1 year.

(79) Youth Prevention and Intervention Records (166-200-0055(21)) — Minimum retention:

(a) Until court ordered expunction (ORS 419A.262);

(b) If case is not expunged: 5 years after last action, or youth reaches age of majority, whichever is longer.

Stat. Auth.: ORS 192 & 357
Stats. Implemented: ORS 192.005 - 192.170 & 357.805 - 357.895
Hist.: OSA 2-2014, f. & cert. ef. 8-7-14; OSA 1-2015, f. & cert. ef. 1-27-15

166-200-0370
Public Works — Wastewater and Water Treatment

Public Works is responsible for the management of the city's infrastructure. Wastewater Treatment documents the management of wastewater and water treatment activities to ensure all rules, laws and codes are being followed. For operational records, please see Public Works — Operations (OAR 166-200-0360) and for reports relating to wastewater and water treatment see Reporting (OAR166-200-0385)

(1) Annual Inspection Records (166-200-0120(1)) — Minimum retention:

(a) Reports, retain permanently;

(b) All other records, retain 5 years.

(2) Mobile Waste Hauler Dumping Records (166-200-0120(5)) — Minimum retention: 5 years.

(3) Non-Compliance Corrective Action Records (166-200-0125(3)) — Minimum retention: 3 years after last action.

(4) Public Facilities Grease Trap Inspection Records (166-200-0120(7)) — Minimum retention:

(a) 1 year after date of inspection;

(b) Closed facilities, retain 2 years after closure.

(5) Sanitary Survey Records (166-200-0125(4)) — Minimum retention:

(a) Reports, retain permanently;

(b) All other records, retain 5 years.

(6) Sewage Sludge Records (166-200-0120(9)) — Minimum retention: Permanent.

(7) Water Quality Complaint Records (166-200-0125(11)) — Minimum retention: 3 years after last action.

Stat. Auth.: ORS 192 & 357
Stats. Implemented: ORS 192.005 - 192.170 & 357.805 - 357.895
Hist.: OSA 2-2014, f. & cert. ef. 8-7-14; OSA 1-2015, f. & cert. ef. 1-27-15

166-200-0375
Recorder — Elections

Recorder is responsible for the care and management of all city records. Elections documents the administration of city elections and that process is conducted in a manner that complies with all state and federal elections laws.

(1) Abstract of Votes (Record of Elections) (166-200-0130(1)) — Minimum retention: Permanent.

(2) Election Filings (166-200-0130(3)) — Minimum retention: 4 years.

(3) Election Preparation Records (166-200-0130(4)) — Minimum retention: 2 years.

(4) Help America Vote Act Identification Records (166-200-0130(5)) — Minimum retention: Until verified by county elections official.

(5) Initiative, Referendum, and Recall Records (166-200-0130(6)) — Minimum retention:

(a) Signature verification records, retain 6 years;

(b) Signature sheets including verification, if measure approved, retain 6 years after election;

(c) Signature sheets, if measure not approved, retain 90 days after election or 90 days after deadline for sufficient signatures;

(d) Petitions qualified to ballot, retain permanently;

(e) Petitions not qualified to ballot, retain 6 years.

(6) Poll Books (166-200-0130(8)) — Minimum retention: Records created prior to 1931, retain permanently.

Stat. Auth.: ORS 192 & 357
Stats. Implemented: ORS 192.005 - 192.170 & 357.805 - 357.895
Hist.: OSA 2-2014, f. & cert. ef. 8-7-14; OSA 1-2015, f. & cert. ef. 1-27-15

166-200-0380
Recorder — General

Recorder is responsible for the care and management of all city records. General documents the management and care of the city's public records.

(1) Annexation Records (166-200-0135(1)) — Minimum retention: Permanent.

(2) City Charter (166-200-0135(2)) Minimum retention: Permanent.

(3) City Code (166-200-0135(3)) — Minimum retention: Permanent.

(4) Deeds to City-Owned Land (166-200-0135(7)) — Minimum retention:

(a) Record of sale or property transfer and legal property description, retain permanently;

(b) All other records, retain until property sold and any applicable audits have been completed.

(5) Easements (166-200-0135(8)) — Minimum retention: Permanent.

(6) Index/Finding Aid Records (166-200-0010(10)) — Minimum retention: Until superseded or obsolete.

(7) Filing System Records (166-200-0060(5)) — Minimum retention: 5 years after superseded or abolished.

(8) Forms Development Records (166-200-0060(6)) — Minimum retention: Until superseded or obsolete.

(9) Microfilm Quality Control Records (166-200-0060(9)) — Minimum retention: Same as related microfilm.

(10) Oaths of Office (166-200-0135(13)) — Minimum retention: 6 years after most recent oath expired.

(11) Orders — Minimum retention: Permanent

(12) Ordinances (166-200-0135(14)) — Minimum retention: Permanent.

(13) Property Dedication Records (166-200-0135(17)) — Minimum retention: Permanent.

(14) Property Vacation Records (166-200-0135(18)) — Minimum retention: Permanent.

(15) Records Management Records (166-200-0060(10)) — Minimum retention:

(a) Destruction records, retain 25 years;

(b) Index/Finding Aid Records (166-200-0010(10)) Until superseded or obsolete;

(c) Filing System Records (166-200-0060(5)) 5 years after superseded or abolished;

(d) Other records, retain 5 years after superseded or obsolete.

(16) Council Resolutions (166-200-0135(6)) — Minimum retention: Permanent.

(17) Waivers of Remonstrance (166-200-0135(20)) — Minimum retention:

(a) If waiver has an expiration date, retain 6 years after expiration date;

(b) If waiver carries no expiration date, retain 6 years after completion of project.

Stat. Auth.: ORS 192 & 357
Stats. Implemented: ORS 192.005 - 192.170 & 357.805 - 357.895
Hist.: OSA 2-2014, f. & cert. ef. 8-7-14; OSA 1-2015, f. & cert. ef. 1-27-15

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Secretary of State, Elections Division
Chapter 165

Rule Caption: Adopts Filing Deadlines for Vacancy in Fern Ridge Library District Board of Directors
Adm. Order No.: ELECT 1-2015(Temp)
Filed with Sec. of State: 2-13-2015
Certified to be Effective: 2-13-15 thru 3-20-15
Notice Publication Date:
Rules Adopted: 165-020-2033
Subject: A vacancy in the office of Director of the Fern Ridge Library District occurred after the deadline for publishing notice of district election but before the 62nd day before the May 19, 2015 Regular District Election. This rule provides the deadlines for the county to publish notice of district election and sets the deadline to accept candidate filings.
Rules Coordinator: Brenda Bayes—(503) 986-1518

165-020-2033
Filing Deadline for Vacancy Appearing on the May 19, 2015, Regular District Election

Due to a vacancy in the position of Director of the Fern Ridge Library District (Lane County) the following deadlines apply:

(1) February 20, 2015, last date for clerk to publish notice of district election in newspaper of general circulation in the district.

(2) March 19, 2015, last date for candidates to file declaration of candidacy or completed nominating petition with the Lane County Clerk.

Sstat. Auth.: ORS 246.150
Stats. Implemented: ORS 255.245
Hist.: ELECT 1-2015(Temp), f. & cert. ef. 2-13-15 thru 3-20-15

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Teacher Standards and Practices Commission
Chapter 584

Rule Caption: Adopts, amends and repeals rules associated with educator licensure, approval of programs, and professional practices.
Adm. Order No.: TSPC 1-2015
Filed with Sec. of State: 2-10-2015
Certified to be Effective: 2-10-15
Notice Publication Date: 12-1-2014
Rules Adopted: 584-018-0165, 584-020-0060, 584-066-0025
Rules Amended: 584-010-0006, 584-010-0090, 584-017-1028, 584-017-1030, 584-017-1032, 584-017-1035, 584-018-0110, 584-018-0115, 584-018-0120, 584-018-0130, 584-018-0140, 584-018-0150, 584-018-0305, 584-019-0003, 584-023-0005, 584-036-0055, 584-036-0070, 584-036-0080, 584-036-0083, 584-038-0003, 584-042-0021, 584-042-0022, 584-042-0044, 584-042-0051, 584-050-0021, 584-052-0027, 584-060-0181, 584-060-0210, 584-060-0635, 584-065-0001, 584-065-0060, 584-065-0070, 584-065-0080, 584-065-0090, 584-065-0120, 584-066-0010, 584-066-0020, 584-070-0120, 584-070-0132, 584-070-0310, 584-080-0152, 584-080-0171, 584-090-0100, 584-090-0115, 584-100-0006, 584-100-0007, 584-100-0016, 584-100-0026, 584-100-0036
Rules Repealed: 584-019-0002
Subject: Changes name of license to Professional; amends licensure requirements; adopts program and candidate competencies; housekeeping changes.
Rules Coordinator: Victoria Chamberlain—(503) 378-6813

584-010-0006
Definitions

(1) "Approved Institution:" A U.S. regionally accredited or internationally accredited institution of higher education approved to prepare licensed personnel by the governmental jurisdiction in which the institution is located.

(2) "Approved Program:" A program of educator preparation approved by the Commission and offered by a regionally accredited institution. As it applies to out-of-state or international programs, a program approved by the licensure body of the governmental jurisdiction authorized to approve educator preparation programs.

(3) "Area for Improvement (AFI):" A statement cited by the Commission or the on-site program or unit review team indicating that a unit or program has not met expected levels of achievement in one or more elements of a standard. The Commission and the unit or program review team may cite one or more areas for improvement and still recommend or find that the standard is "met."

(4) "At Risk Unit:" A unit that the Commission determines is "at risk" of becoming "low-performing." The "at risk" designation would follow an onsite review by the Commission and findings of multiple areas for improvement. Such a unit is required to respond to Commission-imposed conditions and stipulations and must provide evidence within the time indicated by the Commission that the Commission's concerns have been addressed. Units receiving an "at risk" designation will be subject to an on-site review team follow-up visit that focuses on the areas for improvement noted by the accreditation team during the original visit.

(5) "Candidate:" Candidate includes but is not limited to persons preparing to teach, teachers who are continuing their professional development enrolled in an approved program and persons preparing for other professional roles in schools such as administrators, school counselors, school psychologists, and school social workers in a program approved by the Commission.

(6) "Commission:" Teacher Standards and Practices Commission (TSPC).

(7) "Conceptual Framework:" An underlying structure in a professional education unit that gives conceptual meaning to the unit's operations through an articulated rationale and provides direction for programs, courses, teaching, candidate performance, faculty scholarship and service, and unit accountability.

(8) "Consortium:" An advisory body to the unit that reviews, evaluates, and makes recommendations in accordance with OAR 584-017-1025 Consortium.

(9) "Director of Teacher Education:" The Commission staff member responsible for coordinating program approval within the agency.

(10) "Educator Preparation Programs:" Programs preparing licensed teachers, personnel service specialists, or administrators. Oregon Revised Statutes use the term "teacher education" to refer to all programs preparing licensed educational personnel for public elementary and secondary schools, and is not exclusive to programs for preparation of classroom teachers.

(11) "Executive Director:" The Executive Director of the Commission.

(12) "Field or Clinical Experiences:" All supervised clinical field experiences including student teaching, internships, observation experiences and experience necessary to complete an education preparation licensure program.

(13) "Institutional Report:" A report that provides the institutional and unit contexts, a description of the unit's conceptual framework, and evidence that the unit is meeting the Commission-adopted unit standards. The report serves as primary documentation for on-site review teams conducting on-site visits.

(14) "Liaison Officer:" The person designated by the unit to submit all program modifications for Commission approval, issue all recommendations for licensure under the approved program, authorize all waivers of professional courses for students enrolled in the program, and handle all correspondence between Commission staff and the unit.

(15) "Low Performing Unit:" A unit is determined to be "low performing" by the Commission if following on on-site review team visit, the imposition of conditions or stipulations and a subsequent follow-up on-site visit, the institution failed to meet the Commission's standards of quality and effectiveness. Units found to be "low performing" are denied TSPC approval and accreditation to offer educator licensure programs. A unit denied accreditation is prohibited from offering educator preparation programs in Oregon and denied from recommending educators for licensure for a minimum of two years. At the end of such time, the unit may apply for program approval (accreditation) and is required to submit a formal application and demonstrate that the problems identified in the original unit review have been addressed and that the program meets all current requirements for program approval and educator licensure in effect at the time of application for approval.

(16) "Major Modifications:" Changes of program philosophy, curricula, practica, resources, personnel, or performance standards

(17) "Off Campus Programs:" Include but are not limited to:

(a) Off-campus programs in the same state; or

(b) Off-campus programs offered at sites outside of the state or in another country.

(c) Branch campuses must be included in the unit's review if the:

(A) Programs are limited in number and size;

(B) Programs are located in close proximity to the parent campus; or

(C) Program completers are eligible for licensure in Oregon.

(18) "On-Site Review Team:" Team appointed by the Commission to conduct an on-site review for purposes of approval of educator licensure preparation programs.

(19) "Program:" Program includes but is not limited to an academic program designed for one of the following outcomes: Add an endorsement, grade level authorization or result in a new licensure area such as an Initial or Continuing, Professional License in teaching, administration or personnel service.

(20) "Regional Accrediting Associations:" Colleges and universities approved for teacher education must be accredited by the appropriate regional association at the time the degree or program is completed. The regional associations are: New England Association of Schools and Colleges; Commission on Institutions of Higher Education; North Central Association of Colleges and Schools; The Higher Learning Commission; Northwest Commission on Colleges and Universities; Middle States Association of Colleges and Schools; Commission on Higher Education; Southern Association of Colleges and Schools; Commission on Colleges; or Western Association of Schools and Colleges; Accrediting Commission for Senior Colleges and Universities.

(21) "Specialized Professional Associations or SPAs:" The national organizations that represent teachers, professional education faculty, and other school professionals who teach a specific subject matter (e.g., mathematics or social studies), teach students at a specific developmental level (i.e., early childhood, elementary, middle level, or secondary), teach students with specific needs (e.g., bilingual education or special education), administer schools (e.g., principals or superintendents), or provide services to students (e.g., school counselors or school psychologists). Many of these associations are member organizations of NCATE and have standards for both students in schools and candidates preparing to work in schools.

(22) "Unit:" Also known as the "professional education unit." The college, school, or department or other administrative bodies in colleges, universities, or other organizations recognized by the Commission as having the responsibility for managing or coordinating all programs offered for the initial and advanced preparation of teachers and other school professionals regardless of where these programs are housed in an institution. The professional education unit must include in its accreditation review all programs offered by the institution for the purpose of preparing teachers and other school personnel to work in pre-k through twelfth grade settings.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.430; 342.455 - 342.495; 342.533
Hist.: TSPC 2-2008, f. & cert. ef. 4-15-08; TSPC 9-2012, f. & cert. ef. 9-14-12; TSPC 1-2015, f. & cert. ef. 2-10-15

584-010-0090
Program Completion Fast Track — Field Operation Audit

(1) The Commission will provide a program completion fast-track option to units. The fast-track option will grant an expedited license to completers of Commission-approved programs.

(2) The license will be granted so long as it is evident that all requirements of the license have been met.

(3) For participating units, the Commission will schedule biennial field operation audits of the program completion process of each unit.

(a) The review shall audit five (5) percent of the files of program completers at the unit;

(b) A minimum of fifteen (15) files will be reviewed regardless of the number of program completers recommended by a unit for licensure; and

(c) In the event there are less than fifteen (15) files total, all files will be reviewed.

(4) The audit review team will be composed of Commission staff, including at least one (1) licensure evaluator.

(5) The review shall examine files and documents for each Commission-approved program. These files and documents include:

(a) Documentation of degrees identified on the Program Completion Report, including:

(A) Degree level;

(B) Institution granting degree;

(C) Date degree granted; and

(D) Major, if specified;

(b) Coursework completion date;

(c) Evidence of subject-matter mastery. Preferred documentation is passing scores on subject-matter test(s). In the alternative, completion of alternative assessment process, per OAR 584-052-0031;

(d) Evidence of basic skills mastery. Preferred documentation is passing scores on one of Commission-approved basic skills tests;

(e) Evidence of civil rights knowledge. Document is passing score on a Commission-approved test of knowledge of U.S. and Oregon civil rights and professional ethics;

(f) Evidence of fingerprint clearance prior to placement into any practicum experience pursuant to OAR 584-017-0055; and

(g) Basis for recommendation of program completion requirements.

(6) As part of the audit, the review team shall examine the following Commission agency files and documents for randomly chosen audited candidates:

(a) PA1 forms submitted;

(b) Evidence of fingerprint clearance;

(c) Notices of Noncompliance issued to programs;

(d) C1 Educator application forms;

(e) Appropriate test score records;

(f) Fees;

(g) License issued, based on C-2 request and information; and

(h) Any appropriate correspondence based on licensure.

(7) All results of these audits shall be reported to the Commission by Commission staff at the next regularly scheduled meeting following the unit's audit.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120—342.430; 342.455-342.495 & 342.553
Hist.: TSPC 9-2006, f. & cert. ef. 6-15-06; TSPC 2-2008, f. & cert. ef. 4-15-08; TSPC 10-2010, f. 12-30-10, cert. ef. 1-1-11; TSPC 3-2012, f. & cert. ef. 3-9-12; TSPC 1-2015, f. & cert. ef. 2-10-15

584-017-1028
Selection, Recruitment, Admission and Retention of Candidates

The unit attracts and admits qualified candidates to licensure programs, giving special attention to the current personnel needs of schools and actively recruits from under-represented groups.

(1) The unit admits into all initial and advanced programs only those who meet the following entry standards and requirements.

(2) Each candidate must demonstrated aptitude and interest in working with school-aged children.

(3) Each candidate attests to possessing moral character, a commitment to the profession, vow not to harm children, and commit to educational excellence. This attestation must be filed with the Commission upon application for first licensure in a format approved by the Commission.

(4) All teacher candidates for first application for licensure must:

(a) Pass the Commission approved basic skills tests prior to completion of the licensure program;

(b) Pass the Protecting Student and Civil Rights in the Educational Environment test prior to placement into any clinical, student teaching or internship experiences where work samples are required; and

(c) Receive full clearance from the Commission on fingerprints and character questions prior to placement into student teaching or internship experiences.

(5) Educational Leadership Licensure: Candidates for admission into an initial educational leadership licensure program (formerly administration) must document:

(a) Licensure as either a teacher or personnel service specialist in any state;

(b) Three years of experience in the schools as a licensed educator or the legal equivalent;

(c) Evidence of educational leadership potential based on the following or the equivalent: assessments in instructional leadership, administrative experience in an educational environment, human relations, and cultural inclusion;

(d) Passing scores on a Commission-approved basic skills test, unless waived based on possession of a master's degree or higher upon admission;

(e) Passing score on Protecting Student and Civil Rights in the Educational Environment; and

(f) Receive full clearance from the Commission on fingerprints and character questions prior to placement into clinical or internship experiences.

(6) Personnel Service Licensure (School Counseling, School Psychology, School Social Work). All candidates for admission into a personnel service licensure program must document:

(a) Experience working with youth in educational or social agencies;

(b) Preparation in human behavior to include: psychological, sociological, and psychological development, learning theory, and motivation;

(c) Full clearance from the Commission on fingerprints and character questions prior to placement into clinical or internship experiences;

(d) School Counseling candidates must document prior to licensure, either:

(A) Two years teaching experience in schools; or

(B) Alternative practicum experiences in lieu of teaching.

(e) School Social Worker candidates must document a master's degree in social work prior to licensure.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.430, 342.455 - 342.495 & 342.553
Hist.: TSPC 4-2012, f. & cert. ef. 5-18-12; TSPC 2-2013, f. & cert. ef. 4-30-13; TSPC 8-2014(Temp), f. & cert. ef. 11-10-14 thru 5-8-15; TSPC 1-2015, f. & cert. ef. 2-10-15

584-017-1030
Evidence of Effectiveness for Initial Teaching License Preparation

(1) The unit assures that candidates provide evidence of effectiveness to foster student learning.

(2) Each student teacher preparing for any initial teaching license assembles and analyzes either the SCALE edTPA or a teacher work sample where no comparable edTPA assessment exists to document the candidate's ability to demonstrate knowledge, skills and professional dispositions as designated in OAR 584-018-0105. Evidence of effectiveness includes:

(a) Context of the school and classroom is explained, learners with special needs, TAG learners, ESOL learners and learners from diverse cultural and social backgrounds are described, adaptations for their learning needs are discussed, and prerequisite skills required for the unit are considered;

(b) Goals for the unit of study, that vary in kind and complexity, but that include concept attainment and application of knowledge and skills;

(c) Instructional plans to accomplish the learning goals of the group(s) of students that include differentiation of instruction for all students listed in section (a) above;

(d) Data on learning gains resulting from instruction, analyzed for each student, and summarized in relation to students' level of knowledge prior to instruction;

(e) Interpretation and explanation of the learning gains, or lack thereof;

(f) A description of the uses to be made of the data on learning gains in planning subsequent instruction and in reporting student progress to the students and their parents; and

(g) Purposeful attention to literacy instruction based upon content requirements, appropriate authorization level and student needs in at least one subject.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.430, 342.455 - 342.495 & 342.553
Hist.: TSPC 3-2012, f. & cert. ef. 3-9-12; TSPC 8-2014(Temp), f. & cert. ef. 11-10-14 thru 5-8-15; TSPC 1-2015, f. & cert. ef. 2-10-15

584-017-1032
Evidence of Effectiveness for Continuing Teaching License Preparation

Each candidate preparing for a Professional Teaching License assembles a collection of evidence that documents the candidate's advanced knowledge' skills and competencies as designated in OAR 584-018-0102. The collection of evidence includes:

(1) Long term goals of study based on content goals and district standards that determine the knowledge and skills each student needs;

(2) Instructional plans that incorporate knowledge of subject matter, the developmental levels of the students and research-based educational practices that are sensitive to individual differences and diverse cultures;

(3) Evidence of the ability to establish a classroom climate that is conducive to learning for all students;

(4) Data on student progress toward attainment of long term goals, refinement of plans for instruction and establishment of alternative goals for students when necessary;

(5) Evidence of collaboration with parents, colleagues and community members to provide assistance to students and their families to promote learning;

(6) Evidence of the use of emerging research on teaching, learning and school improvement; and

(7) Evidence of participation in designing, evaluating and improving opportunities for teaching.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 – 342.430; 342.455-342.495; 342.553
Hist.: TSPC 3-2012, f. & cert. ef. 3-9-12; TSPC 1-2015, f. & cert. ef. 2-10-15

584-017-1035
Verification of Program Completion for All Licensure Programs

The unit assures that candidates have completed the program successfully.

(1) The unit documents that candidates for licensure have acquired the knowledge and demonstrated the competencies required for the authorization level(s) and endorsement(s).

(2) The unit documents that candidates for licensure have completed the required field experience successfully.

(3) The unit attests that the candidates have passed the licensure tests required for the authorization levels and endorsements for which the unit is recommending. Evidence of program completion is stored in each student's appropriate files including a copy of the C-2 form filed with the Commission as verification of the student's having met all licensure requirements.

(4)(a) Program completion for purposes of reporting under Title II of the Higher Education Improvement Act (HEIA) means the latest date at which a candidate completes all of the requirements for an Initial I Teaching License.

(b) All candidates completing an approved initial teacher preparation program must be reported to the Commission for Title II HEIA reporting purposes in the year in which all requirements are completed whether the candidate applies for licensure with TSPC.

(5) Candidates for an Initial I Teaching License will hold a minimum of a bachelor's degree from a regionally accredited institution or from an institution that is deemed to offer a degree comparable to a regionally accredited institution, including but not limited to a foreign equivalent of such a degree.

(6) Candidates for a Professional Teaching License will hold a master's or higher degree in arts and sciences or an advanced degree in the professions from a regionally accredited institution in the United States, or the foreign equivalent of such degree approved by the Commission.

(7) Candidates for Initial Administrator License will hold a Master's degree or higher in the arts and sciences or an advanced degree in the professions from a regionally accredited institution in the United States, or the foreign equivalent of such degree approved by the Commission.

(8) Candidates for Continuing Administrator License shall have completed a minimum of 18 semester or 27 quarter hours of graduate credit beyond the Master's degree.

(9) Candidates for Initial School Counselor, School Psychologist or School Social Worker License will hold a minimum of a Master's degree in behavioral sciences from a regionally accredited institution in the United States, or the foreign equivalent of such degree approved by the Commission.

(10) Candidates for Continuing School Counselor, School Psychologist or School Social Worker License will have completed an advanced program in professional competencies consisting of a minimum of six semester hours of graduate credit.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 – 342.430; 342.455-342.495; 342.553
Hist.: TSPC 3-2012, f. & cert. ef. 3-9-12; TSPC 1-2015, f. & cert. ef. 2-10-15

584-018-0150
Knowledge, Skills and Abilities for Library Media Endorsement

(1) Completion of a Commission-approved library media academic program, to include completion of a practicum experience and passage of the Commission-approved subject-matter examination is required in order to add the Library Media Endorsement to any Initial or Professional Teaching License. (See, OAR 584-060-0071.)

(2) The endorsement is valid for assignments in library media programs in grades prekindergarten through twelve (12).

(3) Library Media candidates demonstrate skill in use of information and ideas: Candidates must:

(a) Encourage reading and lifelong learning by stimulating interests and fostering competencies in the effective use of ideas and information. Candidates:

(A) Demonstrate ways to establish and maintain a positive educational climate in the library media center;

(B) Identify relationships among facilities, programs, and environment that impact student learning; and

(C) Plan and organize library media centers according to their use by the learning community.

(b) Apply a variety of strategies to ensure access to resources and information in a variety of formats, to all members of the learning community. Candidates:

(A) Support flexible and open access for the library media center and its services;

(B) Identify barriers to equitable access to resources and services;

(C) Facilitate access to information in print, nonprint, and electronic formats; and

(D) Comply with and communicate the legal and ethical codes of the profession.

(c) Promote efficient and ethical information-seeking behavior as part of the school library program and its services. Candidates:

(A) Model strategies to locate, evaluate and use information for specific purposes;

(B) Identify and address student interests and motivations;

(C) Interact with the learning community to access, communicate and interpret intellectual content; and

(D) Adhere to and communicate legal and ethical policies.

(d) Create a positive educational environment which promotes reading, literacy, and use of appropriate technology for diverse learners. Candidates:

(A) Are aware of major trends in reading material for children and youth;

(B) Select materials in multiple formats to address the needs and interests of diverse young readers and learners; and

(C) Use a variety of strategies to promote leisure reading. They model their personal enjoyment of reading in order to promote the habits of creative expression and lifelong reading.

(4) Library Media Candidates demonstrate skill in teaching and learning. Candidates must:

(a) Model and promote collaborative planning and the use of technology tools with teachers in order to teach concepts and skills of information processes integrated with classroom curriculum. Candidates:

(A) Work with classroom teachers to co-plan, co-teach, and co-assess information skills instruction. The library media specialist as teacher of information skills makes use of a variety of instructional strategies and assessment tools; and

(B) Analyze the role of student interest and motivation in instructional design. Student learning experiences are created, implemented and evaluated in partnership with teachers and other educators.

(b) Partner with other education professionals to develop and deliver an integrated information literacy curriculum. Candidates:

(A) Employ strategies to integrate the information literacy curriculum with content curriculum;

(B) Incorporate technology to promote efficient and equitable access to information beyond print resources; and

(C) Assist students to use technology to access, analyze, and present information.

(c) Design and implement instruction that supports student interests, needs, and experiences to assure successful learning. Candidates:

(A) Design library media instruction that assesses learner needs, instructional methodologies, and information processes to assure that each is integral to information skills instruction; and

(B) Support the learning of all students and other members of the learning community, including those with diverse learning styles, abilities and needs. Information skills instruction is based on student interests and learning needs and is linked to student achievement.

(5) Demonstrated skill in professional collaboration and leadership. Candidates must:

(a) Provide leadership and establish connections with the greater library and education community. Candidates:

(A) Demonstrate the potential for establishing connections to other libraries and the larger library community for resource sharing, networking, and developing common policies and procedures;

(B) Articulate the role of their professional associations and journals in their own professional growth;

(C) Model, share, and promote ethical and legal principles of education and librarianship; and

(D) Acknowledge the importance of participating on school and district committees and in faculty staff development opportunities.

(b) Articulate the relationship of the library media program with current educational trends and important issues. Candidates:

(A) Recognize the role of other educational professionals and professional associations;

(B) Translate for the school the ways in which the library program can enhance school improvement efforts; and

(C) Use information found in professional journals to improve library practice

(c) Provide and promote learning opportunities for the school community with a focus on information technology, information literacy, and literature appreciation. Candidates:

(A) Are able to articulate the relationship of the library media program with current educational trends and important issues;

(B) Recognize the role of other educational professionals and professional associations;

(C) Translate for the school the ways in which the library program can enhance school improvement efforts; and

(D) Use information found in professional journals to improve library practice.

(6) Administer the library media program in order to support the mission of the school, and according to the principles of best practice in library science and program administration. Candidates must:

(a) Apply leadership, collaboration and technology skills to design and manage a student-centered program that is current, comprehensive, and integrated within the school. Candidates: Develop and evaluate policies and procedures that support the mission of the school and address specific needs of the library media program, such as collection development and maintenance, challenged materials and acceptable use policies.

(b) Ensure their school library programs focus on students' diverse learning an' achievement. Candidates:

(A) Support intellectual freedom and privacy of users; and

(B) Plan for efficient use of resources and technology to meet diverse user needs.

(c) Adhere to the principles of the school library profession which include selecting, organizing, managing, and developing procedures and policies for print and electronic information resources. Candidates:

(A) Select, analyze, and evaluate print, nonprint and electronic resources using professional selection tools and evaluation criteria to develop a quality collection designed to meet diverse curricular and personal needs; and

(B) Organize the library media facility and its collections - print, nonprint and–electronic, according to standard accepted practice.

(d) Assess and manage financial, physical, and human resources. Candidates:

(A) Apply accepted management principles and practices that relate to personnel, financial and operational issues; and

(B) Plan adequate space for individuals, small groups and whole classes.

(7) Skill in use of technology. Candidates must:

(a) Demonstrate a sound understanding of technology operations and concepts;

(b) Implement curriculum plans that include methods and strategies for applying technology to maximize student learning;

(c) Use technology to enhance their productivity and professional practice; and

(d) Understand the social, ethical, and legal issues surrounding the use of technology in schools and apply those principles in practice.

(8) Skill in cultural competency. Candidates must:

(a) Strive to enhance resources, services, programs and instructional strategies that promote equitable learning opportunities and success for all students, regardless of native language, socioeconomic background, ethnicity, gender, disability, or other individual characteristics; and

(b) Ensure that staff and students have access to all library resources to assist them in working effectively with those in the school community with different native languages, socioeconomic backgrounds, ethnicities, genders, disabilities, and other individual characteristics.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120-342.143, 342.153, 342.165 & 342.223- 342.232

Hist.: TSPC 5-2007, f. & cert. ef. 8-15-07; Renumbered from 584-065-0110 by TSPC 5-2013, f. & cert. ef. 11-14-13; TSPC 1-2015, f. & cert. ef. 2-10-15

584-018-0110
Knowledge, Skills, Abilities and Professional Dispositions for Continuing Teaching Licensure

The unit assures that candidates for a Professional Teaching License have sufficient evidence to show a higher level of performances, essential knowledge and critical dispositions in each of the following ten (10) teaching standards than is expected to achieve the Initial I Teaching License found in OAR 584-018-0100.

(1) The Learner and Learning:

(a) Learner Development: The teacher understands how children learns grow and develop, recognizing that patterns of learning and development vary individually within and across the cognitive, linguistic, social, emotional, and physical areas, and designs and implements developmentally appropriate and challenging learning experiences. [InTASC Standard #1]

(b) Learning Differences: The teacher uses understanding of individual differences and diverse cultures and communities to ensure inclusive learning environments that enable each learner to meet high standards. [InTASC Standard #2]

(c) Learning Environments: The teacher works with others to create environments that support individual and collaborative learning, and that encourage positive social interaction, active engagement in learning, and self-motivation. [InTASC Standard #3]

(2) Content:

(a) Content Knowledge: The teacher understands the central concepts, tools of inquiry, and structures of the discipline(s) he or she teaches and creates learning experiences that make these aspects of the discipline accessible and meaningful for learners to assure mastery of the content. [InTASC Standard #4]

(b) Application of Content: The teacher understands how to connect concepts and use differing perspectives to engage learners in critical thinking, creativity, and collaborative problem solving related to authentic local and global issues. [InTASC Standard #5]

(3) Instructional Practice:

(a) Assessment: The teacher understands and uses multiple methods of assessment to engage learners in their own growth, to monitor learner progress, and to guide the teacher's and learner's decision making. [InTASC Standard #6]

(b) Planning for Instruction: The teacher plans instruction that supports every student in meeting rigorous learning goals by drawing upon knowledge of content areas, curriculum, cross-disciplinary skills and pedagogy, as well as learners and the community context. [InTASC Standard #7]

(c) Instructional Strategies: The teacher understands and uses a variety of instructional strategies to encourage learners to develop deep understanding of content areas and their connections, and to build skills to apply knowledge in meaningful ways. [InTASC Standard #8]

(4) Professional Responsibility:

(a) Professional Learning and Ethical Practice: The teacher engages in ongoing professional learning and uses evidence to continually evaluate his or her practice, particularly the effects of his/her choices and actions on others (learners, families, other professionals, and the community), and adapts practice to meet the needs of each learner. [InTASC Standard #9]

(b) Leadership and Collaboration: The teacher demonstrates leadership by taking responsibility for student learning and by collaborating with learners, families, colleagues, other school professionals, and community members to ensure learner growth and development, learning, and well-being. [InTASC Standard #10]

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 – 342.430; 342.455-342.495; 342.553
Hist.: TSPC 3-2012, f. & cert. ef. 3-9-12; TSPC 1-2015, f. & cert. ef. 2-10-15

584-018-0115
Early Childhood Education Authorization

The unit assures that candidates for an Early Childhood Education Authorization demonstrate knowledge, skills, and competencies in a pre-kindergarten, kindergarten or an elementary setting.

(1) Candidates document understanding and apply knowledge of developmental psychology and learning, appropriate to students ages three through grade four within the cultural and community context of the teacher education institution and cooperating school districts.

(2) Candidates articulate and apply a philosophy of education which is appropriate to the students in pre-kindergarten and elementary grades and which ensures that students learn to think critically and integrate subject matter across disciplines.

(3) Candidates document broad knowledge of the subject matter, curriculum and methods needed to enable students to meet state and district standards by passing the Commission-approved multiple subjects examination.

(4) Candidates complete student teaching or internship with students in grades pre-kindergarten through grade four. A field or clinical experience may substitute for student teaching if this is an additional authorization on an Initial, Initial I, Initial II or Professional Teaching License.

(5) Special Education candidates may complete field, clinical experience or internships in grades pre-kindergarten through grade four.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 – 342.430; 342.455-342.495; 342.553
Hist.: TSPC 3-2012, f. & cert. ef. 3-9-12; TSPC 1-2015, f. & cert. ef. 2-10-15

584-018-0120
Elementary Authorization

The unit assures that candidates for an Elementary (ELE) Authorization demonstrate knowledge, skills, and competencies in an elementary setting.

(1) Candidates document understanding and apply knowledge of developmental psychology and learning, appropriate to students in grades 3–8 within the cultural and community context of the teacher education institution and cooperating school districts.

(2) Candidates articulate and apply a philosophy of education which is appropriate to the students in elementary grades and which ensures that students learn to think critically and integrate subject matter across disciplines.

(3) Candidates document broad knowledge of the subject matter, curriculum and methods needed to enable students to meet state and district standards by passing the Commission-approved multiple subjects examination.

(4) Candidates complete student teaching or internship with students in grades 3–8. A field or clinical experience may substitute for student teaching if this is an additional authorization on an Initial or Professional Teaching License.

(5) Special Education candidates may complete field, clinical experience, or internships in grades three (3) through eight (8).

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 – 342.430; 342.455-342.495; 342.553
Hist.: TSPC 3-2012, f. & cert. ef. 3-9-12; TSPC 1-2015, f. & cert. ef. 2-10-15

584-018-0130
High School Authorization

The unit assures that candidates for a High School Authorization demonstrate knowledge, skills, and competencies in a high school setting.

(1) Candidates document understanding and apply knowledge of developmental psychology and learning, appropriate to students in grades 7–12 within the cultural and community context of the teacher education institution and cooperating school districts.

(2) Candidates articulate and apply a philosophy of education which is appropriate to the students in grades 7–12 and which ensures that students learn to think critically and integrate subject matter across disciplines.

(3) Candidates document in-depth knowledge of one subject matter or specialty area, curriculum, and methods needed to enable students to meet state and district standards by passing the required Commission-approved test or tests in the specific subject area(s).

(4) Candidates holding middle-level endorsements in language arts, social studies or science, are not eligible to teach these subjects on the high school authorization.

(5) Candidates complete student teaching or internship with students in grades 7-12. A field or clinical experience may substitute for student teaching if this is an additional authorization on an Initial or Professional Teaching License.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 – 342.430; 342.455-342.495; 342.553
Hist.: TSPC 3-2012, f. & cert. ef. 3-9-12; TSPC 1-2015, f. & cert. ef. 2-10-15

584-018-0140
Adding Authorization Levels to Existing Initial and Professional Teaching Licenses

(1) The unit makes provisions for adding authorizations to Initial and Professional Teaching Licenses.

(2) A candidate seeking to add the next contiguous authorization to an existing Initial or Professional Teaching License will:

(a) Successfully complete at least six (6) quarter hours or four (4) semester hours of preparation in child or adolescent development, whichever is appropriate for the level being completed. The program will include methods of instruction in the appropriate subjects at the requested authorization level and may include taking additional subject-matter tests to qualify for the authorization level; and

(b) One of the following field or clinical experiences, which must include preparation of one (1) work sample to document teaching effectiveness at the new authorization level:

(A) A field or clinical experience of two (2) semester hours or three (3) quarter hours, which except as specified below may or may not be part of a longer preparation that includes content or methods courses in the subject area, in an institution approved to prepare teachers for that endorsement; or

(B) Verification of one (1) year of experience teaching the new subject-area at least one (1) hour each day or the equivalent on either an optional assignment of ten (10) hours or less or on an approved conditional assignment permit (CAP) as allowed by OAR 584-036-0081.

(3) A candidate may add an authorization level that is not contiguous to an existing Initial or Professional Teaching License if, the candidate successfully completes an approved program at that level. Completion of the approved program shall include the required field or clinical experience and completion of a work sample to document teaching effectiveness at the new authorization level.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 – 342.430; 342.455-342.495; 342.553
Hist.: TSPC 3-2012, f. & cert. ef. 3-9-12; TSPC 1-2015, f. & cert. ef. 2-10-15

584-018-0165
Deaf and Hard of Hearing Endorsement: Competency Standards

(1) Candidates who are prepared for the Special Education: Deaf and Hard of Hearing endorsement will demonstrate the knowledge, skills, professional dispositions and cultural competencies necessary to promote the academic, career, personal and social development of students in the deaf and hard of hearing population.

(2) The Commission may provide approval to an educator preparation program or course of study that prepares candidates for a Special Education: Deaf and Hard of Hearing endorsement only if it includes:

(a) Content that will enable candidates to gain the knowledge, skills, abilities, professional dispositions, and cultural competencies to meet the standards set forth in this rule;

(b) Field experiences that include supervised teaching or internships in classrooms with deaf and hard of hearing learners; and

(c) Integration of principles of cultural competency and equitable practice in each competency standard through the entire Deaf and Hard of Hearing Endorsement program.

(3) Standard 1: American Sign Language Competency — To qualify for the Deaf or Hard of Hearing endorsement, a candidate must show evidence of proficiency in American Sign Language. There are two professional assessments used for Sign Language Proficiency. To meet this requirement, the candidate must have the rating of 3.0 or above on the American Sign Language Proficiency Interview (ASLPI), or the rating of Advanced on the Sign Language Proficiency Interview (SLPI).

(4) Standard 2: Foundations — To qualify for a Deaf or Hard of Hearing endorsement, a candidate must have the knowledge, skills and abilities to understand the philosophical, historical, and legal foundations of special education for individuals who are deaf or hard of hearing and be able to incorporate this knowledge within the context of the educational system. Standard 2 (Foundations) includes:

(a) Knowledge (Foundations) — Educators of students who are deaf or hard of hearing understand:

(A) Current educational definitions of students with hearing loss, including identification criteria, labeling issues, and current incidence and prevalence figures;

(B) Models, theories, and philosophies (e.g., bilingual-bicultural, total communication, oral/aural) that provide the basis for educational practices for students who are deaf or hard of hearing, as consistent with program philosophy;

(C) Variations in beliefs, traditions, and values across cultures and within society, and the effect of the relationships among children who are deaf or hard of hearing, their families, and schooling;

(D) Issues in definitions and identification procedures for individuals who are deaf or hard of hearing (e.g., cultural versus medical perspective);

(E) Rights and responsibilities of parents, students, teachers, and schools as they relate to students who are deaf or hard of hearing; and

(F) The impact of various educational placement options (from the perspective of the needs of any given child who is deaf or hard of hearing and consistent with program philosophy) with regard to cultural identity and linguistic, academic, and social-emotional development.

(b) Skills and Abilities (Foundations) — Educators of students who are deaf or hard of hearing can:

(A) Apply understanding of theory, philosophy, and models of practice to the education of students who are deaf or hard of hearing;

(B) Articulate pros and cons of current issues and trends in special education and the field of education of children who are deaf or hard of hearing; and

(C) Identify the major contributors to the growth and improvement of knowledge and practice in the field of education of children who are deaf or hard of hearing.

(5) Standard 3: Characteristics of Learners — To qualify for a Deaf or Hard of Hearing endorsement, a candidate must have the knowledge, skills and abilities to understand the impact that disabilities have on the cognitive, physical, emotional, social, and communication development of an individual and to create opportunities that support the communication, intellectual, social, and personal development of all students. Standard 3 (Characteristics of Learners) includes:

(a) Knowledge (Characteristics of Learners) — Educators of students who are deaf or hard of hearing understand:

(A) Communication features (visual, spatial, tactile, and/or auditory) salient to the learner who is deaf or hard of hearing that are necessary to enhance cognitive, emotional, and social development;

(B) Research in cognition related to children who are deaf or hard of hearing;

(C) Cultural dimensions that being deaf or hard of hearing may add to the life of a child;

(D) Various etiologies of hearing loss that can result in additional sensory, motor, and/or learning differences in students who are deaf or hard of hearing;

(E) The effects of families and/or primary caregivers on the overall development of children who are deaf or hard of hearing;

(F) The effects that onset of loss, age of identification, and provision of services have on the development of the child who is deaf or hard of hearing;

(G) The impact of early comprehensible communication on the academic, linguistic, and social/emotional development of the child who is deaf or hard of hearing;

(H) That deafness or hearing loss alone does not necessarily preclude normal academic development, cognitive development, or communication ability;

(I) Differences in quality and quantity of incidental language/learning experiences that children who are deaf or hard of hearing may experience;

(J) The effects of sensory input on the development of language and cognition of children who are deaf or hard of hearing; and

(K) The structure and function of the ear and auditory systems, audiological assessments, and auditory interventions, including but not limited to hearing aids, cochlear implants, assistive technology, and auditory training.

(b) Skills and Abilities (Characteristics of Learners) — Educators of students who are deaf or hard of hearing can develop a descriptive profile of a student who is deaf or hard of hearing.

(6) Standard 4: Assessment, Diagnosis, and Evaluation — To qualify for a Deaf or Hard of Hearing endorsement, a candidate must have the knowledge, skills and abilities to understand the educational assessment process and to utilize various assessment strategies to support the continuous development of all students. Standard 4 (Assessment, Diagnosis and Evaluation) includes:

(a) Knowledge (Assessment, Diagnosis and Evaluation) — Educators of students who are deaf or hard of hearing understand:

(A) Specialized terminology used in assessment of children who are deaf or hard of hearing;

(B) The components of an adequate evaluation for eligibility, placement, and program planning (e.g., interpreters, special tests) decisions for students who are deaf or hard of hearing; and

(C) The legal provisions, regulations, and guidelines regarding unbiased diagnostic assessment and use of instructional assessment measures with students who are deaf or hard of hearing.

(b) Skills and Abilities (Assessment, Diagnosis and Evaluation) — Educators of students who are deaf or hard of hearing can:

(A) Administer appropriate assessment tools using the natural/native/preferred language of the student who is deaf or hard of hearing;

(B) Gather and analyze communication samples from students who are deaf or hard of hearing, including nonverbal as well as linguistic acts; and

(C) Use exceptionality-specific assessment instruments appropriate for students who are deaf or hard of hearing.

(7) Standard 5: Instructional Content and Practice — To qualify for a Deaf or Hard of Hearing endorsement, a candidate must have the knowledge, skills and abilities to understand how students differ in their approaches to learning and to create instructional opportunities that are adapted to diverse learners. The candidate understands instructional planning and designs instruction based on knowledge of the discipline, students, community, and curriculum goals. Standard 5 (Instructional Content and Practice) includes:

(a) Knowledge (Instructional Content and Practice) — Educators of students who are deaf or hard of hearing understand:

(A) Sources of specialized materials for students who are deaf or hard of hearing;

(B) Components of the nonlinguistic and linguistic communication that students who are deaf or hard of hearing use;

(C) The procedures and technologies required to educate students who are deaf or hard of hearing under one or more of the existing modes or philosophies;

(D) Information related to American Sign Language (ASL) and existing communication modes or philosophies (consistent with program philosophy);

(E) Current theories of how language (e.g., ASL and English) develop in both children who are hearing and those who are deaf or hard of hearing;

(F) Subject matter and practice used in general education across content areas;

(G) Ways to facilitate cognitive and communicative development in students who are deaf or hard of hearing (e.g., visual saliency) consistent with program philosophy;

(H) Techniques of stimulation and use of residual hearing, based upon interpretation of audiological evaluation, in students who are deaf or hard of hearing;

(I) Research-supported instructional strategies and practices for teaching students who are deaf or hard of hearing;

(J) Techniques/methods to develop speech skills for children who are deaf or hard of hearing; and

(K) Techniques/methods to address the unique needs of children who are deaf or hard of hearing and have additional needs (e.g., behavioral concerns, autism) or disabilities (e.g., cognitive delay, autism).

(b) Skills and Abilities (Instructional Content and Practice) — Educators of students who are deaf or hard of hearing can:

(A) Demonstrate proficiency in the languages used for instructing students who are deaf or hard of hearing;

(B) Demonstrate the basic characteristics of various existing communication modes used with students who are deaf or hard of hearing;

(C) Select, design, produce, and utilize media, materials, and resources required to educate students who are deaf or hard of hearing under one or more of the existing modes or philosophies (e.g., bilingual-bicultural, total communication, aural/oral);

(D) Infuse speech skills into academic areas as consistent with the mode or philosophy espoused and the ability of the student who is deaf or hard of hearing;

(E) Modify the instructional process and classroom environment to meet the physical, cognitive, cultural, and communication needs of the child who is deaf or hard of hearing (e.g., teacher's style, acoustic environment, and availability of support services and appropriate technologies);

(F) Facilitate independent communication behavior in children who are deaf or hard of hearing;

(G) Apply first and second language teaching strategies (i.e., English through ASL or ESL) appropriate to the needs of the individual student who is deaf or hard of hearing and consistent with program philosophy;

(H) Demonstrate the ability to modify incidental language experiences to fit the visual and other sensory needs of children who are deaf or hard of hearing; and

(I) Design and implement appropriate strategies and activities to maximize literacy skills in children who are deaf or hard of hearing.

(8) Standard 6: Planning and Managing the Teaching and Learning Environment — To qualify for a Deaf or Hard of Hearing endorsement, a candidate must have the knowledge, skills and abilities to employ their understanding of individual and group motivation and behavior to create a learning environment that encourages positive social interaction, active engagement in learning, and self-motivation. Standard 6 (Planning and Managing the Teaching and Learning Environment) includes:

(a) Knowledge (Planning and Managing the Teaching and Learning Environment) — Educators of students who are deaf or hard of hearing understand:

(A) Deaf cultural factors that may influence classroom management of students who are deaf or hard of hearing; and

(B) Model programs, including career-vocational and transition that have been effective for students with hearing losses.

(b) Skills and Abilities (Planning and Managing the Teaching and Learning Environment) — Educators of students who are deaf or hard of hearing can:

(A) Manage assistive/augmentative devices appropriate for students who are deaf or hard of hearing in learning environments;

(B) Select, adapt, and implement classroom management strategies for students who are deaf or hard of hearing that reflect understanding of each child's cultural needs, including a primarily visual deaf culture where appropriate;

(C) Design a classroom environment that maximizes opportunities for visually oriented and/or auditory learning in students who are deaf or hard of hearing; and

(D) Plan and implement instruction for students who are deaf or hard of hearing and who have multiple disabilities and special needs.

(9) Standard 7: Managing Student Social Interaction Skills — To qualify for a Deaf or Hard of Hearing endorsement, a candidate must have the knowledge, skills to understand processes and opportunities for interaction and prepares students to interact in a variety of communication situations. Standard 7 (Managing Student Social Interaction Skills) includes:

(a) Knowledge (Managing Student Social Interaction Skills) — Educators of students who are deaf or hard of hearing understand:

(A) Processes for establishing ongoing interactions of students who are deaf or hard of hearing with peers and role models who are deaf or hard of hearing; and

(B) Opportunities for interaction with communities of individuals who are deaf or hard of hearing on the local, State, and national levels.

(b) Skills and Abilities (Managing Student Social Interaction Skills) — Educators of students who are deaf or hard of hearing can teach students to use interpreters appropriately in social situations.

(10) Standard 8: Communication and Collaborative Partnerships — To qualify for a Deaf or Hard of Hearing endorsement, a candidate must have the knowledge, skills and abilities to use knowledge of effective written, verbal, nonverbal, and visual communication techniques to foster active inquiry, collaboration, and supportive interaction among professionals, parents, paraprofessionals, and students. Standard 8 (Communication and Collaborative Partnerships) includes:

(a) Knowledge (Communication and Collaborative Partnerships) — Educators of students who are deaf or hard of hearing understand:

(A) Available resources to help parents of children who are deaf or hard of hearing deal with their concerns regarding educational options and communication modes/philosophies for their children;

(B) The roles and responsibilities of teachers and support personnel in educational practice for students who are deaf or hard of hearing (e.g., educational interpreters, tutors, and note-takers);

(C) The effects of communication on the development of family relationships and strategies used to facilitate communication in families with children who are deaf or hard of hearing; and

(D) Services provided by governmental and non-governmental agencies or individuals in the ongoing management of children who are deaf or hard of hearing.

(b) Skills and Abilities (Communication and Collaborative Partnerships) — Educators of students who are deaf or hard of hearing can:

(A) Teach students who are deaf or hard of hearing to use support personnel effectively (e.g., educational interpreters, tutors, and note-takers);

(B) Facilitate communication between the child who is deaf or hard of hearing and his or her family and/or other caregivers; and

(C) Facilitate coordination of support personnel (e.g., interpreters) to meet the diverse communication needs of the student who is deaf or hard of hearing and his or her primary caregivers.

(11) Standard 9: Professionalism and Ethical Practices — To qualify for a Deaf or Hard of Hearing endorsement, a candidate must have the knowledge, skills and abilities to understand teaching as a profession, maintains standards of professional conduct, and to provide leadership to improve student learning and well-being. Standard 9 (Professional and Ethical Practices) includes:

(a) Knowledge (Professionalism and Ethical Practices) — Educators of students who are deaf or hard of hearing understand:

(A) The process for acquiring the needed skills in modes/philosophies of education of students who are deaf or hard of hearing in which an individual was not prepared; and

(B) Consumer and professional organizations, publications, and journals relevant to the field of education of students who are deaf or hard of hearing.

(b) Skills and Abilities (Professionalism and Ethical Practices) — Educators of students who are deaf or hard of hearing can:

(A) Seek interaction with adults in the deaf community to maintain/improve ASL, English signs, or cues as consistent with program philosophy;

(B) Demonstrate the ability to interact with a variety of individuals who are deaf or hard of hearing on an adult-to-adult level;

(C) Provide families with the knowledge and skills to make appropriate choices needed to enhance the development and transition of their children who are deaf or hard of hearing; and

(D) Participate in the activities of professional organizations relevant to the education of students who are deaf or hard of hearing.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.430, 342.455 - 342.495 & 342.553
Hist.: TSPC 1-2015, f. & cert. ef. 2-10-15

584-018-0305
Initial School Counselor License: Competency Standards

(1) Candidates who are preparing to work as initial school counselors will demonstrate the professional knowledge, skills, cultural competencies and professional dispositions necessary to promote the academic, career, and personal and social development of all K–12 students.

(2) The Commission may provide state approval to an Initial School Counselor preparation program that prepares candidates for an initial school counselor license only if it includes:

(a) Content that will enable candidates to meet the competency standards for school counselors set forth in this rule. These standards align with the Counsel for Accreditation of Counseling and Related Educational Programs (CACREP) school counselor standards found at: http://www.cacrep.org.

(b) Field experience as set forth in section (12) of this rule; and

(c) Integration of principles of cultural competency and equitable practice in each competency standard through the entire Initial School Counselor licensure program.

(3) Initial School Counselor programs must provide evidence that student learning has occurred in the following domains of school counselor competency standards:

(4) Domain 1: Foundations:

(a) Knowledge:

(A) Know the history, philosophy, and current trends in school counseling and educational systems;

(B) Understands ethical and legal considerations specifically related to the practice of school counseling;

(C) Knows roles, functions, settings, and professional identity of the school counselor in relation to the roles of other professional and support personnel in the school;

(D) Knows professional organizations, preparation standards, and credentials that are relevant to the practice of school counseling;

(E) Understands current models of school counseling programs and their integral relationship to the total educational program;

(F) Understands the effects of: Atypical growth and development, health and wellness, language; ability level, multicultural issues, and factors of resiliency on student learning and development; and

(G) Understands the operation of the school emergency management plan and the roles and responsibilities of the school counselor during crises, disasters, and other trauma-causing events.

(b) Skills and Practices:

(A) Demonstrates the ability to apply and adhere to ethical and legal standards in school counseling; and

(B) Demonstrates the ability to articulate, model, and advocate for an appropriate school counselor identity and program.

(5) Domain 2: Counseling, Prevention and Intervention:

(a) Knowledge:

(A) Knows the theories and processes of effective counseling and wellness programs for individual students and groups of students;

(B) Knows how to design, implement, manage, and evaluate programs to enhance the academic, career, and personal/social development of students;

(C) Knows strategies for helping students identify strengths and cope with environmental and developmental problems;

(D) Knows how to design, implement, manage, and evaluate transition programs, including school-to-work, postsecondary planning, and college admissions counseling;

(E) Understands group dynamics — including counseling, psychoeducational, task, and peer helping groups — and the facilitation of teams to enable students to overcome barriers and impediments to learning; and

(F) Understands the potential impact of crises, emergencies, and disasters on students, educators, and schools, and knows the skills needed for crisis intervention.

(b) Skills and Practices:

(A) Demonstrates self-awareness, sensitivity to others, and the skills needed to relate to each diverse individual, group, and classroom;

(B) Provides individual and group counseling and classroom guidance to promote the academic, career, and personal and social development of students;

(C) Designs and implements prevention and intervention plans related to the effects of: Atypical growth and development, health and wellness, language, ability level, multicultural issues, and factors of resiliency on student learning and development;

(D) Demonstrates the ability to use procedures for assessing and managing suicide risk; and

(E) Demonstrates the ability to recognize his or her limitations as a school counselor and to seek supervision or refer clients when appropriate.

(6) Domain 3: Diversity and Advocacy:

(a) Knowledge:

(A) Understands the cultural, ethical, economic, legal, and political issues surrounding diversity, equity, and multicultural excellence in terms of student learning;

(B) Identifies community, environmental, and institutional opportunities that enhance, as well as barriers that impede, the academic, career, and personal and social development of students;

(C) Understands the ways in which educational policies, programs, and practices can be developed, adapted, and modified to be culturally congruent with the needs of students and their families; and

(D) Understands multicultural counseling issues, as well as the impact of ability levels, stereotyping, family, socioeconomic status, gender, and sexual identity, and their effects on student achievement.

(b) Skills and Practices:

(A) Demonstrates multicultural competencies in relation to diversity, equity, and opportunity in student learning and development;

(B) Advocates for the learning and academic experiences necessary to promote the academic, career, and personal/social development of students;

(C) Advocates for school policies, programs, and services that enhance a positive school climate and are equitable and responsive to multicultural student populations; and

(D) Engages parents, guardians, and families to promote the academic, career, and personal and social development of students.

(7) Domain 4: Assessment:

(a) Knowledge:

(A) Understands the influence of multiple factors such as: Abuse, violence, eating disorders, attention deficit hyperactivity disorder, and childhood depression; that may affect the personal, social, and academic functioning of students;

(B) Knows the signs and symptoms of substance abuse in children and adolescents, as well as the signs and symptoms of living in a home where substance abuse occurs; and

(C) Identifies various forms of needs assessments for academic, career, and personal and social development.

(b) Skills and Practices:

(A) Assesses and interprets students' strengths and needs, recognizing uniqueness in cultures, languages, values, backgrounds, and abilities;

(B) Selects appropriate assessment strategies that can be used to evaluate a student's academic, career, and personal/social development;

(C) Analyzes assessment information in a manner that produces valid inferences when evaluating the needs of individual students and assessing the effectiveness of educational programs;

(D) Makes appropriate referrals to school and/or community resources; and

(E) Assesses barriers that impede students' academic, career, and personal and social development.

(8) Domain 5: Research and Evaluation:

(a) Knowledge:

(A) Understands how to critically evaluate research relevant to the practice of school counseling;

(B) Knows models of program evaluation for school counseling programs;

(C) Knows basic strategies for evaluating counseling outcomes in school counseling such as: behavioral observation and program evaluation;

(D) Knows current methods of using data to inform decision making and accountability such as: school improvement plan and school report card; and

(E) Understands the outcome research data and best practices identified in the school counseling research literature.

(b) Skills and Practices:

(A) Applies relevant research findings to inform the practice of school counseling;

(B) Develops measurable outcomes for school counseling programs, activities, interventions, and experiences; and

(C) Analyzes and uses data to enhance school counseling programs.

(9) Domain 6: Academic Development:

(a) Knowledge:

(A) Understands the relationship of the school counseling program to the academic mission of the school;

(B) Understands the concepts, principles, strategies, programs, and practices designed to close the achievement gap, promote student academic success, and prevent students from dropping out of school; and

(C) Understands curriculum design, lesson plan development, classroom management strategies, and differentiated instructional strategies for teaching counseling- and guidance-related material.

(b) Skills and Practices:

(A) Conducts programs designed to enhance student academic development;

(B) Implements strategies and activities to prepare students for a full range of postsecondary options and opportunities; and

(C) Implements differentiated instructional strategies that draw on subject matter and pedagogical content knowledge and skills to promote student achievement.

(10) Domain 7: Collaboration and Consultation:

(a) Knowledge:

(A) Understands the ways in which student development, well-being, and learning are enhanced by family-school-community collaboration;

(B) Knows strategies to promote, develop, and enhance effective teamwork within the school and the larger community;

(C) Knows how to build effective working teams of school staff, parents, and community members to promote the academic, career, and personal and social development of students;

(D) Understands systems theories, models, and processes of consultation in school system settings;

(E) Knows strategies and methods for working with parents, guardians, families, and communities to empower them to act on behalf of their children;

(F) Understands the various peer programming interventions such as: peer meditation, peer mentoring, and peer tutoring; and how to coordinate them; and

(G) Knows school and community collaboration models for crisis or disaster preparedness and response.

(b) Skills and Practices:

(A) Works with parents, guardians, and families to act on behalf of their children to address problems that affect student success in school;

(B) Locates resources in the community that can be used in the school to improve student achievement and success;

(C) Consults with teachers, staff, and community-based organizations to promote student academic, career, and personal/social development;

(D) Uses peer helping strategies in the school counseling program; and

(E) Uses referral procedures with helping agents in the community such as: mental health centers, businesses, and service groups; to secure assistance for students and their families.

(11) Domain 8: Leadership:

(a) Knowledge:

(A) Knows the qualities, principles, skills, and styles of effective leadership;

(B) Knows strategies of leadership designed to enhance the learning environment of schools;

(C) Knows how to design, implement, manage, and evaluate a comprehensive school counseling program;

(D) Understands the important role of the school counselor as a system change agent; and

(E) Understands the school counselor's role in student assistance programs, school leadership, curriculum, and advisory meetings.

(b) Skills and Practices:

(A) Participates in the design, implementation, management, and evaluation of a comprehensive developmental school counseling program; and

(B) Plans and presents school-counseling-related educational programs for use with parents and teachers such as: parent education programs, materials used in classroom guidance, and advisor and advisee programs for teachers.

(12) Field Experience: The Initial School Counselor Preparation Program shall provide practica in public and/or private school settings for purposes of instruction, assessment of competency, and integration of field work with academic study.

(a) Prospective school counselor candidates who have two years of teaching experience in Oregon schools or out-of-state public or regionally accredited private schools upon completion of an initial school counselor preparation program must:

(A) Complete a practicum consisting of 200 clock hours of supervised counseling in a public school setting; and

(B) Assemble a portfolio or work sample to demonstrate the candidate's ability to meet the expectations of the public school's counseling program.

(b) Prospective school counselor candidates who do not have two years of teaching experience in any public or regionally accredited private schools upon completion of an initial school counselor preparation program:

(A) Complete a supervised practicum consisting of a minimum of 200 clock hours in a regular classroom in a public school, to include a minimum of 75 clock hours of full responsibility for directing learning;

(B) Complete a minimum of 600 clock hours of supervised counseling experience in a public school;

(C) Assemble and analyze one work sample to illustrate his/her ability to foster student learning; and

(D) Assemble a portfolio or work sample to demonstrate the candidate's ability to meet the expectations of the public school's counseling program. The Initial School Counselor Preparation Program shall:

(i) Determine jointly with the practicum site supervising counselor that the candidate has demonstrated the skills and competencies required for licensure in the practicum.

(ii) Establish and implement policies on supervision of practicum candidates that state the responsibilities of unit supervisors and practicum site supervisors and administrators, including the frequency of observations and conferences with the candidates.

(iii) Make a minimum of four supportive/evaluative visits during the practicum. At least twice during the practicum, the unit's supervisors meets with the candidate and the practicum site supervisor in joint conferences to discuss performance and evaluation.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.430, 342.455 - 342.495 & 342.553

Hist.: TSPC 4-2012, f. & cert. ef. 5-18-12; TSPC 1-2013, f. & cert. ef. 2-14-13; TSPC 5-2014, f. & cert. ef. 8-5-14: TSPC 1-2015, f. & cert. ef. 2-10-15

584-019-0003

Notice of Opportunity for Hearing and Hearing Procedures

(1) The Commission delegates to the Executive Director the authority to draft the contents of the Notice of Hearing and Notice of Opportunity for Hearing when:

(a) The Executive Director denies the issuance, renewal or re-instatement of a license, charter school registration, school nurse certificate, or PA-1 clearance for student teaching under OAR 584-050-0006.

(b) When the Commission determines that there is sufficient cause to justify a hearing under ORS 342.176(5); or

(c) When the Executive Director has information that the educator has violated any term or condition of probation.

(2) The Commission delegates to the Executive Director the authority to amend the Notice of Hearing or Notice of Opportunity for Hearing.

(3) The Commission will review, approve or reject all Amended Notices of Hearing at the next Commission meeting following the Executive Director's issuance of the Amended Notice. The educator who is the subject of an Amended Notice may file objections to the amendments prior to the Commission meeting. The Commission's decision to review, approve or reject the Amended Notice will be in executive session under ORS 342.176.

(4) If the Commission rejects the Amended Notice of Hearing, the Executive Director will withdraw the Amended Notice, and the prior Notice of Hearing or Notice of Opportunity for Hearing will stand as the Commission's notice to the educator.

(5) Contested case hearings will be held in accordance with OAR 137-003-0501 through 137-003-0700.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.175 - 342.190
Hist.: TSPC 9-2005, f. & cert. ef. 11-15-05; TSPC 7-2007, f. & cert. ef. 12-14-07; TSPC 5-2009, f. & cert. ef. 10-5-09; TSPC 1-2015, f. & cert. ef. 2-10-15

584-020-0060
Letters of Informal Reproval

(1) Pursuant to ORS 342.183, the Commission may agree not to pursue disciplinary action against a licensed, registered or certified educator by the Commission and issue a letter of informal reproval if:

(a) Following an investigation, the Commission determines that the educator has engaged in misconduct based on standards adopted by the Commission by rule; and

(b) The educator agrees to the terms of the letter of informal reproval, including a monitoring period.

(2) The Commission may take disciplinary action if the educator fails to comply with the terms of the informal reproval as provided in section (5) of this rule.

(3) Pursuant to ORS 342.183, the Commission shall:

(a) Establish the terms of a monitoring period for the educator to whom the letter is issued; and

(b) Notify the employer, if any, of the educator to whom the letter is issued, including any terms of the letter that the employer may need to know to assist the educator in complying with the terms of the letter.

(4) A letter of reproval:

(a) Is confidential; and

(b) May not be posted on an interstate clearinghouse related to educator license sanctions except if disciplinary action is taken as provided in section (5) of this rule.

(5) If an educator fails to comply with the terms of a letter of informal reproval, the Commission may take disciplinary action against the educator based on one or both of the following:

(a) The conduct underlying the letter of informal reproval; or

(b) The failure to comply with the terms of the letter of informal reproval.

(6) If the Executive Director of the Commission determines that an educator failed to meet the terms of a letter of informal reproval, the Executive Director shall report the failure to the Commission to make a final determination pursuant to ORS 342.176.

(7) If the Executive Director of the Commission determines that an educator has met the terms of a letter of informal reproval and has successfully completed the monitoring period, the Executive Director shall report to the Commission that the educator has met the terms of the letter of informal reproval. The report and the Commission's approval of the report shall serve as the termination of the informal reproval.

(8) The Executive Director shall notify the educator of the successful termination of the informal reproval as provided in section (7) of this rule.

(9) The Executive Director shall notify the employer, if any, of the educator who was previously notified under section (3)(b) of this rule of the successful termination of the informal reproval as provided in section (7) of this rule.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.175 - 342.190
Hist.: TSPC 1-2015, f. & cert. ef. 2-10-15

584-023-0005
Registry of Charter School Teachers

(1) No persons shall serve as a teacher (as defined in ORS 342.120) in a public charter school unless such person either holds a valid Oregon license issued by TSPC pursuant to 338.135 or is registered with TSPC as a charter school teacher in accordance with 342.125(5).

(2) TSPC shall create a Public Charter School Registry for all non-licensed persons who are employed and registered as teachers in any charter school.

(3) To obtain a charter school teacher registration, an applicant and the employing charter school will submit a joint application, which will include the following documentation:

(a) Description of the specific teaching position the applicant will fill with the employing charter school plus an indication of the exact subjects the educator will be teaching;

(b) Fingerprints on forms prescribed by the Oregon State Police and in the manner required by TSPC. Fingerprint cards previously filed with the Oregon Department of Education do not qualify;

(c) Completed application and fee;

(d) Transcripts of the applicant's post-secondary education and evidence of other experience and qualifications relevant to the teaching position the applicant is seeking;

(e) A list of any professional licenses held; and

(f) A passing score on a commission-approved test of knowledge of U.S. and Oregon civil rights laws and professional ethics unless these requirements have already been met through prior TSPC licensure.

(4) The registration is not transferrable to another charter school without an application for a registration change with TSPC.

(5) A charter school registration may be renewed for an additional three-year term upon joint application of the registrant and employing charter school on forms established by the Commission and upon the payment of the applicable fee.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120–342.430, 342.455–342.495 &342.533
Hist.: TSPC 5-1999(Temp), f. & cert. ef. 8-24-99 thru 2-19-00; TSPC 7-1999, f. & cert. ef. 10-8-99; TSPC 9-2006, f. & cert. ef. 6-15-06; TSPC 7-2007, f. & cert. ef. 12-14-07; TSPC 4-2009, f. & cert. ef. 9-22-09; TSPC 5-2010(Temp), f. & cert. ef. 8-13-10 thru 12-31-10; TSPC 9-2010, f. 12-15-10, cert. ef. 1-1-11; TSPC 4-2012, f. & cert. ef. 5-18-12; TSPC 1-2014(Temp), f. & cert. ef. 3-15-14 thru 9-10-14; TSPC 5-2014, f. & cert. ef. 8-5-14; TSPC 7-2014(Temp), f. & cert. ef. 9-24-14 thru 3-23-15; TSPC 1-2015, f. & cert. ef. 2-10-15

584-036-0055
Fees

(1) All fees are assessed for evaluation of the application and are not refundable.

(2) If the applicant is eligible for the license, registration, or certificate for which application is made and the license, registration or certificate is issued within 90 days of original application, the commission shall issue the license, without additional charge with the following exceptions:

(a) If the commission determines the application is incomplete and fails to notify the applicant in less than one calendar week, the commission will extend the 90 days by an amount equal to the number of days the commission delayed notifying the applicant of incomplete items.

(b) For renewable licenses with a 120 day grace period, the original application fee remains good throughout the 120 days.

(c) If the commission fails to issue the license within 90 days due to commission backlog, the fee shall remain good until the license is issued or 120 days, whichever is less.

(3) The fee for evaluating an initial application:

(a) Initial I License (3 years): $100;

(b) Initial I Teaching License (18 months): $50;

(c) Initial II Teaching License (3 years): $100;

(d) Basic License (3 years): $100;

(e) Continuing License (5 years): $100;

(f) Professional License (5 years): $100;

(g) Standard License (5 years): $100;

(h) Restricted Licenses (1 year or 3 years): $100;

(i) Limited License (3 years): $100;

(j) American Indian Language License (3 years): $100;

(k) Substitute License (3 years): $100;

(l) Restricted Substitute License (1 year): $100;

(m) Exceptional Administrator License (3 years): $100;

(n) Career and Technical Education I Teaching License (1 year): $100;

(o) Career and Technical Education II Teaching License (3 years): $100;

(p) Five-Year Career and Technical Education License (5 years): $100;

(q) Emergency License (term at discretion of Executive Director): $100;

(r) Professional School Nurse Certification (3 5 years): $100;

(s) International Visiting Teaching License (1 year): $100;

(t) License for Conditional Assignment (1 to 3 years): $25;

(u) Initial Administrator License (3 years): $100;

(v) Initial School Psychologist License (3 years): $100;

(w) Initial School Social Worker License (3 years): $100; and

(x) Distinguished Teacher Leader License (2 years): $100.

(4) The fee for evaluating all applications for a first Oregon license based on completion of an out-of-state educator preparation program or an out of state license is $120 regardless of the license issued.

(5) The fee for registration of a charter school teacher or administrator is $75 which includes the fee for required criminal records and fingerprinting costs.

(6) The fee for evaluating an application for renewal of any license or certification is $100 except as follows:

(a) Renewal of a one-year Restricted Teaching License is $25;

(b) Renewal of a charter school registration is $25;

(c) Renewal of an International Visiting Teacher License is $25;

(d) Renewal of Career and Technical Education I Teaching License is $25; and

(e) Renewal of License for Conditional Assignment is $25.

(7) The fee for each of the following circumstances is $20:

(a) A duplicate license, registration, or certificate for any reason;

(b) An approved extension to a provisional license; and

(c) Adding a district to an existing restricted license requiring a co-applicant school district.

(8) The fee for evaluating an application to add one or more endorsements or authorization levels to a currently valid license is $100. No additional fee is required to add an endorsement or authorization in conjunction with an application for renewal or reinstatement of a license.

(9) The fee to evaluate an application for reinstatement of an expired license or certificate is $100 plus a late application fee of $25 for each month or portion of a month that the license or certificate has been expired to a maximum of $200 total.

(a) The reinstatement fee does not include any separate fingerprint fee that may be required if more than three years has elapsed from the date of the expired license, registration or school nurse certification.

(b) Late fees may only be imposed one time following the expiration of a license or school nurse certificate. If the applicant does not initially qualify for the license or certificate the applicant is seeking to reinstate, no additional late fees will be imposed upon application for subsequent licenses so long as the applicant has a current active license, registration or certification in effect at the time of application.

(c) In certain cases involving extenuating circumstances related to OAR 584-036-0057 Late Fee Waivers, the Executive Director may choose to waive this late fee.

(10) The fee for evaluating an application for reinstatement of a suspended license or certificate is $100 in addition to the $100 application fee for a total of $200. The fee does not include any separate fingerprint fee that may be required if more than three years has elapsed from the date of the expired license or certificate.

(11) The fee for evaluating an application for reinstatement of a suspended charter school registration is $50 and does not include any separate fingerprint fee that may be required if more than three years has elapsed from the date of the expired registration.

(12) In addition to the application fees required by this rule, the Commission shall collect a late application fee not to exceed $25 per month up to a maximum of $125 from an applicant who fails to make timely application for renewal of the license, certificate or registration.

(13) The fee for evaluating an application for reinstatement of a revoked license or certificate is $150 in addition to the $100 application fee for a total of $250. The reinstatement fee does not include any separate fingerprint fee that may be required if more than three years has elapsed from the date of the expired license, or school nurse certificate.

(14) The fee for evaluating an application for reinstatement of a revoked charter school registration is $150 in addition to the $25 application fee for a total of $175. The reinstatement fee does not include any separate fingerprint fee that may be required if more than three years has elapsed from the date of the expired charter school registration.

(15) Forfeiture for a check which the applicant's bank will not honor is $25, unrelated to any evaluation fees. The total amount due shall be paid in cash, credit, or Money Order at the Commission's office.

(16) The fee for evaluating licensure applications submitted on behalf of teachers participating in exchange programs or on Congressional appointment from foreign countries is $100.

(17) The fee for expedited service for an emergency or other license, registration or certificate is $99 plus the fee for the license registration or certificate application as defined in this administrative rule.

(18) The fee to evaluate an application for reinstatement of an expired charter school registration is $25 plus a late application fee of $25 for each month or portion of a month that the registration has been expired to a maximum of $125 total. The reinstatement fee does not include any separate fingerprint fee that may be required if more than three years has elapsed from the date of the expired charter school registration.

(19) The fee for a criminal records check including fingerprinting is $57.

(20) The fee for a "highly qualified teacher" evaluation is $50.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 – 342.430; 342.455-342.495; 342.533

Hist.: TS 15, f. 12-20-76, ef. 1-1-77; TS 17, f. 12-19-77, ef. 1-1-78; TS 2-1979, f. 8-21-79, ef. 1-1-80; TS 1-1982, f. & ef. 1-5-82; TS 3-1983, f. & ef. 5-16-83; TS 4-1983, f. 5-17-83, ef. 7-1-83; TS 6-1984, f. 12-27-84, ef. 1-15-85; TS 4-1985, f. 10-4-85, ef. 1-1-86; TS 7-1986, f. 10-15-86, ef. 1-15-87; TS 5-1988, f. 10-6-88, cert. ef. 1-15-89; TS 7-1989, f. & cert. ef. 12-13-89; TS 1-1992, f. & cert. ef. 1-15-92; TS 4-1994, f. 7-19-94, cert. ef. 10-15-94; TS 5-1994, f. 9-29-95, cert. ef. 10-15-94; TS 4-1997, f. 9-25-97, cert. ef. 10-4-97; TSPC 4-1999, f. & cert. ef. 8-2-99; TSPC 2-2000, f. & cert. ef. 5-15-00; TSPC 1-2003, f. & cert. ef. 1-13-03; TSPC 6-2004, f. & cert. ef. 8-25-04; TSPC 6-2005(Temp), f. & cert. ef. 8-16-05 thru 1-30-06; TSPC 9-2005, f. & cert. ef. 11-15-05; TSPC 11-2005(Temp), f. 11-18-05, cert. ef. 1-1-06 thru 6-29-06; TSPC 5-2006, f. & cert. ef. 2-10-06; TSPC 5-2007, f. & cert. ef. 8-15-07; TSPC 5-2008, f. & cert. ef. 6-13-08; TSPC 7-2008, f. & cert. ef. 8-20-08; TSPC 1-2009(Temp), f. & cert. ef. 2-27-09 thru 8-25-09; Administrative correction 9-29-09; TSPC 4-2009, f. & cert. ef. 9-22-09; TSPC 8-2009, f. & cert. ef. 12-15-09; TSPC 4-2010, f. & cert. ef. 7-15-10; TSPC 5-2010(Temp), f. & cert. ef. 8-13-10 thru 12-31-10; TSPC 9-2010, f. 12-15-10, cert. ef. 1-1-11; TSPC 5-2011, f. & cert. ef. 6-15-11; TSPC 2-2012, f. & cert. ef. 2-15-12; TSPC 6-2012, f. & cert. ef. 5-18-12; TSPC 9-2012, f. & cert. ef. 9-14-12; TSPC 3-2013, f. & cert. ef. 8-19-13; TSPC 1-2015, f. & cert. ef. 2-10-15

584-036-0070

Expedited Service for Licensure, Registration and Certificate Applications

(1) Pursuant to ORS 342.125, expedited service is defined as the priority processing of a license, registration or certificate within two working days after receiving a correct and complete application.

(2) Expedited service is only available in the following circumstances:

(a) District requests for the issuance of a license, registration or certificate in an urgent situation; and

(b) Military Spouse or Military Domestic Partner Applications pursuant to ORS 342.195(2).

(3) To be eligible for expedited service of a license, registration or certificate application, other than a military spouse or domestic partner application pursuant to ORS 342.195(2), an applicant and co-applicant district must provide:

(a) A C-3 form (District-provided);

(b) A complete application, including all fingerprint clearance and criminal records check requirements. (Applicant-provided); (See OAR 584-036-0062 for Criminal Records Check Requirement.)

(c) A Statement of Need: A statement from the district describing the urgent situation requiring the expedited service. The district may be required to provide evidence to support the Statement of Need; and

(d) All licensure, registration or certificate application fees and the expedited service fee pursuant to OAR 584-036-0055.

(4)(a) Upon evaluation for eligibility of all items listed in section (3) above, a license, registration or certificate will be issued within two working days as provided in ORS 342.125(6), provided the applicant meets all licensure, registration or certification requirements.

(b) Incomplete applications are not subject to the two working day provision.

(c) Applications are considered incomplete until sufficient evidence and information is received and reviewed to determine if the applicant has met the requirements of the license, registration or certificate for which the applicant has applied.

(5) Applications not eligible for expedited service of licensure, registration or certification applications include:

(a) Renewal applications within the 120 days grace period, unless the application was submitted too late to allow processing within the 120 period following the expiration date on the license and all late and expedited fees have been paid;

(b) New Oregon applicants eligible for Fast-Track processing pursuant to OAR 584-010-0090; or

(c) Applications that include requests for expedited service due to the applicant's failure to meet renewal or upgrade requirements such as needing more time to submit passing test scores, required coursework or continuing professional development.

(6) To be eligible for expedited service of a military spouse or military domestic partner application pursuant to ORS 342.195(2), an applicant must:

(a) Hold a current license from another state;

(b) Be a military spouse or domestic partner of an active member of the Armed Forces of the United States who has been subject to a military transfer to Oregon within the 12 months prior to the application of the license;

(c) Submit a complete application as provided in OAR chapter 584, divisions 60, 70 or 80, including evidence of the spousal or domestic relationship and evidence of the recent military transfer; and

(d) Submit the fees for an out-of-state evaluation and for the expedited service.

(7) A qualifying applicant for an expedited military spouse or domestic partner of an active member of the Armed Forces of the United States license will only be eligible for an equivalent license issued by the Commission if:

(a) The applicant has met all the requirements of the license for which the applicant is applying; and

(b) The applicant has not been subject to discipline in another state against any educator certificate, license or charter school registration. For this section, discipline is defined as any discipline for conduct that would bar an applicant from licensure as an educator in the state of Oregon.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.125, 342.127, 342.195 & 342.475
Hist.: TSPC 4-2006(Temp), f. & cert. ef. 2-3-06 thru 8-2-06; TSPC 9-2006, f. & cert. ef. 6-15-06; TSPC 4-2013(Temp), f. & cert. ef. 11-14-13 thru 5-13-14; TSPC 2-2014, f. & cert. ef. 3-15-14; TSPC 1-2015, f. & cert. ef. 2-10-15

584-036-0080
Licensure Tests

(1) Licensure tests are required to demonstrate subject-matter competency in most endorsement areas established by the Commission.

(2) Out-of-State Applicants:

(a) Basic Skills: A non-provisional teaching license issued by another state or NASDTEC jurisdiction will be acceptable for waiver of the basic skills test requirement.

(b) Subject-Matter Endorsement: Out-of-state applicants may present proof of passage of another state's subject-matter competency test for full subject-matter endorsement on an Oregon license under the following conditions:

(A) The area in which the test was passed is comparable to the subject-matter endorsement area adopted by the Commission and is not a basic skills test;

(B) The test was administered by either the former or current testing companies representing Evaluation Systems group of Pearson (ESP) or Education Testing Service (ETS);

(C)(i) A passing score on an out-of-state licensure test for subject-matter endorsement on the license results in waiver of a comparable Oregon adopted beginning-teacher licensure test if the subject-matter area covered by the out-of-state test is more similar than not to the Oregon test;

(ii) The burden is on the applicant to provide alternate proof the test was taken and the score was a passing score in another state if the applicant is unable to produce an original score report. TSPC reserves the right to reject the alternate verification if the source of the score verification is not a higher education institution or another public educator licensure agency; and

(D) Any subject-matter test, except the basic skills tests, may be waived if the applicant demonstrates special academic preparation satisfactory to the Commission together with five years of half-time or more experience teaching the specific subject matter on a license valid for the assignment in a public school or regionally accredited private school in a U.S. jurisdiction before holding any Oregon license. The five years of half-time or more experience must be acquired entirely outside of the State of Oregon and must be obtained while holding an unrestricted out-of-state license valid for the assignment. Teaching experience without a valid license does not count toward test waiver.

(3) An electronic score report submitted by the testing company administering the test at the applicant's request will be treated as an "original" score report. In all other cases, only the original score report, or an authentic facsimile will be accepted as validation of passing the required test. TSPC reserves the right to require the applicant to produce authentic evidence of passage of the test the applicant wishes to submit for consideration for test waiver.

(4) Other evidence documenting passage of a required test for licensure may be accepted at the executive director's discretion when exigent circumstances prohibit the educator from presenting an original score report. The executive director may submit the evidence and the decision to the Commission at the next meeting at the director's discretion in cases the director believes may need Commission review.

(5) Basic Skills Tests:

(a) To satisfy the basic skills testing requirements, the Commission will accept passing scores on the following tests:

(A) NES Essential Academic Skills Tests — Pearson Evaluation Systems

(B) Any basic skills test currently approved or accepted by the California Commission on Teacher Credentialing (CTC);

(C) Any basic skills test current approved or accepted by the Washington Professional Educator Standards Board (WPESB);

(D) Any Education Testing Service (ETS) developed basic skills tests approved by the Commission.

(b) Notwithstanding section (2)(a) above, a regionally-accredited or foreign equivalent master's degree or higher held at the time of admission into an educator preparation program, waives the basic skills tests.

(c) An out-of-state applicant may waive the basic skills test with evidence of full out-of-state licensure or a master's degree from an accredited institution or foreign equivalent.

(d) Applicants submitting proof of a non-provisional California Teaching License will be deemed to have fulfilled the basic skills testing requirement.

(6) Applicants seeking endorsement in areas where the Commission has not adopted an approved test must complete coursework as required by the Commission. In the alternative, applicants may submit evidence of a passing score from another state's licensure test and evidence they held the endorsement on an out-of-state license in lieu of satisfying the Commission's required coursework.

(7) For situations not covered by these rules, the Commission grants the executive director the discretion to determine whether test scores or licenses submitted pursuant to this section meet the Commission's intent with regard to preventing unnecessary redundancy in completing licensure testing requirements.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.430, 342.455-342.495 & 342.553
Hist.: TSPC 2-2007, f. & cert. ef. 4-23-07; TSPC 2-2009, f. & cert. ef. 3-12-09; TSPC 6-2010, f. & cert. ef. 8-31-10; TSPC 9-2012, f. & cert. ef. 9-14-12; TSPC 6-2013, f. & cert. ef. 11-14-13; TSPC 5-2014, f. & cert. ef. 8-5-14; TSPC 1-2015, f. & cert. ef. 2-10-15

584-036-0083
Special Assignments

(1) Special assignments are assignments that have special requirements and/or limitations associated with the assignment that are different from the requirements and limitations associated with the conventional teaching assignments associated with endorsements on the license.

(2) Special Assignments include but are not limited to the following:

(a) Assignments in areas that do not require a specific licensure endorsement;

(b) Coaching Assignments within the school day;

(c) Assignment of "subjects" within an endorsement;

(d) Teachers on Special Assignment (TOSA);

(e) Driver's Education Assignments;

(f) Public Alternative Education Assignments; or

(g) Public Charter Schools Assignments.

(3) Assignments not Requiring Specific Endorsements:

(a) The Commission requires valid unrestricted teaching licensure, but does not require a specific licensure endorsement for credit courses that do not generally fall within a specific subject-matter endorsement area;

(b) To be assigned to courses that require no specific endorsement, a person must have a valid and unrestricted Oregon teaching license: Basic, Standard, Initial, Professional or Five-Year teaching license. Educators that hold Administrator and Personnel Services licenses are not eligible to "teach" in areas that do not require an endorsement unless they also hold a valid unrestricted teaching license.

(c) It is not acceptable to act as, or compel a licensed educator to be, the "Teacher of Record" for special assignments unless the teacher of record is actively engaged in direct instruction of the students enrolled in the courses for which credit is granted. Failure to honor this provision may result in discipline related to the license pursuant to OAR 584-020-0040(4) Gross Neglect of Duty.

(d) Courses that do not require a specific endorsement may comprise electives, credit recovery and other areas in which any credit is granted, including but not limited to:

(A) Computer education, including software programs;

(B) Personal finance;

(C) Driver's Education;

(D) Outdoor education;

(E) World languages other than Chinese, French, German, Japanese, Latin, Russian, and Spanish;

(F) Study skills, essential skills, or tutoring;

(G) Talented and Gifted separate course offerings;

(H) Career and Technical Education (CTE) separate course offerings provided outside of a structured CTE program approved by the Oregon Department of Education pursuant to Chapter 581, Division 44.

(I) Observing Occupations and related job duties such as supervising work study, work experience, or career education where credit is assigned;

(J) Photography;

(K) Leadership Class or Student Government; or

(L) SAT or ACT preparation.

(4) Coaching Assignments: A person must have a valid unrestricted Oregon teaching license for coaching assignments that are included within the regular school day and for coaching assignments that involve any class time for which credit is obtained by the participating students.

(5) Assignments in "subjects" contained within an endorsement: Assignments in subjects which are a component of a broader endorsement (such as jazz band which is subsumed in the music endorsement) necessitate the broader endorsement or a Limited Teaching License (See OAR 584-060-0171).

(6) Teachers On Special Assignments (TOSA):

(a) Any valid unrestricted teaching license that is valid to teach full time in one or more endorsed subject-areas, is valid for an assignment involving leadership responsibilities, such as planning and development of curriculum, organization and maintenance of professional growth programs for licensed personnel, or improvement of instructional practices.

(b) A TOSA is not valid to serve as an administrator if the duties include:

(A) Evaluation of licensed personnel;

(B) Discipline of licensed personnel; or

(C) Authorization of out-of-school suspension or expulsion of students.

(7) Driver's Education Assignments: A person must have a valid unrestricted Oregon teaching license and the appropriate Oregon motor vehicle operator's license to serve as a driver education instructor for the classroom portion of the course. An instructor who provides the behind-the-wheel portion of the course shall meet requirements established by the Oregon Department of Transportation.

(8) Public Alternative Education Assignments: Any Basic, Standard, Initial, Professional or pre-1965 Five-Year teaching license is valid to teach any subject or grade level in a public alternative education program in accordance with ORS 336.615 to 336.675.

(9) Public Charter Schools Assignments:

(a) No person shall serve as a teacher as defined by ORS 342.120 in a public charter school unless such person either holds a valid Oregon license issued by TSPC or is registered with TSPC as a charter school teacher pursuant to 338.135 in accordance with OAR 584-023-0005 and ORS 342.125(5).

(b) For non-virtual charter schools at least one-half of the total full-time equivalent (FTE) teaching and administrative staff at the public charter school shall be licensed by the Commission pursuant to ORS 338.135(7). For virtual charter schools, 95 percent of the teaching staff must hold a valid TSPC teaching license pursuant to 342.125.

(c) Licensed and registered charter school personnel may be assigned outside the scope of the endorsements and authorizations on the educator's license or registration without limitation. However, charter schools teachers are required to comply with the federal Elementary Secondary Education Act provisions related to "highly qualified teachers."

(10) Private Schools and Programs Assignments: A teaching license is not required to teach in a private regular or private alternative education program.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.430 & 342.985
Hist.: TSPC 2-2009, f. & cert. ef. 3-12-09; TSPC 1-2015, f. & cert. ef. 2-10-15

584-038-0003
Basic Teaching Licensure Under Superseded Standards

Upon filing a correct and complete application in form and manner prescribed by the Commission, a qualified applicant may be granted a Basic Teaching License, issued for three years plus time to the applicant's next birth date an' renewable under OAR 584-048. Such an applicant must have enrolled in a basic teacher education program under standards superseded by 21st century licensure and be found in the judgment of the Commission subject to hardship if issued an initial license instead of a basic license. If the initial license is judged preferable, the applicant will not be required to add course work to the basic program, although institutions may make appropriate substitutions for partial updating. The recipient of a basic license may pursue either a standard license (see OAR 584, division 40) or a Professional license (see OAR 584, division 60).

(1) General requirements for the Basic Teaching License include:

(a) A bachelor's degree from a regionally accredited institution in the United States, or the foreign equivalent of such degree approved by the Commission.

(b) Completion in Oregon or another U.S. jurisdiction of a basic teacher education program approved by the Commission, or completion of a U.S. or foreign program evaluated as satisfactory by an Oregon institution approved to offer the corresponding program.

(c) A passing score as currently specified by the Commission on each of one or more tests of subject mastery for license endorsement, except for tests waived due to special academic preparation satisfactory to the Commission together with five years of experience teaching the specialty in a public school or regionally accredited private school in a U.S. jurisdiction.

(d) A passing score as currently specified by the Commission on a test of basic verbal and computational skills, unless the applicant held an Oregon educator license before 1985 or has a regionally accredited doctor's degree.

(e) A passing score on a test of knowledge of U.S. and Oregon civil rights laws at the conclusion of a course or workshop approved by the Commission.

(2) To be eligible for a Basic Teaching License, an applicant must satisfy a recent experience requirement in one of the following ways during the three-year period immediately preceding application:

(a) Completion of an approved teacher education program; or

(b) Beginning and completion in a public school or regionally accredited private school in a U.S. jurisdiction of at least one academic year as a full-time licensed educator or two consecutive years as a half-time licensed educator on any license appropriate for the assignment, or equivalent experience as in a state or federal school; or

(c) Receipt of 6 semester hours or 9 quarter hours of academic credit, germane to teaching licensure, from a regionally accredited college or university.

(3) To be eligible for a Basic Teaching License, an applicant must furnish fingerprints in the manner prescribed by the Commission.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.200
Hist.: TSPC 4-1999, f. & cert. ef. 8-2-99; TSPC 2-2000, f. & cert. ef. 5-15-00; TSPC 1-2015, f. & cert. ef. 2-10-15

584-042-0021
Definitions

(1) "Approved Career and Technical Education Program:" A career and technical education program (CTE), approved by the Oregon Department of Education (ODE).

(2) " Career and Technical Education (CTE) Mentor:" A teacher holding a pre-1965 Five-Year Teaching, Five-Year CTE, CTE II, Basic, Standard, Initial, Initial I, Initial II or Professional teaching license who guides and supports a beginning CTE teacher on a CTE I Teaching License with instructional planning and preparation, delivery of classroom instruction, classroom management, assessment of student performance, and professional development. The assigned mentor must be approved by ODE to be a CTE mentor.

(3) "Career and Technical Education Professional Development Plan:" A plan for personal professional growth during the life of the Career and Technical Education I Teaching License and the Career and Technical Education II Teaching License consistent with OAR 584-042-0051 Career and Technical Education Professional Development Plan.

(4) "Regional Coordinator:" An individual hired by a local educational agency or community college and officially recognized by the Oregon Department of Education (ODE) to specifically coordinate the ODE approved regional system of Career and Technical Education.

(5) "Instructor Appraisal Committee (IAC):" A committee organized in accordance with OAR 584-042-0022.

(6) "Significant Progress:" Significant progress toward completion of CTE professional development plan requirements means the applicant has made a confirmed commitment in each year the license is held toward completing the CTE professional development plan submitted upon application to TSPC. Significant progress may be evidenced by completion of at least one-third of the requirements contained within the professional development plan. The progress must have been completed within the last year preceding application for renewal.

(7) "Waivers:" A waiver of the work experience or academic requirements for the CTE I Teaching License in accordance with OAR 584-042-0060 Waivers.

(8) "Work Experience:" Planned and coordinated work experience or previous and documented work experience that meets the criteria included in OAR 584-042-0070 Work Experience.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 – 342.430; 342.455 – 342.495, 342.553
Hist.: TSPC 2-2010(Temp), f. & cert. ef. 3-5-10 thru 8-31-10; TSPC 4-2010, f. & cert. ef. 7-15-10; TSPC 2-2012, f. & cert. ef. 2-15-12; TSPC 1-2015, f. & cert. ef. 2-10-15

584-042-0022
Instructor Appraisal Committees

(1) An Instructor Appraisal Committee (IAC) is a group of industry and education experts appointed by a school district with an approved ODE Career and Technical Education program. The IAC is convened to evaluate either CTE licensure or CTE endorsement applicants with regard to their

work experience and preparation in a CTE endorsed area. (See OAR 584-042-0044 Career and Technical Education Endorsements.)

(2) The appointed Instructor Appraisal committee must make specific CTE licensure and endorsement recommendations to the Oregon Department of Education and to the Teacher Standards and Practices Commission based on their evaluation of each applicant's preparation and work experience in a CTE endorsement area.

(3) The Instructor Appraisal Committee is comprised of specific membership depending on whether the applicant comes from business and industry or whether the applicant already holds a TSPC License. In all cases, the IAC must have at least five members. An individual member may represent more than one of the representative areas outlined in subsections (e) through (f) immediately below.

(a) Instructor Appraisal Committees evaluating applicants from business and industry and new to education must have at least two educator representatives on the committee subject to the requirements in subsection (e) below.

(b) Instructor Appraisal Committees evaluating applicants for a CTE endorsement onto a TSPC existing CTE, Basic, Standard, Initial or Professional Teaching License must have at least two business and industry representatives on the committee subject to the requirements in subsection (f) below.

(c) District Administrators: All IACs must have a school district administrator or a director of CTE from the district. The administrator representative is an official member of the IAC.

(d) Ex-Officio: The district may appoint non-voting ex-officio members to the IAC.

(e) Educators: Educator representatives may be from public or private secondary and post-secondary institutions. Educators must possess current and substantial knowledge of pedagogy, instructional practices, assessment practices, classroom management, and educational policy. Secondary representatives must hold a valid TSPC license. Post-secondary representatives should be from the applicant's endorsement program area. The educator representative(s) is an official member of the IAC.

(f) Business or industry members: Business or industry representatives may be either employers or employees of the business or industry. At least one business or industry representatives must be currently engaged in an occupation related to the career and technical education program endorsement area. The representative must possess current and substantial knowledge of the technical and environmental requirements, and standards of behavior required of the business or industry program. The business or industry representative is an official member of the IAC.

(4) Once appointed, the IAC must select a trained facilitator to operate the IAC during each candidate appraisal process. All facilitators must be approved by the ODE prior to selection. An ODE recognized Regional Coordinator of Career and Technical Education or an appropriate ODE program area specialist may serve as the facilitator. Failure to obtain ODE approval may result in an invalid recommendation and is a basis for determining that the licensure process is incomplete.

(5) The IAC must appoint a chair from the official membership of the committee. The chair may not be an ex-officio member or an appointed facilitator. The chair is responsible to provide the IAC's rationale for the recommendation and must sign any submitted recommendation for a waiver of academic or work experience to the ODE, prior to application for licensure at TSPC.

(6) The CTE Regional Coordinator and the appropriate ODE program specialist must officially verify the IAC member roster as well as evaluations and recommendations of the IAC prior to application for licensure at TSPC.

(7) The applicant's proposed professional development plan must be consistent with the CTE I Teaching License (OAR 584-042-0031) requirements if the candidate does not hold an existing CTE, Basic, Standard, Initial or Professional teaching license.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 – 342.430, 342.455-342.495, 342.553
Hist.: TSPC 6-2010, f. & cert. ef. 8-31-10; TSPC 1-2015, f. & cert. ef. 2-10-15

584-042-0044
Career and Technical Education Endorsements

(1) Career and Technical Education (CTE) Endorsements are subject-matter endorsements in the career and technical fields.

(2) Only the Basic, Standard, Initial, Professional or CTE II Teaching Licenses are eligible to hold any CTE endorsement. A CTE I Teaching License may only hold a single CTE endorsement.

(3) Endorsements indicate the scope of the subject-matter that may be taught on the license which holds the endorsement. Specific courses allowed within the scope of each endorsement are identified by TSPC and published on the TSPC web site. Endorsements include the following:

(a) Endorsements in the Agriculture, Food and Natural Resource Systems area include:

(A) Agriculture Science and Technology;

(B) Natural Resources Management; and

(C) Environmental Services.

(b) Endorsements in the Arts, Information and Communications area include:

(A) Publishing and Broadcasting;

(B) Information and Communications Technology; and

(C) Visual, Performing and Media Arts.

(c) Endorsements in the Business and Management area include:

(A) Business Management and Administration;

(B) Finance;

(C) Hospitality and Tourism;

(D) Information and Communications Technology; and

(E) Marketing.

(d) Endorsements in the Health Sciences area include: Health Sciences.

(e) Endorsements in the Human Resources area include:

(A) Education and Related Fields;

(B) Hospitality and Tourism (Culinary);

(C) Human Services; and

(D) Public Services.

(f) Endorsements in the Industrial and Engineering Systems area include:

(A) Construction Technology;

(B) Engineering Technology;

(C) Information and Communications Technology;

(D) Transportation Technology; and

(E) Manufacturing Technology.

(4) Applicants for the CTE I Teaching License may be limited with regard to the courses they may teach in the first three years of licensure. The IAC will determine whether the applicant is fully prepared to teach all courses with the endorsement area in which the applicant seeks licensure.

(5) All CTE II Teaching License holders are eligible to teach within the full scope of the CTE endorsement.

(6) Adding a CTE Endorsement with Work Experience. Holders of Basic, Standard, Initial, Professional or CTE II teaching licenses who meet all of the ODE-approved work experience requirements for a CTE II Teaching License may be eligible to add CTE endorsements onto their underlying teaching license. The endorsement shall be valid for the same amount of time as the underlying license. Only ODE may approve work experience under this subsection.

(7) Adding a CTE Endorsement without Work Experience. Holders of Basic, Standard, Initial, Professional or CTE II teaching licenses who do not meet the work experience requirements to add a CTE endorsement must apply for a CTE I Teaching License in that endorsement area. Upon verification of the work experience requirements in an application to TSPC, the endorsement may be added to the holder's Basic, Standard, Initial, Professional Teaching, or CTE II License.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.430, 342.455 - 342.495, 342.553
Hist.: TSPC 2-2010(Temp), f. & cert. ef. 3-5-10 thru 8-31-10; TSPC 4-2010, f. & cert. ef. 7-15-10; TSPC 5-2010(Temp), f. & cert. ef. 8-13-10 thru 12-31-10; TSPC 9-2010, f. 12-15-10, cert. ef. 1-1-11; TSPC 2-2012, f. & cert. ef. 2-15-12; TSPC 1-2015, f. & cert. ef. 2-10-15

584-042-0051
Career and Technical Education (CTE) Professional Development Plan

(1) A CTE professional development plan (PDP) is required as part of the application for the Career and Technical Education I Teaching License. The CTE professional development plan must be for at least three years.

(2) The CTE professional development plan must be signed by both the district and the prospective educator. The employing school district will keep a copy of the CTE professional development plan.

(3) A signed copy of the plan must be included in the CTE I Teaching License application materials submitted to the Commission.

(4) The plan must include assurances that the district has assigned an appropriately licensed administrator to monitor the progress and timely completion of the signed CTE professional development plan. The administrator must be identified in the application materials for the CTE I Teaching License.

(5) The plan must include assurances that the district has assigned an appropriately trained mentor consistent with 584-042-0021(6) and such mentor is identified in the application materials.

(6) For applicants holding a pre-1965 Five-Year Teaching, Basic, Standard, Initial, Initial I, Initial II, Professional, or an equivalent out-of-state non-provisional teaching license prior to applying for the Career and Technical Education I Teaching License; the scope of the PDP must include:

(a) Activities identified by the Instructional Appraisal Committee (IAC) that address relevant CTE professional development needs, including verifiable work experience, and coursework that specifically relates to career and technical education; and

(b) Verifiable work experience that has been performed in the last five (5) years and includes one of the following:

(A) At least 1800 hours of previous and documented related work as defined in OAR 584-042-0070(1) CTE Work Experience;

(B) At least 600 hours of planned and coordinated related work experience as defined in OAR 584-042-0070(2) CTE Work Experience;

(C) The equivalent combination of planned and coordinated and previous and documented related work at a technical skill level within the last five years; or

(D) Related industry certification or licensure.

(7) For applicants who have not previously completed a teacher preparation program, the CTE professional development plan must outline how the applicant will acquire a minimum of eighteen (18) quarter hours or twelve (12) semester hours, as specified below, of teacher preparation required for eligibility for a Career and Technical Education II Teaching License. The Instructor Appraisal Committee may increase the requirements if they deem the additional education is necessary. Applicants under this subsection must meet all of the following requirements in subsections (a) through (d).

(a) Obtain nine (9) quarter hours or six (6) semester hours of education-specific coursework which must be selected from the following areas:

(A) Introduction to Career and Technical Education in Oregon;

(B) Introduction to the Education Profession;

(C) Oregon School Law including a focus on special needs students;

(D) Classroom Management;

(E) Multi-cultural Education;

(F) Second Language Acquisition;

(G) Human Development for adolescent and older children;

(H) Education Psychology and Learning Development; and

(b) Obtain at least three (3) quarter hours or two (2) semester hours in Curriculum Design, Instructional Strategies and Assessment; and

(c) Obtain at least three (3) quarter hours or two (2) semester hours in instructional methodology in how to teach mathematics to secondary learners, which may include coursework focused on how to teach mathematics in the CTE context; and

(d) Obtain at least three (3) quarter hours or two (2) semester hours in instructional methodology in how to teach reading, or writing and literacy to secondary learners.

(8) In addition to the requirements in sections (6) and (7) above, all applicants, regardless if they are coming from education or industry, must show evidence they have at one time obtained or will obtain all of the following specific college-level coursework:

(a) Three (3) quarter hours or two (2) semester hours of math at or above a level required by the industry related to the applicant's endorsement and identified by the IAC; and

(b) Three (3) quarter hours or two (2) semester hours of college level language arts or speech at the one-hundred level or higher as identified by the IAC.

(9) The IAC may increase the minimum requirements described in section (8) above if they deem additional education is needed.

(10) Coursework as required by the Instructor Appraisal Committee must be attained through a TSPC-approved teacher education program or an accredited community college and verified by transcripts submitted to TSPC at the time of application for a Career and Technical Education II License. If in doubt whether the coursework will apply, check with TSPC prior to enrolling in coursework to fulfill these requirements.

(11) Professional Development Plans may be modified after initial development and submission to TSPC with written approval by ODE. Modified plans must be submitted to TSPC with ODE's approval prior to the expiration of the CTE I Teaching License.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 – 342.430; 342.455 –342.496; 342.553
Hist.: TSPC 6-2010, f. & cert. ef. 8-31-10; TSPC 2-2012, f. & cert. ef. 2-15-12; TSPC 1-2015, f. & cert. ef. 2-10-15

584-050-0021
Reinstatement of Right to Apply for a License Following Revocation of a Provisional License

(1) Educators who are only eligible for a provisional license upon application for reinstatement or who have had a provisional license revoked and are applying for a right to apply for a non-provisional license, will be applying for reinstatement of the "right to apply" for any TSPC license whether the revocation order expressly stated the Commission revoked the educator's "right to apply".

(2) Non-Provisional Licenses or certificates include any pre-1965 Five-Year, Basic, Standard, Initial, Continuing, Professional, Nursing Certificate or Career and Technical Education II license.

(3) Provisional licenses, certificates or registrations include but are not limited to any: Emergency, Limited, Restricted Transitional, Charter School Registry, International Visiting Teaching, NCLB Alternative Route, Career and Technical Education License, except as noted in section (2) above, Transitional and Substitute licenses.

(4) Application for reinstatement of the right to apply for any license, certificate or registration revoked for any reason other than those cited in ORS 342.143(3) may be submitted at any time after the period of revocation has expired.

(5) The burden will be on the educator to establish fitness for reinstatement.

(6) The application for reinstatement must include:

(a) A C-1 application form;

(b) A fee pursuant to OAR 584-036-0055;

(c) A personal notarized affidavit attesting that:

(A) All the conditions of the order for revocation have been met; and

(B) That the educator has not violated any laws of the states, including ethical violations related to licensure, certificate or registration;

(d) Any additional documentation, sufficient to establish convincingly that the educator possesses all of the qualifications required for first licensure or reinstatement of a license, certificate or registration. Letters of recommendations from educator colleagues are insufficient alone to establish fitness for licensure following a revocation. The educator must be clear regarding what proactive steps have been taken to ensure to the Commission that the conduct that resulted in the revocation is highly unlikely to occur again.

(7) Following review of the application for reinstatement pursuant to this section, the Executive Director may make a recommendation to the Commission regarding whether to approve or deny the application.

(8) All decisions to reinstate a revoked right to apply for a license, certificate, or registration under this rule or will be made by the Commission in executive session.

(9) The Executive Director or the Commission may require the educator to appear before the Commission in executive session prior to consideration of the application for reinstatement.

(a) It is entirely at the Commission's discretion whether an educator may meet with the Commission under these circumstances.

(b) This subsection does not grant a right to any applicant to appear before the Commission prior to the Commission's consideration of the application for reinstatement following a revocation.

(10) If the Commission denies the application for reinstatement, or the right to apply for a license, certificate or registration, the Executive Director will mail a copy of the recommendation of denial to the educator and a notice of right to a hearing under ORS 342.175.

Stat. Auth.: ORS 181 & 342
Stats. Implemented: ORS 181.525, 342.120 - 342.430, 342.455 - 342.495 & 342.553
Hist.: TSPC 4-2012, f. & cert. ef. 5-18-12; TSPC 1-2015, f. & cert. ef. 2-10-15

584-052-0027
Waiver of Academic or Experience Requirements by the Commission

(1) The Executive Director may substitute successful teaching, personnel service, or administrative experience to satisfy minimal requirements for formal college preparation or public school experience required in the rules for licensure. Experience acceptable for substitution for minimal requirements shall be such that the applicant has developed skills and knowledge comparable to that developed through approved program preparation. To be granted a basic, standard, initial, Continuing, or Professional license, a candidate shall have clearly demonstrated ability to perform the duties of the position.

(2) The Commission shall monitor any waivers granted under section (1) of this rule and shall receive reports on such waivers.

(3) Applicants requesting licensure based on substitution of successful teaching, personnel service, or administrative experience to satisfy licensure requirements shall submit the following materials:

(a) Application form, evaluation fee, and supporting materials;

(b) A written statement from the applicant including type of license requested, requirements and qualifications to be considered, supportive information, and plans for professional growth;

(c) If applicable, written statements from supervisors in the employing school district indicating support for the substitution and the particular competency of the candidate in relationship to identified district and student needs; and

(d) The applicant's resume and a statement indicating reasons for referring the matter to the Executive Director.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.430 & 342.985

Hist.: TS 15, f. 12-20-76, ef. 1-1-77; TS 17, f. 12-19-77, ef. 1-1-78; TS 6-1980, 0f. & ef. 12-23-80; Renumbered from 584-052-025; TS 1-1982, f. & ef. 1-5-82; TS 7-1986, f. 10-15-86, ef. 1-15-87; TS 6-1991, f. & cert. ef. 3-12-91; TS 1-1992, f. & cert. ef. 1-15-92; TS 6-1992(Temp), f. & cert. ef. 10-1-92; TS 3-1993, f. & cert. ef. 4-19-93; TS 7-1994, f. 9-29-94, cert. ef. 1-15-95; TS 3-1997, f. & cert. ef. 9-22-97; TS 4-1997, f. 9-25-97, cert. ef. 10-4-97; TSPC 3-1998(Temp), f. & cert. ef. 3-25-98 thru 9-8-98; Administrative correction 8-9-99; TSPC 2-2000, f. & cert. ef. 5-15-00; TSPC 2-2009, f. & cert. ef. 3-12-09; TSPC 1-2015, f. & cert. ef. 2-10-15

584-060-0181

Substitute Teaching License

(1) Upon filing a correct and complete application in form and manner prescribed by the Commission, a qualified applicant may be granted a Substitute Teaching License. This license, issued for three years and renewable, is valid at any level in any specialty to substitute for a teacher who is temporarily unable to work.

(2) To be eligible for a Substitute Teaching License, the applicant must:

(a) Hold a bachelor's degree or higher from a regionally-accredited institution in the United States, or the foreign equivalent of such degree approved by the Commission. A master's degree or a doctoral degree from a regionally-accredited institution in the United States validates a non-regionally accredited bachelor's degree for licensure;

(b) Hold an unrestricted license for full-time teaching in any state demonstrating completion of a state-approved teacher education program;

(c) Obtain a passing score on a Commission-adopted test of knowledge of U.S. and Oregon civil rights and professional ethics;

(d) Furnish fingerprints in the manner prescribed by the Commission if the applicant has not been fingerprinted or has not held an active license issued by the Commission in the past three years; and

(e) Provide continuing professional development if transitioning from a basic, standard, initial or Professional teaching license to a Substitute Teaching License.

(3) The holder of a Substitute Teaching License may not continuously replace an individual teacher absent for more than three consecutive months without obtaining a full-time license. Failure to observe this limitation may result in licensure sanction by the Commission for either the teacher or the assigning administrator or both.

(4) A district and co-applicant educator may apply for an Emergency Teaching License for the holder of a Substitute Teaching License if the district is unable to obtain a regularly-licensed teacher for any position lasting more than three consecutive months. The Emergency Teaching License will allow the educator to teach for time beyond the allowed timelines stated in section (3) above. The Executive Director may approve the Emergency Teaching License upon proof of the district's emergency and may only issue the license for the amount of time to cover the emergency. In all cases, the Emergency Teaching License may not extend beyond the end of that school year.

(5) To be eligible for renewal of the Substitute Teaching License an applicant must show:

(a) Evidence of having obtained a passing score as currently specified by the Commission on a test of basic verbal and computational skills, unless the applicant held an Oregon educator license before 1985 or has a regionally-accredited master's degree; and

(b) Completion of continuing professional development in accordance with OAR 584-090.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.430, 342.455 - 342.495 & 342.533

Hist.: TSPC 3-1999, f. & cert. ef. 7-15-99; TSPC 9-1999, f. & cert. ef. 11-22-99; TSPC 5-2004, f. & cert. ef. 8-25-04; TSPC 7-2008, f. & cert. ef. 8-20-08; TSPC 2-2009, f. & cert. ef. 3-12-09; TSPC 8-2009, f. & cert. ef. 12-15-09; TSPC 5-2010(Temp), f. & cert. ef. 8-13-10 thru 12-31-10; TSPC 9-2010, f. 12-15-10, cert. ef. 1-1-11; TSPC 3-2011, f. & cert. ef. 3-15-11; TSPC 5-2013, f. & cert. ef. 11-14-13; TSPC 1-2015, f. & cert. ef. 2-10-15

584-060-0210

Emergency Teaching License

(1) Upon filing a correct and complete application in form and manner prescribed by the Commission, a qualified applicant and a co-applicant district may be granted an Emergency Teaching License. An Emergency Teaching License may be issued when a school district demonstrates extenuating circumstances that merit the issuance of the license in order to protect the district's programs or students.

(2) The Emergency Teaching License shall be issued solely at the discretion of the Executive Director for any length of time deemed necessary to protect the district's programs or students.

(a) In most cases, an Emergency Teaching License will not exceed one year unless the educator or the district has presented unusual extenuating circumstances.

(b) The Executive Director may consider efforts the educator has made in meeting licensure requirements. Additionally, the Executive Director will consider academic preparation or experience the proposed educator has had in the area in which the district is requesting the license.

(c) Generally, failure to meet renewal requirements does not constitute an emergency or extenuating circumstances.

(d) In most cases, an Emergency Teaching License will expire on June 30 of the academic year in which the license was granted regardless of the term for licensure. Extending the license beyond the June 30 expiration date is at the discretion of the Executive Director after considering all extenuating circumstances.

(3) To be eligible for the Emergency Teaching License an applicant and co-applicant district must provide the following:

(a) C-1 application;

(b) All licensure fees, including possible late fees and expedited service fee if appropriate;

(c) Fingerprints furnished in the manner prescribed by the Commission if the applicant has not been fingerprinted or has not held an active license issued by the Commission in the past three years;

(d) A letter from the district detailing the extenuating circumstances constituting the emergency and the applicant's unique skills qualifying her or him for the license. The letter should include a request for the least amount of time necessary to meet the emergency needs of the district; and

(e) An applicant may be asked to provide a resume, official transcripts or other evidence of qualifications if requested by the Executive Director.

(4)(a) The Emergency Teaching License is not subject to the 120 day grace period allowed for licensure renewal purposes under ORS 342.127. A new application and fee is required for the license the applicant must qualify for once the Emergency License has expired.

(b) It is the applicant's responsibility to apply for the subsequent license in a timely manner in order to ensure that the applicant remains licensed.

(5) Applications not eligible for emergency licensure requests include:

(a) Renewal applications within the 120 days grace period;

(b) New Oregon Applicants eligible for Fast-Track processing pursuant to OAR 584-010-0090; or

(c) Applications that include requests for Emergency Teaching Licenses due to the applicant's failure to meet renewal or upgrade requirements such as required coursework or continuing professional development.

(6) The Commission may limit the number of applications from an employing district to a maximum of one hundred (100) in any two-day period.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.430, 342.455 - 342.495 & 342.533

Hist.: TSPC 3-2003, f. & cert. ef. 5-15-03; TSPC 8-2004(Temp), f. & cert. ef. 9-10-04 thru 3-9-05 (Suspended by TSPC 9-2004(Temp), f. & cert. ef. 9-5-04 thru 3-9-05); TSPC 1-2005, f. & cert. ef. 1-21-05; TSPC 2-2008, f. & cert. ef. 4-15-08; TSPC 2-2009, f. & cert. ef. 3-12-09; TSPC 5-2010(Temp), f. & cert. ef. 8-13-10 thru 12-31-10; TSPC 7-2010, f. & cert. ef. 9-15-10; TSPC 10-2010, f. 12-30-10, cert. ef. 1-1-11; TSPC 8-2014(Temp), f. & cert. ef. 11-10-14 thru 5-8-15; TSPC 1-2015, f. & cert. ef. 2-10-15

584-060-0635

Adding Specializations to Teaching Licenses

(1) Specializations on teaching licenses represent an optional notation of a specialized expertise or preparation in a single subject area. The purpose of the specialization is to recognize that an educator has demonstrated exceptional knowledge, skills and abilities in the single subject area. Specializations are not required to teach or work in the specialized areas. Specializations do not limit the scope or area of licensure.

(2) Specializations include the following areas:

(a) Autism Spectrum Disorder Specialist;

(b) Dual Language;

(c) Elementary Mathematics Instructional Coach; and

(d) Talented and Gifted.

(3) Autism Spectrum Disorder Specialist: To be eligible to add an Autism Spectrum Disorder Specialist specialization to a non-provisional license, an applicant must meet the requirements set forth in OAR 584-066-0010(3).

(4) Dual Language Specialization: To be eligible to add a Dual Language specialization to a non-provisional license, an applicant must meet the requirements set forth in OAR 584-066-0015(1).

(5) Elementary Mathematics Instructional Coach: To be eligible to add an Elementary Mathematics Instructional Coach specialization to a non-provisional license, an applicant must meet the requirements set forth in OAR 584-066-0020(2).

(6) Talented and Gifted Specialization: To be eligible to add a Talented and Gifted specialization to a non-provisional license, and applicant must meet the requirements set forth in OAR 584-066-0025.

(7) Autism Spectrum Disorder Specialist, Dual Language, Elementary Mathematics Instructional Coach, and Talented and Gifted specializations may not be added to a provisional teaching license.

(8) Specializations do not replace or preclude the endorsement requirements for teaching licenses set forth in OAR chapter 584, division 60. Specializations will be noted on a license as an addition to the required endorsement area. Notations of specializations will appear on teaching licenses as follows: Example: Specialization: Autism Spectrum Disorder Specialist.

Example: Specialization: Autism Spectrum Disorder Specialist.
Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.430, 342.455 - 342.495 & 342.553
Hist.: TSPC 9-2014, f. & cert. ef. 11-14-14; TSPC 1-2015, f. & cert. ef. 2-10-15

584-065-0001
Purpose of Endorsements for Initial and Continuing Teacher Licenses

(1) These rules establish endorsement requirements for Initial and Professional Teacher Licenses. The use of this rule includes, but is not limited to, the following:

(a) Advising Oregon Teacher Education Institutions of academic requirements for endorsements under divisions 60, 70 and 80;

(b) Assessing the preparation of out-of-state applicants who make application for Oregon licensure; and

(c) Guiding in the selection and use of licensure tests in the respective endorsements.

(2) Teachers holding Basic or Standard Licenses are endorsed under requirements stated in divisions 38 and 40.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 143, 342.153, 342.165 & 342.223 - 232
Hist.: TSPC 5-1998, f. 6-5-98, cert. ef. 1-15-99; TSPC 1-2015, f. & cert. ef. 2-10-15

584-065-0060
Knowledge, Skills and Abilities for Physical Education Endorsement

(1) In addition to passing the required Commission-approved subject-matter, examinations for physical education and completing the required practicum experience, the following requirements must be met to add a physical education endorsement onto any Initial or Professional Teaching License. The requirements to add a physical education endorsement onto a Basic or Standard Teaching License can be found at: OAR 584-038-0230 and 584-040-0210.

(2) Demonstrated Content Knowledge. Candidates demonstrate an understanding of physical education content, disciplinary concepts, and tools of inquiry related to the development of a physically educated person. Candidates must:

(a) Identify critical elements of motor skill performance, and combine motor skills into appropriate sequences for the purpose of improving learning;

(b) Demonstrate competent motor skill performance in a variety of physical activities;

(c) Describe performance concepts and strategies related to a skillful movement and physical activity such as: fitness principles, game tactics, skill improvement principles;

(d) Describe and apply: anatomical, physiological and biomechanical bioscience and psychological concepts to skillful movement, physical activity and fitness;

(e) Understand and debate current physical education and activity issues and laws based on historical, philosophical and sociological concepts; and

(f) Demonstrate knowledge of national and state content standards and local programs goals.

(3) Demonstrated Knowledge of Growth and Development. Candidates demonstrate an understanding of how individuals learn and develop, and can provide opportunities that support their physical, cognitive, social and emotional development. Candidates must:

(a) Monitor individual and group performance in order to design safe instruction that meets student development needs in the physical, cognitive and social and emotional domains;

(b) Understand the biological, psychological, sociological, experiential and environmental factors such as: neurological development, physique, gender and socio-economic status that impact developmental readiness to learn and demonstrate the ability to refine movement skills accordingly; and

(c) Identify, select and implement appropriate learning and best practices opportunities based on understanding the student, the learning environment and the task.

(4) Demonstrated Ability to Differentiate Instruction. Candidates demonstrate competencies in differentiated instruction for diverse learners by demonstrating an understanding of how individuals differ in their approaches to learning and create appropriate instruction opportunities adapted to individual differences. Candidates must:

(a) Identify, select, and implement appropriate instruction that is sensitive to students' strengths and weaknesses, multiple needs, learning styles, and prior experiences including but not limited to cultural, ethnic, personal, family and community influences; and

(b) Use appropriate services and resources in the delivery of differentiated instruction to ensure success for all students.

(5) Demonstrated Competency in Classroom Management and Individual and Group Motivation. Candidate demonstrates ability to understand individual and group motivation and behavior to create a learning environment that encourages positive social interaction, active engagement in learning and self-motivation. Candidates must:

(a) Use managerial routines that create smoothly functioning learning experiences and environments;

(b) Organize, allocate, and manage resources such as students, time, space, equipment, activities and teacher attention;

(c) Use a variety of developmentally appropriate practices to motivate students to participate in physical activity inside and outside the school;

(d) Use strategies to help students demonstrate responsible personal and social behaviors such as mutual respect, support for others, safety and cooperation that promote positive relationships and a productive learning environment; and

(e) Develop effective behavior management plans when appropriate.

(6) Demonstrate Competency in Communication. Candidates demonstrate skill and knowledge in the use of effective verbal, nonverbal and media communication techniques to foster inquiry, collaboration and engagement in physical activity settings. Candidates must:

(a) Describe and demonstrate effective communication skills, such as: use of language, clarity, conciseness, pacing, giving and receiving, feedback, age appropriate language and non-verbal communication;

(b) Communicate managerial and instructional information in a variety of ways such as bulletin boards, music, task cards, posters, Internet and video;

(c) Communicate in ways that demonstrate sensitivity and consideration of ethnic, cultural, socio-economic, ability and gender differences; and

(d) Describe and implement strategies to enhance communication and collaboration among students in physical activity settings.

(7) Demonstrate Competency in Planning and Instruction. The candidate demonstrates skill in planning and implements a variety of developmentally appropriate instructional strategies to develop physically educated individuals. Candidates must:

(a) Identify, develop and implement appropriate program and instructional goals;

(b) Develop long and short-term plans that are linked to both programs, instructional goals and student needs;

(c) Select and implement instructional strategies, based on selected content, student needs and safety issues, to facilitate learning in the physical activity setting;

(d) Design and implement learning experiences that are safe, appropriate, relevant and based on principles of effective instruction;

(e) Apply disciplinary and pedagogical knowledge in developing and implementing effective learning environments and experiences;

(f) Provide learning experiences that allow students to integrate knowledge and skills from multiple subject areas;

(g) Select and implement appropriate, comprehensive, accurate, useful and safe teaching resources and curriculum materials;

(h) Use effective demonstrations and explanations to link physical activity concepts to appropriate learning experiences;

(i) Develop and use appropriate instructional cues and prompts to facilitate competent motor skills performance; and

(j) Develop a repertoire of direct and indirect instructional formats to facilitate student learning such as ask questions, pose scenarios, promote problem-solving and critical thinking; facilitate factual recall and promote literacy.

(8) Demonstrate Competencies in Learner Assessment. The candidate demonstrates an understanding and use of formal and informal assessment strategies to foster physical, cognitive, social and emotional development of learners in physical activity. Candidates must:

(a) Identify key component of various types of assessment, describe their appropriate and inappropriate use and address issues of validity, reliability and adverse impact;

(b) Use a variety of appropriate authentic and traditional assessment techniques, including both self and peer assessments, to assess student understanding and performance, provide feedback and communicate student progress for both formative and summative purposes; and

(c) Interpret and use learning and performance data to make informed curricular and instructional decisions.

(9) Demonstrate Competency in the Ability to Reflect and Make Appropriate Adjustments in Teaching Quality. Candidates demonstrate the ability to reflect and evaluate the effects of her or his actions on others. Candidates must:

(a) Use a reflective cycle involving description of teaching, justification of teaching performance, critique of the teaching performance, the setting of teaching goals and implementation of change;

(b) Use available resources such as colleagues, literature and professional associations to develop as a reflective physical educator; and

(c) Construct a plan for continued professional growth based on the assessment of personal teaching performance.

(10) Demonstrate Competency in Technology. Candidates use information technology to enhance learning and to enhance personal and professional productivity. Candidates must:

(a) Demonstrate knowledge of current technologies and their application in physical education;

(b) Design, develop and implement student learning activities that integrate information technology; and

(c) Use technologies to communicate, network, locate resources and enhance continuing professional development.

(11) Demonstrate Competency to Foster Collaboration. Candidates will foster relationships with colleagues, parents and guardians and community agencies to support learners' growth and well-being. Candidates will:

(a) Identify strategies to become an advocate in the school and community to promote a variety of physical activity opportunities;

(b) Actively participate in the local, state and national professional physical education community and within the broader education field;

(c) Identify and actively seek community resources to enhance physical activity opportunities; and

(d) Pursue productive relationships with parents, guardians and school colleagues to support student growth and well-being.

(12) Candidates for physical education endorsement must be authorized at one paired authorization level as defined in OAR 584-060-0071 in any one of the following combinations below. Candidates completing a practica experience at either early childhood or elementary and at either middle or high school levels shall qualify for authorization to teach preprimary through grade 12. Paired authorizations may be:

(a) Early Childhood and Elementary;

(b) Elementary and Middle Level; or

(c) Middle Level and High School.

(13) This endorsement is valid to teach:

(a) Games and sports skills;

(b) Gymnastics;

(c) Movement;

(d) Personal and Social Development;

(e) Physical Fitness and Body Development;

(f) Rhythms;

(g) Adaptive motor skills; and

(h) Athletic training.

(14) This endorsement is required for teaching any subject in section (13) above:

(a) More than 51% on a Basic or Standard Teaching License with an elementary endorsement; or

(b) More than 10 hours per week on:

(A) Any Basic or Standard Teaching License with other than an elementary endorsement; or

(B) An Initial or Professional Teaching License at any grade authorization level.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.143, 342.153, 342.165 & 342.173
Hist.: TSPC 2-2005, f. & cert. ef. 4-15-05; TSPC 5-2009, f. & cert. ef. 10-5-09; TSPC 1-2015, f. & cert. ef. 2-10-15

584-065-0070
Knowledge, Skills and Abilities for Health Education Endorsement

(1) In addition to passing the required Commission-approved subject-matter, examinations for health education and completing the required practicum experience, the following requirements must be met to add a health education endorsement onto any Initial or Professional Teaching License. The requirements to add a health education endorsement onto a Basic or Standard Teaching License can be found at: OAR 584-038-0110 and 584-040-0100.

(2) Candidates Assess Individual and Community Needs for Health Education. Candidates will:

(a) Obtain health-related data about social and cultural environments, growth and development factors, needs, and interests of students;

(b) Distinguish between behaviors that foster and those that hinder well-being; and

(c) Candidates determine health education needs based on observed and obtained data.

(3) Candidates Plan Effective Health Education Programs. Candidates will:

(a) Recruit school and community representatives to support and assist in program planning;

(b) Develop a logical scope and sequence plan for a health education program;

(c) Formulate appropriate and measurable learner objectives; and

(d) Design educational strategies consistent with specified learner objectives.

(4) Candidates Implement Health Education Programs. Candidates will:

(a) Analyze factors affecting the successful implementation of health education and Coordinated School Health Programs (CSHPs);

(b) Select resources and media best suited to implement program plans for diverse learners;

(c) Exhibit competence in carrying out planned programs; and

(d) Monitor educational programs, adjusting objectives and instructional strategies as necessary.

(5) Candidates Evaluate the Effectiveness of Coordinated School Health Programs. Candidates will:

(a) Develop plans to assess student achievement of program objectives;

(b) Carry out evaluation plans;

(c) Interpret results of program evaluation; and

(d) Infer implications of evaluation findings for future program planning.

(6) Candidates Coordinate Provision of Health Education Programs and Services. Candidates will:

(a) Develop a plan for coordinating health education with other components of a school health program;

(b) Demonstrate the dispositions and skills to facilitate cooperation among health educators, other teachers, and appropriate school staff;

(c) Candidates formulate practical modes of collaboration among health educators in all settings and other school and community health professionals; and

(d) Candidates organize professional development programs for teachers, other school personnel, community members, and other interested individuals.

(7) Candidates Act as a Resource Person in Health Education. Candidates will:

(a) Utilize computerized health information retrieval systems effectively;

(b) Establish effective consultative relationships with those requesting assistance in solving health-related problems;

(c) Interpret and respond to requests for health information; and

(d) Select effective educational resource materials for dissemination.

(8) Candidates Communicate Health and Health Education Needs, Concerns, and Resources. Candidates will:

(a) Interpret concepts, purposes, and theories of health education;

(b) Predict the impact of societal value systems on health education programs;

(c) Select a variety of communication methods and techniques in providing health information; and

(d) Foster communication between health care providers and consumers.

(9) Candidates Apply Appropriate Research Principles and Methods in Health Education. Candidates will:

(a) Conduct thorough reviews of health-related literature;

(b) Use appropriate qualitative and quantitative research methods; and

(c) Apply research to health education practices.

(10) Candidates Have the Skills to Administer Health Education Programs. Candidates will:

(a) Develop and manage health education program fiscal resources;

(b) Develop and manage human resources; and

(c) Exercise organizational leadership.

(11) Candidates Advance the Profession of Health Education. Candidates will:

(a) Provide a critical analysis of current and future needs in health education;

(b) Assume responsibility for advancing the profession;

(c) Apply ethical principles as they relate to the practice of health education.

(12) Candidates Have the Ability to Differentiate Instruction. Candidates will:

(a) Demonstrate competencies in delivering differentiated instructional strategies that promote equitable learning opportunities and success for all students regardless of native language, socioeconomic background, ethnicity, gender, disability or other individual characteristics;

(b) Identify, select, and implement appropriate instruction that is sensitive to students' strengths and weaknesses, multiple needs, learning styles, and prior experiences including but not limited to cultural, ethnic, personal, family and community influences; and

I Use appropriate services and resources in the delivery of differentiated instruction.

(13) This endorsement is valid to teach:

(a) Health Education;

(b) Advanced Health;

(c) Food and Fitness;

(d) Drug Education;

(e) Health Promotion;

(f) Health and Wellness Education;

(g) Individual Health Projects;

(h) Chemical and Substance Abuse Education;

(i) Family Living; and

(j) Other health-related courses or activities.

(14) This endorsement is required for teaching any subject in section (12) above for more than ten hours per week, or if conditionally assigned in more than one subject (See, OAR 584-036-0081) on:

(a) Any Basic or Standard Teaching License with other than an elementary endorsement in grades 5 through 12; and

(b) Any Initial or Professional Teaching License with a high school authorization.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 -342.143, 342.153, 342.165, 342.223 - 342.232

Hist.: TSPC 2-2005, f. & cert. ef. 4-15-05; TSPC 2-2008, f. & cert. ef. 4-15-08; TSPC 1-2015, f. & cert. ef. 2-10-15

584-065-0080

Knowledge, Skills and Abilities for Basic Math Endorsement

(1) In addition to passing the required Commission-approved subject-matter, examinations for basic math and completing the required practicum experience, the following requirements must be met to add a basic math endorsement onto any Initial or Professional Teaching License. The requirements to add a basic math endorsement onto a Basic or Standard Teaching License can be found at OAR 584-038-0180.

(2) Demonstrated Content Knowledge:

(a) For knowledge of numbers, operations, candidates will:

(A) Demonstrate conceptual understanding of complex numbers and real numbers particularly rational numbers and integers; ways of representing numbers; relationships among numbers and number systems; and the meaning of operations; and

(B) Be computationally proficient and choose the appropriate computational format such as exact or approximate; and method, such as mental, paper and pencil, or electronic.

(b) For knowledge of algebra and functions, candidates will:

(A) Understand the various roles of algebra and demonstrate conceptual understanding of variables and functions including linear, quadratic and exponential functions and their inverses;

(B) Use a variety of representations including verbal, pictorial, tabular, symbolic and graphic to emphasize relationships among quantities; and

(C) Demonstrate conceptual understanding of and skill in appropriate use of symbols.

(c) For knowledge of geometry, candidates will:

(A) Use spatial visualization and geometric modeling and constructions to explore and analyze geometric shapes, structures, and their properties;

(B) Make conjectures about two- and three-dimensional shapes and offer justifications for conjectures; and

(C) Apply coordinates geometry and transformations including the use of congruence, similarity, and symmetry to analyze mathematical situations.

(d) For knowledge of measurement, candidates will:

(A) Understand measurement processes including estimation, accuracy and choice of measurement tool for both U.S. customary and metric systems; and

(B) Understand and use direct and indirect measurement techniques and formulas for both two- and three-dimensional figures.

(e) For knowledge of data analysis and probability and statistic, candidates will:

(A) Design investigations, collect data, use a variety of ways to display the data and critically interpret data representations;

(B) Make predictions and draw conclusions involving uncertainty by applying basic concepts of probability; and

(C) Use appropriate statistical methods to analyze and describe shape, spread, and center data; then they use that information to make inferences.

(f) For knowledge of calculus, candidates will:

(A) Demonstrate a conceptual understanding of limits, particularly in relation to understanding series, repetitive processes and non-terminating decimals; and

(B) Demonstrate a conceptual understanding of rate of change and the relationship to minimums, maximums and area of a region.

(3) Demonstrated Competency in Following Process Standards.

(a) For competency in problem solving, candidates will engage in mathematical inquiry through understanding a problem, exploring, conjecturing, experimenting and justifying.

(b) For competency in reasoning and proof, candidates will:

(A) Select and use various types of reasoning including categorizing based on numeric and geometric properties, and using Venn diagrams, set notation and operations; and

(B) Develop and evaluate mathematical arguments such as informal proofs, and the foundations on which arguments are built.

(c) For competency in communication, candidates will:

(A) Organize and consolidate their mathematical thinking through communication;

(B) Communicate coherently and use the language of mathematics, such as symbols and terminology, to express ideas precisely; and

(C) Analyze the mathematical thinking of others.

(d) For competency in representation, candidates will:

(A) Use multiple forms of representation including concrete models, pictures, diagrams, tables and graphs; and

(B) Use invented and conventional terms and symbols to communicate reasoning and solve problems.

(e) For competency in connections, candidates will:

(A) Understand how mathematical ideas interconnect and build on one another to produce a coherent whole; and

(B) Recognize and apply mathematics in contexts outside of mathematics.

(4) Demonstrated knowledge and skill in mathematics pedagogy:

(a) For demonstrated knowledge and skill in the principles equity candidates will demonstrate high expectations and strong support for all students to learn mathematics.

(b) For demonstrated knowledge and skill in developing curriculum, candidates will:

(A) Map curriculum that is coherent, focused on important mathematics and carefully sequenced;

(B) Be familiar with curriculum both preceding and following the middle level; and

(C) Be able to discern the quality of learning opportunities for students when given a particular task, activity, educational software, etc., and are able to make adaptations to assure quality.

(c) For demonstrated knowledge and skill in developing quality learning environment candidates will foster a classroom environment conducive to mathematical learning through:

(A) Providing and structuring the time necessary to explore sound mathematics and grapple with significant ideas and problems;

(B) Using the physical space and materials in ways that facilitate students' learning of mathematics;

(C) Providing a context that encourages the development of mathematical skill and proficiency; and

(D) Respecting and valuing students' ideas, ways o' thinking and mathematical dispositions.

(d) For demonstrated knowledge and skill in teaching, candidates will:

(A) Understand what mathematics students know and need to learn and then challenge and support them to learn it well; and

(B) Orchestrate discourse by:

(i) Posing questions and tasks that elicit, engage and challenge each student's thinking;

(ii) Listening carefully to students' ideas; asking 'students to clarify and justify their ideas orally and in writing;

(iii) Deciding what to pursue in depth from among the ideas that students bring up during a discussion;

(iv) Deciding when and how to attach mathematical notation and language to students' ideas;

(v) Deciding when to provide information, when to clarify an issue, when to model, when to lead, and when to let a student struggle with a difficulty; and

(vi) Monitoring students' participation' in discussions and deciding when and how to encourage each student to participate.

(e) For demonstrated knowledge and skill in learning, candidates will:

(A) Know that students must learn mathematics with understanding, actively building new knowledge from experience and prior knowledge; and

(B) Have the ability to recognize and move students from concrete to abstract levels of understanding.

(f) For demonstrated knowledge and skill in assessment, candidates will:

(A) Use a variety of formal and informal, formative and summative assessment techniques to support the learning of important mathematics;

(B) Understand how, why, and when to use various assessment techniques and tools; as well as how these tools inform their understanding about student thinking and understanding; and

(C) Plan instruction based upon the information obtained through classroom and external assessments of each student's developmental' level.

(g) For demonstrated knowledge and skill in technology, candidates will:

(A) Understand that technology is an integral part of teaching and learning mathematics both influencing what is taught and enhancing how it is learned.

(B) Demonstrate effective and appropriate use of technology.

(h) For demonstrated knowledge and skill in mathematic historical development candidates will demonstrate knowledge of historical and cultural influences in mathematics including contributions of underrepresented groups.

(i) For demonstrated ability to differentiate instruction, candidates will demonstrate competencies in delivering differentiated instructional strategies that promote equitable learning opportunities and success for all students regardless of native language, socioeconomic background, ethnicity, gender, disability or other individual characteristics. Candidates will:

(A) Identify, select, and implement appropriate instruction that is sensitive to students' strengths and 'weaknesses, multiple needs, learning styles, and prior experiences including but not limited to cultural, ethnic, personal, family and community influences; and

(B) Use appropriate services and resources in the delivery of differentiated instruction.

(5) This endorsement is valid to teach any course at or below Algebra I including:

(a) Remedial Math;

(b) Mathematics;

(c) Basic Math;

(d) Math Concepts (grades 6–8);

(e) Pre-Algebra;

(f) Introductory Algebra;

(g) Basic Algebra;

(h) Algebra I;

(i) Competency Mathematics;

(j) Consumer Mathematics;

(k) General Math I & II;

(l) Mathematics Fundamentals;

(m) Math Lab;

(n) Middle Mathematics Skills;

(o) Problem Solving; and

(p) Other math-related courses at or below the Algebra I level.

(6) This endorsement is required for teaching any subject in section (4) above:

(a) More than 51% of a full teaching assignment on a Basic or Standard Teaching License with an elementary endorsement issued after 1987 with the licensure code of (016); or

(b) More than 10 hours per week or if conditionally assigned in more than one subject, (See, OAR 584-036-0081) on:

(A) Any Basic or Standard Teaching License with other than an elementary endorsement; or

(B) An Initial or Professional Teaching License with a high school authorization.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.143, 342.153, 342.165, 342.223 - 342.232

Hist.: TSPC 2-2005, f. & cert. ef. 4-15-05; TSPC 2-2008, f. & cert. ef. 4-15-08; TSPC 1-2015, f. & cert. ef. 2-10-15

584-065-0090

Knowledge, Skills and Abilities for Advanced Math Endorsement

(1) In addition to passing the required Commission-approved subject-matter, examinations for advanced math and completing the required practicum experience, the following requirements must be met to add an advanced math endorsement onto any Initial or Professional Teaching License. The requirements to add an advanced math endorsement onto a Basic or Standard Teaching License can be found at: OAR 584-038-0190 and 584-040-0180.

(2) Demonstrated Content Knowledge.

(a) For knowledge of numbers, operations and algebra, candidates will:

(A) Demonstrate knowledge of the properties of the natural, integer, rational, real and complex number systems and the interrelationships of these number systems

(B) Identify and apply the basic ideas, properties and results of number theory and algebraic structures that underlie numbers and algebraic expressions, operations, equations and inequalities;

(C) Use algebraic equations to describe lines, planes and conic sections and to find distances in the plane and space;

(D) Demonstrate the use of algebra to model, analyze, and solve problems from various areas of mathematics, science and the social sciences;

(E) Apply properties and operations of matrices and techniques of analytic geometry to analyze and solve systems of equations; and

(F) Use graphing calculators, computer algebra systems, and spreadsheets to explore algebraic ideas and algebraic representations of information and to solve problems.

(b) For knowledge of geometry, candidates will:

(A) Identify and apply the basic ideas, properties and results of number theory and algebraic structures that underlie numbers and algebraic expressions, operations, equations and inequalities;

(B) Use algebraic equations to describe lines, planes and conic sections and to find distances in the plane and space;

(C) Demonstrate the use of algebra to model, analyze, and solve problems from various areas of mathematics, science and the social sciences;

(D) Apply properties and operations of matrices and techniques of analytic geometry to analyze and solve systems of equations; and

(E) Use graphing calculators, computer algebra systems, and spreadsheets to explore algebraic ideas and algebraic representations of information, and to solve problems.

(c) For knowledge of functions, candidates will:

(A) Demonstrate knowledge of the concept of a function and the most important classes of functions, including polynomial, exponential and logarithmic, rational and trigonometric;

(B) Represent functions in multiple forms, such as graphs, tables, mappings, formulas, matrices and equations;

(C) Perform a variety of operations on functions, including addition, multiplication and composition of functions, and recognize related special

functions such as identities and inverses and those operations that preserve the various properties;

(D) Use functions to model situations and solve problems in calculus, linear and abstract algebra, geometry, statistics and discrete mathematics;

(E) Explore various kinds of relations, including equivalence relations, and the differences between relations and functions;

(F) Use calculator and computer technology effectively to study functions and solve problems;

(G) Demonstrate specific knowledge of trigonometric functions, including properties of their graphs, special angles, identities and inequalities, and complex and polar forms; and

(H) Use analytic representations, measures, and properties to analyze transformation of two- and three-dimensional objects.

(d) For knowledge of discrete mathematics and computer science, candidates will:

(A) Demonstrate knowledge of discrete topics including graphs, trees, networks, enumerative combinatorics and finite difference equations, iteration and recursion, and the use of tools such as functions, diagrams and matrices to explore them;

(B) Build discrete mathematical models for social decision-making;

(C) Apply discrete structures such as: sets, logic, relations and functions, and their applications in design of data structures and programming;

(D) Use recursion and combinatorics in the design and analysis of algorithms; and

(E) Candidates employ linear and computer programming to solve problems.

(e) For knowledge of probability and statistics, candidates will:

(A) Explore data using a variety of standard techniques to organize and display data and detect and use measures of central tendency and dispersion;

(B) Use surveys to estimate population characteristics and design experiments to test conjectured relationships among variables;

(C) Use theory and simulations to study probability distributions and apply them as models of real phenomena;

(D) Demonstrate knowledge of statistical inference by using probability models to draw conclusions from data and measure the uncertainty of those conclusions;

(E) Employ calculators and computers effectively in statistical explorations and practice; and

(F) Demonstrate knowledge of basic concepts of probability such as conditional probability and independence, and develop skill in calculating probabilities associated with those concepts.

(f) For knowledge of calculus, candidates will:

(A) Demonstrate conceptual understanding of and procedural facility with basic calculus concepts such as limits, derivatives and integrals of functions of one and two variables;

(B) Use concepts of calculus to analyze the behavior of functions and solve problems; and

(C) Determine the limits of sequences and series and demonstrate the convergence or divergence of series.

(3) Demonstrated Competency in Following Process Standards.

(a) For competency in problem solving, candidates will engage in mathematical inquiry through understanding a problem, exploring, recognizing patterns, conjecturing, experimenting and justifying.

(b) For competency in reasoning and proof, candidates will select and use various types of reasoning and develop and evaluate mathematical arguments and proof in all the mathematics content knowledge areas.

(c) For competency in communication, candidates will:

(A) Organize and consolidate their mathematical thinking through communication;

(B) Communicate coherently and use the language of mathematics such as symbols and terminology to express ideas precisely; and

(C) Analyze the mathematical thinking of others.

(d) For competency in representation, candidates will:

(A) Use multiple forms of representation including concrete models, pictures, diagrams, tables and graphs; and

(B) Use invented and conventional terms and symbols to communicate reasoning and solve problems.

(e) For competency in connections, candidates will:

(A) Understand how mathematical ideas interconnect and build on one another to produce a coherent whole; and

(B) Recognize and apply mathematics in contexts outside of mathematics.

(4) Demonstrated Knowledge and Skill In Mathematics Pedagogy.

(a) For demonstrated knowledge and skill in the principles of equity, candidates will demonstrate high expectations and strong support for all students to learn mathematics,

(b) For demonstrated knowledge and skill in developing curriculum, candidates will:

(A) Map curriculum that is coherent, focused on important mathematics and carefully sequenced;

(B) Be familiar with curriculum both preceding and following the high school level; and

(C) Be able to discern the quality of learning opportunities for students when given a particular task, activity, educational software, etc., and are able to make adaptations to assure quality.

(c) For demonstrated knowledge and skill in developing a quality learning environment, candidates will foster a classroom environment conducive to mathematical learning through:

(A) Providing and structuring the time necessary to explore sound mathematics and grapple with significant ideas and problems;

(B) Using the physical space and materials in ways that facilitate students' learning of mathematics;

(C) Providing a context that encourages the development of mathematical skill and proficiency; and

(D) Respecting and valuing students' ideas, ways o' thinking, and mathematical dispositions.

(d) For demonstrated knowledge and skill in teaching, candidates will:

(A) Understand what mathematics students know and need to learn and then challenge and support them to learn it well; and

(B) Orchestrate discourse by:

(i) Posing questions and tasks that elicit, engage and challenge each student's thinking;

(ii) Listening carefully to students' ideas; asking 'students to clarify and justify their ideas orally and in writing;

(iii) Deciding what to pursue in depth from among the ideas that students bring up during a discussion;

(iv) Deciding when and how to attach mathematical notation and language to students' ideas;

(v) Deciding when to provide information, when to clarify an issue, when to model, when to lead, and when to let a student struggle with a difficulty; and

(vi) Monitoring students' participation 'in discussions and deciding when and how to encourage each student to participate.

(e) For demonstrated knowledge and skill in learning, candidates will:

(A) Know that students must learn mathematics with understanding, actively building new knowledge from experience and prior knowledge; and

(B) Have the ability to recognize and move students from concrete to abstract levels of understanding.

(f) For demonstrated knowledge and skill in assessment, candidates will:

(A) Use a variety of formal and informal, formative and summative assessment techniques to support the learning of important mathematics;

(B) Understand how, why and when to use various assessment techniques and tools; as well as how these tools inform their understanding about student thinking and understanding; and

(C) Plan instruction based upon the information obtained through classroom and external assessments of each student's developmental' level.

(g) For demonstrated knowledge and skill in technology, candidates will:

(A) Understand that technology is an integral part of teaching and learning mathematics both influencing what is taught and enhancing how it is learned.

(B) Demonstrate effective and appropriate use of technology.

(h) For demonstrated knowledge and skill in mathematic historical development candidates will demonstrate knowledge of historical and cultural influences in mathematics including contributions of underrepresented groups.

(i) For demonstrated ability to differentiate instruction, candidates will demonstrate competencies in delivering differentiated instructional strategies that promote equitable learning opportunities and success for all students regardless of native language, socioeconomic background, ethnicity, gender, disability or other individual characteristics. Candidates will:

(A) Identify, select, and implement appropriate instruction that is sensitive to students' strengths and'weaknesses, multiple needs, learning styles, and prior experiences including but not limited to cultural, ethnic, personal, family and community influences; and

(B) Use appropriate services and resources in the delivery of differentiated instruction.

(5) This endorsement is valid to teach:

(a) Advanced Algebra;

(b) Trigonometry;

(c) Pre-Calculus;

(d) Calculus;

(e) Statistics & Probability;

(f) Geometry;

(g) Survey Geometry;

(h) Trigonometry Analysis; and

(i) Other math-related courses.

(6) This endorsement is required to teach any math course above the Algebra I level.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.143, 342.153, 342.165 & 342.223 - 342.232
Hist.: TSPC 2-2005, f. & cert. ef. 4-15-05; TSPC 1-2015, f. & cert. ef. 2-10-15

584-065-0120
Knowledge, Skills and Abilities for Early Childhood Endorsement

(1) In addition to passing the required Commission-approved multiple subjects examination required for early childhood education authorization, candidates must complete the required practicum experience with students in one or more age groups or grades between age three and grade four.

(2) Teachers who hold an Initial, Initial I or Initial II or Professional Teaching License with an elementary authorization may add the early childhood authorization level only upon enrollment in an early childhood authorization program approved by TSPC. [See, OAR 584-060-0051.]

(3) In order to promote child development and learning, the candidate must:

(a) Know and understand young children's characteristics and needs;

(b) Know and understand the multiple influences on development and learning; and

(c) Use developmental knowledge to create healthy, respectful, supportive and challenging learning environments.

(4) In order to build family and community relationships, the candidate must:

(a) Know about and understand family and community characteristics;

(b) Support and empower families and communities through respectful, reciprocal relationships; and

(c) Involve families and communities in their children's development and learning.

(5) In order to document and assess the learning of young children, the candidate will:

(a) Understand the goals, benefits and uses of assessment;

(b) Know about and use observation, documentation, and other appropriate assessment tools and approaches to inform instruction;

(c) Understand and practice appropriate assessment;

(d) Develop partnerships with families and other professionals to assess children's strengths and needs; and

(e) Understand and practice appropriate assessment for all children including culturally and linguistically diverse children as well as children with exceptionalities.

(6) In order to demonstrate teaching and learning, the candidate will:

(a) Connect with children and families to create positive learning environments;

(b) Use developmentally effective approaches:

(A) Foster oral language and communication;

(B) Draw from continuum of teaching strategies;

(C) Make the most of the environment and routines;

(D) Capitalize on incidental teaching;

(E) Focus on children's characteristics, needs, and interests;

(F) Link children's language and culture to the early childhood program;

(G) Teach through social interactions;

(H) Create support for play;

(I) Address children's challenging behaviors;

(J) Use integrative approaches to curriculum; and

(c) Demonstrate an understanding of content knowledge in early education, the candidate will create a classroom environment that encompasses the following core content objectives:

(A) In language and literacy, candidates will develop curriculum so that students will:

(i) Explore their environments and develop the conceptual, experiential, and language foundations for learning to read and write;

(ii) Develop their ability to converse at length and in depth on a topic in various settings (one-on-one with adults and peers, in small groups, etc.);

(iii) Develop vocabulary that reflects their growing knowledge of the world around them;

(iv) Use language, reading and writing to strengthen their own cultural identify as well as to participate in the shared identity of the school environment;

(v) Associate reading and writing with pleasure and enjoyment as well as with skill development;

(vi) Use a range of strategies to derive meaning from stories and texts;

(vii) Use language, reading, and writing for various purposes;

(viii) Use a variety of print and non-print resources;

(ix) Develop basic concepts of print and understanding of sounds, letters, and letter sound relationships; and

(B) In the Arts: music, creative movement, dance, drama, and art, candidates will develop curriculum so that students will:

(i) Interact musically with others;

(ii) Express and interpret understandings of their world through structured and informal musical play;

(iii) Sing, play, and create music;

(iv) Respond to expressive characteristics of music-rhythm, melody, form-through speaking, singing, moving, and playing simple instruments;

(v) Use music to express emotions, conflicts, and needs;

(vi) Move expressively to music of various tempos, meters, modes, genres, and cultures to express what they feel and hear;

(vii) Understand and apply artistic media, techniques, and processes;

(viii) Make connections between visual arts and other disciplines; and

(C) In Mathematics, candidates will develop curriculum in alignment with the National Council of Teachers of Mathematics (NCTM) curriculum student or K-12 grade, recognizing the quantitative dimensions of children's learning:

(i) Mathematics as problem solving;

(ii) Mathematics as communication;

(iii) Mathematics as reasoning;

(iv) Mathematical connections;

(v) Estimation;

(vi) Number sense and numeration;

(vii) Concepts of whole number operations;

(viii) Whole number computation;

(ix) Geometry and spatial sense;

(x) Measurement;

(xi) Statistics and probability;

(xii) Fractions and decimals;

(xiii) Patterns and relationships; and

(D) In physical activity and Physical Education, candidates will develop curriculum so that students will:

(i) Have varied, repeated experiences with functional movement and manipulation;

(ii) Demonstrate progress toward mature forms of selected physical skills;

(iii) Try new movement activities and skills;

(iv) Use feedback to improve performance;

(v) Experience and express pleasure from participation in physical activity;

(vi) Apply rules, procedures, and safe practices;

(vii) Gain competence to provide increased enjoyment in movement; and

(E) In Science, candidates will develop curriculum so that students will:

(i) Explore materials, objects and events by acting upon them and noticing what happens;

(ii) Make careful observations of objects, organisms, and events using all their senses;

(iii) Describe, compare, sort, classify, and order in terms of observable characteristics;

(iv) Use a variety of simple tools to extend their observations;

(v) Engage in simple investigations including making predictions, gathering and interpreting data, recognizing simple patterns, and drawing conclusions;

(vi) Record observations, explanations, and ideas through multiple forms of representation;

(vii) Work collaboratively with others, share and discuss ideas, and listen to new perspectives; and

(F) In Social Studies, candidates will develop curriculum so that students will:

(i) Geography:

(ii) Make and use maps to locate themselves in space

(iii) Observe the physical characteristics of the places in which they live and identify landforms, bodies of water, climate, soils, natural vegetation and animal life of that place; and

(iv) History:

(v) Use the methods of the historian, identifying questions, locating and analyzing information, and reaching conclusions;

(vi) Record and discuss the changes that occur in their lives, recalling their immediate past; and

(vii) Economics:

(I) Develop awareness of the difference between wants and needs;

(II) Develop interest in the economic system, understanding the contributions of those who produce goods and services; and

(viii) Social relations/civics:

(I) Become a participating member of the group, giving up some individuality for the greater good;

(II) Recognizing similarities among people of many cultures;

(III) Respecting others, including those who differ in gender, ethnicity, ability or ideas;

(IV) Learn the principles of democracy, working cooperatively with others, sharing and voting as they solve problems; and

(d) In order to build meaningful curriculum, the candidate will:

(A) Know, understand, and use positive relationships and supportive interactions;

(B) Know, understand, and use effective approaches, strategies, and tools for early education;

(C) Know and understand the importance, central concepts, inquiry tools, curriculum integration, and structures of content areas or academic disciplines; and

(D) Know and use differentiated instructional strategies to promote equitable learning opportunities and success for all students, regardless of native language, socioeconomic background, ethnicity, gender, disability or other individual characteristics.

(7) In demonstrating professionalism, the candidate will:

(a) Identify and involve oneself with the early childhood field;

(b) Know about and uphold ethical standard and other professional guidelines (see National Association for the Education for Young Children (NAEYC) Code of Ethical Conduct);

(c) Engage in continuous, collaborative learning to inform practice;

(d) Integrate knowledgeable, reflective, and critical perspectives on early education; and

(e) Engage in informed advocacy for children and the profession.

(8) Valid for any teaching assignment, except specialization requiring endorsement under OAR 584-060-0071, at or below grade four.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.165

Hist.: TSPC 5-2008, f. & cert. ef. 6-13-08; TSPC 1-2015, f. & cert. ef. 2-10-15

584-066-0010

Autism Spectrum Disorder (ASD) Licensed Specialist Standards and Competencies

(1)(a) An Autism Spectrum Disorder Specialization may be indicated on any TSPC Basic, Standard, Initial or Professional Teaching License with a special education endorsement so long as the educator qualifies for the specialization by demonstrated completion of a Commission-approved program for Autism Spectrum Disorder specialization.

(b) Once the specialization is earned and placed on a license, it may only be removed at the educator's request.

(2) Definitions:

(a) Academic Curriculum: Language arts, mathematics, science, social sciences, health, physical education, world languages, and the arts;

(b) Expanded Functional Core Curriculum: Communication development, social development, self-advocacy, cognitive development, sensory processing skills, organization skills, adaptive skills-life function, and transitional skills for life span.

(3) To be eligible to add an Autism Spectrum Disorder specialization on a TSPC license, the application must:

(a) Hold a Basic, Standard, Initial or Professional Teaching License with any special education endorsement;

(b) Provide evidence of three years experience working with a range of ASD learners; and

(c) Completed a Commission-approved program for Autism Spectrum Disorder (ASD) Specialization.

(4) Candidates for Autism Spectrum Disorder (ASD) Specialization must demonstrate competency in the following standards:

(a) Standard 1: Foundations of ASD: Candidates indicate knowledge of autism spectrum disorders including development and characteristics of learners. Candidates will:

(A) Describe unique developmental and behavioral characteristics of individuals with ASD as identified in DSM and how these: Differ from neuro-typical development; differ across people with ASD; change with age; and impact an individual's learning;

(B) Describe current theories of etiology for individuals with ASD;

(C) Describe State (OAR) and Federal requirements for assessment, eligibility, and education of individuals with ASD;

(D) Differentiate between medical diagnosis (current DSM definitions) and educational eligibility (federal and state requirements);

(E) Differentiate ASD from other disabilities (differential diagnosis) and identify co-existing conditions associated with ASD and their impact on learning and behavior;

(F) Describe unique learning characteristics of individuals with ASD;

(G) Describe the unique influence of stress, age, instruction, and environmental factors on individuals with ASD;

(H) Describe the standards for determining and a process for locating evidence-based instructional and behavioral interventions for individuals with ASD;

(I) Describe academic curriculum and expanded functional core curriculum for individuals with ASD at various age levels;

(J) Describe current best family-centered practices;

(K) Describe a continuum of placements and services available for the individual with ASD and families;

(L) Describe health issues that potentially impact the individual with ASD and their families;

(M) Describe how to evaluate and access public and private systems and organizations that serve individuals with ASD;

(N) Describe concepts and impacts of self-determination, advocacy, community and family supports in the lives of individuals with ASD;

(O) Provide families with information about community support services such as respite care, in-home behavior support, home health care, transportation, and parent education for individuals with ASD;

(P) Describe typical child development milestones across domains; and

(Q) Identify strengths and needs for an individual with ASD across core and expanded core curricula.

(b) Standard 2: ASD Service Needs: Candidates indicate knowledge of ASD Assessments for Development and Educational Impact on ASD service needs. Candidates will:

(A) Describe the impact that ethnic, cultural, and linguistic diversity issues have on the assessment of the individual with ASD;

(B) Administer or assist in the completion of the required components of the identification assessment for initial and reevaluation of an individual with ASD;

(C) Select, administer, and assist with appropriate educational assessments to determine the present level of academic and functional performance for individuals with ASD;

(D) Interpret assessment data, write summaries, and report results to teams, including families, in a systematic manner that leads directly to programmatic recommendations for instruction for individuals with ASD;

(E) Collaborate with teams, including families, to identify unique needs and to develop appropriate, functional IFSP/IEP goals, matched to assessment information for individuals with ASD;

(F) Collaborate with teams, including families, to identify sufficient special education and related services to enable the individual with ASD to progress on his or her goals;

(G) Assist teams with development and maintenance of ongoing data collection, data analysis, and progress reports for individuals with ASD;

(H) Assist teams in the assessment of environmental conditions that impact access to learning for individuals with ASD;

(I) Assist teams with a functional behavior assessment (FBA) to design behavior support plans for the challenging behaviors of individuals with ASD;

(J) Describe typical child developmental milestones across domains; and

(K) Identify strengths and needs for an individual with ASD across core and expanded core curricula.

(c) Standard 3: ASD Program Development and Implementation: Candidates demonstrate knowledge of system-wide considerations. Candidates will:

(A) Encourage collaboration with the higher education community, foundations, nonprofit and other organizations engaged in researching critical educational issues;

(B) Facilitate the interpretation, communication and dissemination of research findings related to ASD;

(C) Implement expanded core functional curriculum designed to meet the needs of individual learners with ASD;

(D) Conduct expanded core functional curriculum-based assessment to determine areas to address specific skills to teach, and to identify the appropriate evidence-based interventions to implement for learners with ASD;

(E) Collect data on abilities in all skill areas identified from expanded core functional curriculum-based assessments and other performance-based measures for learners with ASD;

(F) Design, facilitate, monitor, and evaluate instruction that is appropriate for both age and skill level of the learner with ASD;

(G) Apply the principles of applied behavior analysis (ABA) within a variety of instructional formats with a variety of learners with ASD, in a variety of settings to teach the skills identified from a curriculum-based assessment;

(H) Utilize appropriate evidence-based curricula content appropriate for a full range of learners with ASD.

(I) Design, facilitate, monitor, and evaluate instructional strategies that promote generalization and maintenance of skills across domains and settings;

(J) Facilitate the identification of assistive technology (low-high) across all areas of skill development appropriate to meet the needs of the individual;

(K) Train and coach others to:

(i) Implement the appropriate evidence-based instructional interventions, curriculum content, accommodations, and modifications identified for the learner with ASD;

(ii) Use individual strengths of the learner with ASD to reinforce and maintain skills; and

(L) Plan with the families for the transition needs of the learner with ASD.

(d) Standard 4: ASD Systematic Instruction: Candidates demonstrate knowledge of evidence-based interventions to promote focused, engaged time for learners with ASD. Candidates will:

(A) Match evidence-based interventions with the needs of individual learners with ASD;

(B) Design evidence-based interventions based on components of core and expanded core curricula;

(C) Implement data based decision-making by:

(i) Collecting baseline data;

(ii) Collecting, reviewing, and interpreting ongoing data;

(iii) Modifying program as needed to promote performance; and

(D) Demonstrate with fidelity the implementation of evidence-based strategies across a range of learners with ASD;

(E) Design and implement plans to ensure generalization of skills across settings and materials for learners with ASD;

(F) Demonstrate knowledge of the general education academic curriculum and supports necessary to facilitate the success of the learner with ASD;

(G) Design environmental plans that define expectations for appropriate behaviors across settings, utilizing evidence-based intervention strategies for learners with ASD;

(H) Design visual, auditory, and tactile supports to enable the learner with ASD to:

(i) Predict events and activities;

(ii) Anticipate change;

(iii) Understand expectations in a variety of settings;

(iv) Maintain or re-gain appropriate self regulation for learning; and

(v) Demonstrate independence;

(I) Assist in determining appropriate evidence-based assistive and/or augmentative communication systems;

(J) Plan and implement evidence-based strategies to support sustained peer interactions and memberships across all environments; and

(K) Demonstrate skills in teaching family members to implement expanded core functional curriculum at home.

(e) Standard 5: Training and Coaching of Adults Serving Individuals with ASD. Candidates will:

(A) Work with administrators to organize, set-up, and deliver the Oregon Education Guidelines for ASD Program and Self-Assessment.

(B) Identify appropriate technologies to deliver training and coaching;

(C) Collaborate with teams to analyze and interpret learner data to improve instruction and evaluate the impact of instructional interventions on learners with ASD;

(D) Work with teams to incorporate coaching in school, home, and community environments;

(E) Provide feedback to adults serving individuals with ASD to strengthen teaching practice and improve learning for the learner;

(F) Evaluate the effectiveness of the training and coaching to ensure implementation and improvement in progress for learners with ASD;

(G) Demonstrate how to investigate, access, and evaluate electronic and print resources on ASD;

(H) Assess, plan, and use an appropriate evidenced based format for training and coaching;

(I) Facilitate group processes to help team members work collaboratively to solve problems, manage conflict, and make decisions; and

(J) Model effective skills in listening, presenting ideas, leading discussions, clarifying, mediating and identifying the needs of self and others in order to advance shared goals and professional learning.

(f) Standard 6: Professional Practices for ASD Specialists. Candidates will:

(A) Advocate for professional resources, including financial support, human and other material resources, which allow for the implementation of the Oregon Comprehensive ASD Program;

(B) Represent and advocate for the profession in contexts outside of the classroom, such as:

(i) Be a member of committees or task forces addressing curriculum, assessment, professional development or other educational issues; and

(ii) Participate in local, state or national educational professional associations or professional standards boards;

(C) Access professional organizations and publications related to ASD to keep current on evidence based practices.

(D) Demonstrate professional skills;

(E) Comply with federal, state, and local policies and regulations;

(F) Maintain professional relationships with colleagues, employers, students, and families; and

(G) Participate in on-going professional development activities.

(g) Standard 7: Collaboration with Families and Communities. Candidates will:

(A) Identify access and share resources from community-based services to support individuals with ASD;

(B) Develop comprehensive strategies, including the use of technology, for engaging families and community members as partners in the educational process;

(C) Establish and maintain positive collaborative relationships with families in a manner which acknowledges culture, language, values, and parenting styles of the families;

(D) Apply effective strategies for participating, collaborating, and facilitating team processes; and

(E) Describe the impact of one's own experience, culture, language, race, and ethnicity on attitudes, beliefs, values, and ways of thinking, behaving, and teaching.

(h) Field Experience: Field experience will be designed in accordance with OAR 584-017-1038 through 584-017-1048 and be aligned with the TSPC Professional Standards Handbook.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 –342.430, 342.455-342.495; 342.553
Hist.: TSPC 4-2012, f. & cert. ef. 5-18-12; TSPC 1-2015, f. & cert. ef. 2-10-15

584-066-0020
Knowledge, Skills and Abilities for Elementary Mathematics Instructional Leader Specialization

(1) An Elementary Mathematics Instructional Leader specialization may be added to any TSPC Basic, Standard, Initial or Professional Teaching License upon completion of the requirements and qualifications found in this rule.

(2) To be eligible for the Elementary Mathematics Instructional Leader (EMIL) specialization, the licensed teacher must have all of the following:

(a) A license authorized to teach in grades K–8 and holding the multiple subjects, basic elementary or standard elementary endorsements;

(b) Three complete years of teaching mathematics in grades K–8 as verified by a Professional Educator Experience Form (PEER) or other verifiable experience if the experience is obtained out of state; and

(c) Demonstrated competency in the following Elementary Math Specialist (EMS) standards as determined by a program approved to offer the Elementary Mathematics Instructional Leaders specialization as evidenced by completion of:

(A) Twenty-four quarter or sixteen semester hours of a TSPC-approved Elementary Mathematics Instructional Leader program; and

(B) An EMIL practicum working with a range of students and teachers.

(3) Elementary Mathematics Instructional Leaders specialist standards include:

(a) Content Knowledge: EMIL professionals must know and understand deeply the mathematics of elementary school as well as how mathematics concepts and skills develop through middle school. This knowledge includes specialized knowledge that teachers need in order to understand and support student learning of elementary mathematics.

(b) Pedagogical Knowledge for Teaching Mathematic: EMIL professionals are expected to have a foundation in pedagogical content knowledge (PCK) (Ball, Thames, & Phelps, 2008). This section is informed by and draws upon the 2003 NCATE/NCTM Program Standards: Standards for Elementary Mathematics Specialists.

(c) Leadership Knowledge and Skills: EMIL professionals need to be prepared to take on collegial non-evaluative leadership roles within their schools and districts. They must have a broad view of many aspects and resources needed to support and facilitate effective instruction and professional growth.

(4) Approval of any EMIL program must satisfy the full set of standards including specific objectives which may be found in the publication: Standards for Elementary Math Specialists: A Reference for Teacher Credentialing and Degree Programs; a publication of the Association of Mathematics Teacher Educators.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120–342.430, 342.455-342.495; 342.553
Hist.: TSPC 3-2014(Temp), f. 4-7-14, cert. ef. 4-8-14 thru 9-22-14TSPC 5-2014, f. & cert. ef. 8-5-14; TSPC 1-2015, f. & cert. ef. 2-10-15

584-066-0025
Talented and Gifted Specialization: Competency Standards

(1) The Commission may provide approval to an educator preparation program or course of study that prepares candidates for a talented and gifted specialization only if it includes:

(a) Content that will enable candidates to gain the knowledge, skills, abilities, professional dispositions, and cultural competencies to meet the competency standards set forth in this rule;

(b) Field experiences that include supervised teaching or internships in classrooms with talented and gifted learners; and

(c) Integration of principles of cultural competency and equitable practice in each competency standard through the entire Talented and Gifted Specialization program.

(2) A candidate for the Talented and Gifted Specialization shall demonstrate the knowledge, skills, professional dispositions and cultural competencies necessary to promote the academic, career, personal and social development of students, including:

(a) Standard 1: Learner Development and Individual Learning Differences: Talented and Gifted Specialists understand the variations in learning and development in cognitive and affective areas between and among Talented and Gifted Learners and apply this understanding to provide meaningful and challenging learning experiences for children identified as Talented and Gifted.

(b) Standard 2: Learning Environments: Talented and Gifted Specialists create safe, inclusive, and culturally responsive learning environments so that Talented and Gifted Learners become effective learners and develop social and emotional well-being.

(c) Standard 3: Curricular Content Knowledge: Talented and Gifted Specialists use knowledge of general and specialized curricula to advance learning for Talented and Gifted Learners.

(d) Standard 4: Cultural Competency and Equity in the Classroom: Talented and Gifted Specialists demonstrate the cultural competency and proficiencies necessary to provide equitable outcomes for all students.

(e) Standard 5: Assessment: Talented and Gifted Specialists use multiple methods of assessment and data sources in making educational decisions about identification of Talented and Gifted Learners and student learning.

(f) Standard 6: Instructional Planning and Strategies: Talented and Gifted Specialists select, adapt, and use a repertoire of evidence-based instructional strategies to advance the learning of Talented and Gifted Learners.

(g) Standard 7: Professional Learning and Ethical Practices: Talented and Gifted Specialists use foundational knowledge of the field and professional ethical principles and programming standards to inform gifted education practice, to engage in lifelong learning, and to advance the profession.

(h) Standard 8: Collaboration: Talented and Gifted Specialists collaborate with families, other educators, related service providers, Talented and Gifted Learners, and personnel from community agencies in culturally responsive ways to address the needs of Talented and Gifted Learners across a range of learning experiences.

(3)(a) A Talented and Gifted specialization may not be added to a provisional license.

(b)The notation of a Talented and Gifted specialization will appear on a license as follows: Specialization: Talented and Gifted.

(c) Once the specialization is noted on a license, it may only be removed at the educator's request.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.430, 342.455 - 342.495 & 342.553
Hist.: TSPC 1-2015, f. & cert. ef. 2-10-15

584-070-0120
Assignment of Teachers as School Counselors

(1) A Basic or Standard Teaching License is valid for .49 or less time as a school counselor at the grade levels valid for the teaching license.

(2) Initial or Professional Teaching Licenses are not valid for counseling assignments except as allowed under License for Conditional Assignment rules in OAR 584-060-0250.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 143, 342.153, 342.165 & 342.223 - 232
Hist.: TSPC 2-1998, f. 2-4-98, cert. ef. 1-15-99; TSPC 2-2007, f. & cert. ef. 4-23-07; TSPC 1-2015, f. & cert. ef. 2-10-15

584-070-0132
Emergency School Counselor License

(1) Upon filing a correct and complete application in the form and manner prescribed by the Commission, a qualified applicant and a co-applicant district may be granted an Emergency School Counselor License. An Emergency School Counselor License may be issued when a school district demonstrates extenuating circumstances that merit the issuance of the license in order to protect the district's programs or students.

(2) An Emergency School Counselor License shall be issued solely at the discretion of the Executive Director for any length of time deemed necessary to protect the district's programs or students.

(a) In most cases, an Emergency School Counselor License will not exceed one year unless the educator or the district has presented unusual extenuating circumstances.

(b) The Executive Director may consider efforts the educator has made in meeting licensure requirements. Additionally, the Executive Director will consider academic preparation or experience the proposed educator has had in the area in which the district is requesting the license.

(c) Generally, failure to meet renewal requirements does not constitute an emergency or extenuating circumstances.

(d) In most cases, an Emergency School Counselor License will expire on June 30 of the academic year in which the license was granted regardless of the term for licensure. Extending the license beyond the June 30 expiration date is at the discretion of the Executive Director after considering all extenuating circumstances.

(3) To be eligible for the Emergency School Counselor License an applicant and co-applicant district must provide the following:

(a) A C-1 application;

(b) All licensure fees, including possible late fees and expedited service fee if appropriate;

(c) Fingerprints furnished in the manner prescribed by the Commission if the applicant has not been fingerprinted or has not held an active license issued by the Commission in the past three years;

(d) A letter from the district detailing the extenuating circumstances constituting the emergency and the applicant's unique skills qualifying her or him for the license. The letter should include a request for the least amount of time necessary to meet the emergency needs of the district; and

(e) An applicant may be asked to provide a resume, official transcripts or other evidence of qualifications if requested by the Executive Director.

(4)(a) The Emergency School Counselor License is not subject to the 120 days allowed for licensure renewal purposes under ORS 342.127. A new application and fee is required for the license the applicant must qualify for once the Emergency License has expired.

(b) It is the applicant's responsibility to apply for the subsequent license in a timely manner in order to ensure that the applicant remains licensed.

(5) Applications not eligible for emergency licensure requests include:

(a) Renewal applications within the 120 days grace period;

(b) New Oregon Applicants eligible for Fast-Track processing pursuant to OAR 584-010-0090; or

(c) Applications that include requests for Emergency School Counselor licenses due to the applicant's failure to meet renewal or upgrade requirements such as required coursework or continuing professional development.

(6) The Commission may limit the number of applications from an employing district to a maximum of one hundred (100) in any two-day period.

Stat. Auth.: ORS 342.125
Stats. Implemented: ORS 342.120 - 342.430; 342.455 - 342.495; 342.533
Hist.: TSPC 7-2005, f. & cert. ef. 8-24-05; TSPC 2-2008, f. & cert. ef. 4-15-08; TSPC 5-2010(Temp), f. & cert. ef. 8-13-10 thru 12-31-10; TSPC 9-2010, f. 12-15-10, cert. ef. 1-1-11; TSPC 5-2012, f. & cert. ef. 5-18-12; TSPC 8-2014(Temp), f. & cert. ef. 11-10-14 thru 5-8-15; TSPC 1-2015, f. & cert. ef. 2-10-15

584-070-0310
Limited Student Service License

(1) Upon filing a correct and complete application in form and manner prescribed by the Commission, a qualified applicant may be granted a Limited Student Service License. This license, issued for three years and renewable, is valid at any authorization level and designated for a specialized type of direct service to students for which the Commission at its discretion may not require a school counselor, school psychologist or school social worker license. It is not valid for substitute teaching of any kind.

(2) To be eligible for a Limited Student Service License the applicant must:

(a) Have a bachelor's degree or higher from a regionally accredited institution in the United States, or the foreign equivalent of such degree approved by the Commission, together with an equally valid master's degree or other specialized preparation related to the intended service role and ordinarily equivalent to one academic year of graduate study. Awarding of a higher degree in the arts and sciences or an advanced degree in the professions from a regionally accredited institution in the United States validates a non-regionally accredited bachelor's degree for licensure.

(b) Obtain a passing score on a Commission-approved test of knowledge of U.S. and Oregon civil rights and professional ethics; and

(c) Furnish fingerprints in the manner prescribed by the Commission and provide satisfactory responses to the character questions contained in the Commission's licensure application. (See also, OAR 584-036-0062 for Criminal Records Check Requirement.)

(3) The Limited Student Service License is restricted to use within a district that has applied for it jointly with the applicant, whose qualifications and job description are subject to Commission approval. Upon application, the co-applicant district must describe its particular need in relation to the co-applicant specialist's qualifications summarized on a submitted resume, agree to provide a mentor during the first year of the assignment, and attest that the role to be filled has been structured so as not to require a school counselor, school psychologist, or school social worker license.

(4) The holder of a Limited Student Service License shall use only the title specifically approved by the Commission and shall not use any unapproved title or imply any unapproved duties related to serving children. Titles such as "advisor" or "student service specialist" or "student assistance specialist" will more readily be approved. The following additional provisos apply:

(a) No holder of a limited student service license shall use a title containing words derived from "psychology" nor claim to be a psychologist or to render psychological services without obtaining a school psychologist license from the Commission unless licensed as a psychologist or psychologist associate by the Board of Psychologist Examiners. Under ORS 675.990(1)(b), a violation of this subsection is a Class A misdemeanor; and

(b) The Commission at its discretion may consider a title indicating a therapeutic student service role like counseling or social work, for a specialist who has a corresponding master's or doctor's degree, if the applicant is licensed by the Board of Licensed Professional Counselors and Therapists or the Board of Licensed Social Workers, respectively, and is demonstrably prevented from gaining admission to a graduate program in school counseling, school psychology or school social work.

(5) The Limited Student Service License is renewable under the following circumstances:

(a) Upon first renewal, an applicant must obtain a passing score as currently specified by the Commission on a test of basic verbal and computational skills, unless the applicant held an Oregon educator license before 1985 or has a regionally accredited master's degree; and

(b) Upon completion of a professional development requirements pursuant to OAR 584, Division 90.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120—342.430; 342.455 - 342.495; 342.533
Hist.: TSPC 4-1999, f. & cert. ef. 8-2-99; TSPC 9-1999, f. & cert. ef. 11-22-99; TSPC 7-2008, f. & cert. ef. 8-20-08; TSPC 3-2009(Temp), f. & cert. ef. 5-15-09 thru 11-11-09; Administrative correction 11-19-09; TSPC 8-2009, f. & cert. ef. 12-15-09; TSPC 5-2010(Temp), f. & cert. ef. 8-13-10 thru 12-31-10; TSPC 9-2010, f. 12-15-10, cert. ef. 1-1-11; TSPC 1-2015, f. & cert. ef. 2-10-15

584-080-0152
Transitional Superintendent License for First Time Out-of-State Applicants

(1) Upon filing a correct and complete application in form and manner prescribed by the Commission, a qualified applicant who has never been licensed in Oregon as an administrator may be granted a Transitional Superintendent License.

(2) The Transitional Superintendent License is issued for eighteen months and is not renewable. At that time, the educator must qualify for a Continuing Administrator License. Under significant extenuating circumstances, additional time may be allowed, as described below in section (7) of this rule.

(3) The Transitional Superintendent License is valid for:

(a) The position of superintendent when issued to a person who has been a superintendent on regular assignment and license in any state; and

(b) Substitute teaching at any level in any specialty.

(4) To be eligible for a Transitional Superintendent License, the applicant must:

(a) Possess the personal qualifications for licensure including attainment of at least eighteen years of age and possessing good moral character and mental and physical health necessary for employment as an educator;

(b) Hold a master's degree or higher degree in the arts and sciences or an advanced degree in the professions from a regionally accredited institution;

(c) Have been employed as a superintendent for five years or more in any state on a license valid for the assignment before holding an Oregon license;

(d) Hold a valid superintendent's license from that state based upon completion of an approved program; and

(e) Furnish fingerprints in the manner prescribed by the Commission and provide satisfactory responses to the character questions contained in the commission's licensure application. (See OAR 584-036-0062 for Criminal Records Check Requirement.)

(5) While holding this license, an applicant must complete:

(a) An Oregon school law and finance class; and

(b) Obtain a passing score on a commission-approved test of knowledge of U.S. and Oregon civil rights and professional ethics.

(6) Upon completion of the requirements in section (5) above, in addition to three consecutive years of full-time experience as a superintendent, the applicant qualifies for a Continuing Administrator License as defined in OAR 584-080-0022.

(7) If extenuating circumstances prevent the educator from completing these requirements prior to the expiration of the Transitional Superintendent License, an Emergency Administrator License may be issued, at the sole discretion of the Executive Director as provided in ORS 584-080-0171. Evidence of the extenuating circumstances must be presented to the Executive Director, who then determines if and for how long an emergency license should be issued as needed to protect the district's programs or students.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.430, 342.455 - 342.495 & 342.553
Hist.: TPSC 3-2001, f. & cert. ef. 6-21-01; TSPC 5-2001, f. & cert. ef. 12-13-01; TSPC 2-2007, f. & cert. ef. 4-23-07; TSPC 7-2008, f. & cert. ef. 8-20-08; TSPC 8-2009, f. & cert. ef. 12-15-09; TSPC 3-2011, f. & cert. ef. 3-15-11; TSPC 5-2012, f. & cert. ef. 5-18-12; TSPC 1-2015, f. & cert. ef. 2-10-15

584-080-0171
Emergency Administrator License

(1) Upon filing a correct and complete application in form and manner prescribed by the Commission, a qualified applicant and a co-applicant district may be granted an Emergency Administrator License. An Emergency Administrator License may be issued when a school district demonstrates extenuating circumstances that merit the issuance of the license in order to protect the district's programs or students.

(2) The Emergency Administrator License shall be issued solely at the discretion of the Executive Director for any length of time deemed necessary to protect the district's programs or students.

(a) In most cases, an Emergency Administrator License will not exceed one year unless the educator or the district has presented unusual extenuating circumstances.

(b) The Executive Director may consider efforts the educator has made in meeting licensure requirements. Additionally, the Executive Director will consider academic preparation or experience the proposed educator has had in the area in which the district is requesting the license.

(c) Generally, failure to meet renewal requirements does not constitute an emergency or extenuating circumstances.

(d) In most cases, an Emergency Administrator License will expire on June 30 of the academic year in which the license was granted regardless of the term for licensure. Extending the license beyond the June 30 expiration date is at the discretion of the Executive Director after considering all extenuating circumstances.

(3) To be eligible for the Emergency Administrator License an applicant and co-applicant district must provide the following:

(a) C-1 application;

(b) All licensure fees, including possible late fees and expedited service fee if appropriate;

(c) Fingerprints furnished in the manner prescribed by the Commission if the applicant has not been fingerprinted or has not held an active license issued by the Commission in the past three years;

(d) A letter from the district detailing the extenuating circumstances constituting the emergency and the applicant's unique skills qualifying her or him for the license. The letter should include a request for the least amount of time necessary to meet the emergency needs of the district; and

(e) An applicant may be asked to provide a resume, official transcripts or other evidence of qualifications if requested by the Executive Director.

(4)(a) The Emergency Administrator License is not subject to the 120 days allowed for licensure renewal purposes under ORS 342.127(4). A new application and fee is required for the license the applicant must qualify for once the Emergency License has expired.

(b) It is the applicant's responsibility to apply for the subsequent license in a timely manner in order to ensure that the applicant remains licensed.

(5) Applications not eligible for emergency licensure requests include:

(a) Renewal applications within the 120 days grace period;

(b) New Oregon Applicants eligible for Fast-Track processing pursuant to OAR 584-010-0090; or

(c) Applications that include requests for Emergency Administrator Licenses due to the applicant's failure to meet renewal or upgrade requirements such as required coursework or continuing professional development.

(6) The Commission may limit the number of applications from an employing district to a maximum of one hundred (100) in any two-day period.

Stat. Auth.: ORS 342.125
Stats. Implemented: ORS 342.120 - 342.430, 342.455 - 342.495 & 342.533
Hist.: TSPC 8-2004(Temp), f. & cert. ef. 9-10-04 thru 3-9-05; Suspended by TSPC 9-2004(Temp), f. & cert. ef. 9-5-04 thru 3-9-05; TSPC 10-2004(Temp), f. & cert. ef. 10-20-04 thru 3-1-05; TSPC 1-2005, f. & cert. ef. 1-21-05; TSPC 5-2007, f. & cert. ef. 8-15-07; TSPC 5-2010(Temp), f. & cert. ef. 8-13-10 thru 12-31-10; TSPC 9-2010, f. 12-15-10, cert. ef. 1-1-11; TSPC 8-2014(Temp), f. & cert. ef. 11-10-14 thru 5-8-15; TSPC 1-2015, f. & cert. ef. 2-10-15

584-090-0100
Professional Development Generally

(1) Professional development is required for renewal of most active licenses and certificates for public school teachers, administrators, school counselors, school psychologists, school social workers, and school nurses.

(2) Continuing professional development (CPD) obligations are common to most professions. CPD is defined as a structured approach to learning to help ensure competence to practice, taking in knowledge, skills and practical experience. CPD can involve any relevant education learning activity, whether formal and structured or informal and self-directed.

(3) Educators seeking to reinstate a renewable license must demonstrate completion of all professional development requirements obtained after the date on which their last active license was issued by the Commission provided continuing professional development (CPD) is required for renewal.

(4) New out-of-state educators may submit professional development obtained prior to licensure in Oregon as a basis for licensure renewal so long as:

(a) The professional development was obtained within the five (5) years immediately preceding the date the first Oregon educator license, registration or certification was issued;

(b) The professional development is consistent with the requirements of this Division; and

(c) The professional development was obtained within the five years immediately preceding the expiration date on the license for which they are seeking renewal.

(5) Professional development is required for renewal of the following licenses, registrations or certificates for teaching, administration, personnel service, and school nursing:

(a) American Indian Language Teaching;

(b) Basic;

(c) Standard;

(d) Career and Technical Education II Teaching (See also, OAR 584-042-0051);

(e) Continuing;

(f) Professional;

(g) Five-Year Career and Technical Education Teaching;

(h) Five Year Teaching (pre-1965);

(i) Initial II;

(j) Limited;

(k) Substitute;

(l) Restricted Substitute;

(m) Distinguished Administrator;

(n) Exceptional Administrator;

(o) Five Year Administrator (pre-1965);

(p) Five Year Personnel Service (pre-1965); and

(q) Professional School Nurse.

(6) Educators who hold dual licensure with other state professional licensing boards are encouraged to fulfill their CPD requirements by completing PDUs provided by those professional licensure areas.

(7) It is the sole responsibility of the licensed educator to ensure accurate completion of continuing professional development upon renewal. Failure to complete continuing professional development does not constitute an "emergency" for the purposes of receiving an Emergency License when CPD requirements have not been met.

(8) If employed during the life of the license, the supervisor or CPD advisor will verify that the educator has successfully completed all CPD requirements to the district superintendent or designee on the TSPC Professional Educational Experience Report (PEER) form prior to renewal of licensure.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120-342.430; 342.455-342.495; 342.553
Hist.: TSPC 6-2012, f. & cert. ef. 5-18-12; TSPC 3-2013, f. & cert. ef. 8-19-13; TSPC 1-2015, f. & cert. ef. 2-10-15

584-090-0115
Professional Development Requirements

(1) Applicants for licensure renewal must complete professional development units. The professional development requirements apply to all actively licensed and certified educators listed in OAR 584-090-0100(5).

(2) Professional Development Units (PDUs) are defined as follows:

(a) One (1) hour of approved professional development activity equals one (1) PDU;

(b) One (1) semester hour of college credit equals thirty (30) PDUs; or

(c) One (1) quarter hour of college credit equals twenty (20) PDUs.

(3) The professional development units (PDUs) required for licensure and certification renewal are as follows:

(a) Except as provided in section (3)(b) and section (4), all licensed educators shall report 25 PDUs per year of the licensure term. (Certified school nurses are not considered licensed educators and must meet only the PDU requirements of section 3(c) of this rule.)

(A) 50 professional development units (PDUs) for a two year license;

(B) 75 professional development units (PDUs) for a three year license; and

(C) 125 professional development units (PDUs) for a five year license.

(b) All Substitute and Restricted Substitute licensees shall report 10 PDUs per year of the licensure term as follows:

(A) 30 professional development units (PDU) for the three year Substitute license;

(B) 10 professional development units (PDU) for the one year Restricted Substitute license.

(c) School nurses certified pursuant to OAR Chapter 584, Division 021 shall meet the professional development requirements set forth in OAR 584-021-0150 (Renewal of Professional School Nurse Certification) and OAR 584-021-0155 (Emergency School Nurse Certification Renewal).

(4) The following licenses do not have a professional development unit requirement because the licenses require the completion of additional specific coursework or other requirements to move to the next stage license:

(a) Initial Teaching license;

(b) Initial I Teaching license;

(c) Initial Administrator license;

(d) Initial I School Counselor license;

(e) Initial I School Social Worker license;

(f) Initial School Psychologist license;

(g) Career and Technical Education I Teaching license;

(h) All restricted licenses, except the Restricted Substitute license;

(i) All emergency licenses; and

(j) All transitional licenses.

(5) PDUs for licensure renewal may be earned at any time during the life of the license; however, licensees may only carry-over into the next renewal cycle excess PDUs pursuant to section (8) below.

(6)(a) Educators holding a Career and Technical I Education teaching license may be subject to other continuing professional development requirements consistent with their formal professional development plan. See, OAR 584-042-0051 Career and Technical Education (CTE) Professional Development Plan to determine whether additional CPD requirements apply upon licensure renewal.

(b) Educators holding a Five-Year Career and Technical Education Teaching License or a Career and Technical Education II Teaching License are subject to the requirements in section (3) above.

(7) Completing any of the following advanced certifications will waive CPD for the renewal period during which the certification is completed and the next licensure renewal cycle only:

(a) National Board of Professional Teaching Standards (NBPTS);

(b) National Association of School Psychologists certification (NASP);

(c) National School Counselor Certification (NCSC);

(d) National Association of Social Workers certification (C-SSWS); or

(e) Association of Speech, Hearing and Audiology (ASHA) certification.

(8) Licensed educators may carry-over excess PDUs obtained only in the previous reporting renewal period as follows:

(a) Substitutes: 10 PDUs;

(b) Restricted Substitutes: 3 PDUs;

(c) Two year licenses; 10 PDUs;

(d) Three year licenses: 25 PDUs;

(e) Five year licenses: 25 PDUs.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.430, 342.455-342.495 & 342.553

Hist.: TSPC 8-2012, f. & cert. ef. 8-15-12; TPSC 10-2012, f. & cert. ef. 11-19-12; TSPC 1-2015, f. & cert. ef. 2-10-15

584-100-0006

Definitions

These definitions apply only to division 100.

(1) "Advanced Credential or Advanced Certification" for teachers holding middle level or high school authorization levels:

(a) A Professional Teaching License; or

(b) A Standard Teaching License with a Standard endorsement in the core academic subject; or

(c) A certificate from the National Board for Professional Teaching Standards in the core academic subject area.

(2) "Bachelor's Degree":

(a) A degree obtained from a regionally accredited institution in the United States; or

(b) A degree from a foreign institution that is appropriately accredited as affirmed through the Oregon Office of Degree Authorization; or

(c) A higher degree in the arts or sciences or an advanced degree in the professions from a regionally-accredited institution may validate a non-regionally accredited bachelor's degree.

(3) "Complete School Year": Any related teaching assignment for 135 instructional days in a school year. Exceptions may be appealed to the Executive Director pursuant to OAR 584-052-0027.

(4) "Core Academic Subjects":

(a) English (Language Arts);

(b) Reading or Language Arts (Reading or Language Arts)

(c) Mathematics (Basic or Advanced Mathematics);

(d) Science (Integrated Science, Biology, Chemistry, or Physics);

(e) Foreign Languages (Spanish, French, German);

(f) Civics and Government (Social Studies);

(g) Economics (Social Studies);

(h) Arts (Art or Music);

(i) History (Social Studies);

(j) Geography (Social Studies).

(5) "Elementary Classroom": Any combination of self-contained classrooms in grades preprimary through six in any school identified as an elementary school pursuant to OAR 581-022-0102(25).

(6) "Elementary Teacher": An educator teaching in a self-contained classroom grades preprimary through six.

(7) "Middle-level Classroom": Any classrooms in grades seven or eight.

(8) "New to the Profession": A teacher who has been teaching on an approved license in any U.S. jurisdiction in a public or regionally accredited private school less than three complete school years. (See definition of "Complete School Year" above)

(9) "Newly Hired Teacher": A teacher hired after the first day of the 2002-2003 school year in a Title IA program or Title IA school-wide program. The teacher is not considered "newly hired" if the teacher is already employed in the district and transferred into a Title IA program or Title IA school-wide program.

(10) "Not New to the Profession": A teacher who has been teaching on an approved license in any U.S. jurisdiction in a public or private school for a total of three or more complete school years. (See definition of "Complete School Year" above.)

(11) "Rigorous State Test":

(a) The appropriate Commission approved licensure subject-matter test for elementary, middle-level and high school; or

(b) Another state's subject-matter licensure exam designated as a "rigorous state test."

(12) "Secondary School or high school":

(a) A combination of grades ten through twelve in districts providing a junior high school containing grade nine; or

(b) Any combination of grades seven through twelve organized as a separate unit; or

(c) Grades seven through twelve housed with grades preprimary through twelve if grades seven and eight are departmentally organized.

(13) "Self-contained Classroom": An assignment for teaching in grades preprimary through six in which the teacher has full responsibility for the curriculum.

(14) "Subject-matter competency": Subject matter competency may be demonstrated through any one of the following:

(a) Passing the appropriate "rigorous state test;" or

(b) Having a major in the subject-matter area (does not apply to elementary endorsements or authorizations); or

(c) Having coursework equivalent to a major in the subject-matter area (does not apply to elementary endorsements or authorizations); or

(d) Having a graduate degree in the subject matter area (does not apply to elementary endorsements or authorizations); or

(e) Satisfying the Highly Objective Uniform State Standard of Evaluation (HOUSSE) requirements set forth in these rules if the educator has taught three complete years or more.

(15) "Undergraduate Major or Coursework Equivalent to a Major": Thirty-four (34) quarter hours or twenty-three (23) semester hours of undergraduate or graduate coursework in core academic subject matter numbered 100 level or above, from a regionally accredited college or university. (See definition of "Bachelor's Degree" for undergraduate credits obtained from an unaccredited college or university.)

Stat. Auth: ORS 342

Stats. Implemented: ORS 342.120 - 342.430 & 342.985

Hist.: TSPC 2-2004, f. & cert. ef. 3-17-04; TSPC 2-2006(Temp), f. & cert. ef. 2-3-06 thru 8-2-06; TSPC 8-2006, f. 5-15-06, cert. ef. 7-1-06; TSPC 13-2006, f. & cert. ef. 11-22-06; TSPC 4-2008(Temp), f. & cert. ef. 6-5-08 thru 11-30-08; TSPC 7-2008, f. & cert. ef. 8-20-08; TSPC 2-2009, f. & cert. ef. 3-12-09; TSPC 3-2013, f. & cert. ef. 8-19-13; TSPC 1-2015, f. & cert. ef. 2-10-15

584-100-0007

Licenses Considered "Full State Licensure"

The following Oregon Teaching Licenses are considered to meet "full state licensure" under the federal ESEA:

(1) Basic Teaching License;

(2) Standard Teaching License;

(3) Initial, Initial I and Initial II Teaching Licenses;

(4) Professional Teaching License;
(5) Five-Year Elementary Teaching License;
(6) Five-Year Secondary Teaching License;
(7) Approved ESEA Alternative Route Teaching License;
(8) International Visiting Teacher; or
(9) Charter School Registry.

Stat. Auth: ORS 342
Stats. Implemented: ORS 342.125
Hist.: TSPC 2-2004, f. & cert. ef. 3-17-04; TSPC 2-2006(Temp), f. & cert. ef. 2-3-06 thru 8-2-06; TSPC 8-2006, f. 5-15-06, cert. ef. 7-1-06; TSPC 5-2007, f. & cert. ef. 8-15-07; TSPC 1-2013, f. & cert. ef. 2-14-13; Renumbered from 584-100-0101 by TSPC 3-2013, f. & cert. ef. 8-19-13; TSPC 1-2015, f. & cert. ef. 2-10-15

584-100-0016
Highly Qualified Elementary Teacher Not New to the Profession

Teachers not new to the profession teaching multiple subjects in grades kindergarten (K) through six (6) must meet the following criteria in order to meet the federal definition of "highly qualified teacher." The teacher must:

(1) Hold a bachelor's degree;

(2) Hold a Basic, Standard, Initial, Professional, Pre-1965 Five-Year Elementary Teaching License;

(3) Demonstrate subject-matter competency by passing a rigorous Commission-adopted elementary education examination appropriate for grades kindergarten (K) through six (6); or

(4) Demonstrate competency by meeting the following High Objective Uniform State Standards of Evaluation (HOUSSE):

(a) To qualify for HOUSSE, a teaching license must have been awarded prior to July 1, 2007 and a minimum of three years teaching experience in elementary education must have occurred prior to July 1, 2009; and

(b) Complete an approved elementary teacher education program or the coursework equivalent to sixty-quarter hours distributed as follows:

(A) Eighteen quarter or twelve semester hours in language arts;
(B) Twelve quarter or eight semester hours in mathematics;
(C) Nine quarter or six semester hours in science;
(D) Nine quarter or six semester hours in U.S. history, cultural geography, and other social sciences;
(E) Three quarter or two semester hours in health education;
(F) Three quarter or two semester hours in physical education;
(G) Three quarter or two semester hours in music education; and
(H) Three quarter or two semester hours in art education; and

(5) Be properly assigned in grades kindergarten (K) through six (6).

Stat. Auth: ORS 342
Stats. Implemented: ORS 342.125
Hist.: TSPC 2-2004, f. & cert. ef. 3-17-04; TSPC 2-2006(Temp), f. & cert. ef. 2-3-06 thru 8-2-06; TSPC 8-2006, f. 5-15-06, cert. ef. 7-1-06; TSPC 5-2007, f. & cert. ef. 8-15-07; TSPC 5-2012, f. & cert. ef. 5-18-12; TSPC 1-2013, f. & cert. ef. 2-14-13; TSPC 3-2013, f. & cert. ef. 8-19-13; TSPC 1-2015, f. & cert. ef. 2-10-15

584-100-0026
Highly Qualified Middle Level Teacher Not New to the Profession

Teachers not new to the profession teaching core academic subjects in grades seven (7) and eight (8) in an Oregon middle or junior high school must meet the following criteria in order to meet the federal definition of "highly qualified teacher." The teacher must:

(1) Hold a Basic, Standard, Initial, Professional, Five-Year Elementary, Five-Year Secondary, or an Approved ESEA Alternative Route Teaching License and satisfy one of the following:

(a) Pass the prescribed rigorous state exam in the core academic subject; or

(b) Hold an undergraduate major in the core academic subject area(s); or

(c) Hold a graduate degree in the core academic subject area(s); or

(d) Complete coursework equivalent to an undergraduate major in the core academic subject area; or

(e) Hold advanced certification or credentialing in the core academic subject area; or

(f) Meet the HOUSSE requirements as defined in OAR 584-100-0038; and

(g) Be properly assigned in the core academic subject area in grades seven (7) or eight (8).

(2) Teachers on an approved License for Conditional Assignment (LCA) for any core academic subject may be highly qualified based on completed coursework in the core academic subject area pursuant to OAR 584-100-0038.

Stat. Auth: ORS 342
Stats. Implemented: ORS 342.125
Hist.: TSPC 2-2004, f. & cert. ef. 3-17-04; TSPC 4-2004(Temp), f. & cert. ef. 5-14-04 thru 11-9-04; TSPC 6-2004, f. & cert. ef. 8-25-04; TSPC 2-2006(Temp), f. & cert. ef. 2-3-06 thru 8-2-06; TSPC 8-2006, f. 5-15-06, cert. ef. 7-1-06; TSPC 5-2007, f. & cert. ef. 8-15-07; TSPC 5-2012, f. & cert. ef. 5-18-12; TSPC 3-2013, f. & cert. ef. 8-19-13; TSPC 1-2015, f. & cert. ef. 2-10-15

584-100-0036
Highly Qualified Secondary Teacher Not New to the Profession

Teachers not new to the profession teaching core academic subjects in grades nine (9) through twelve (12) in an Oregon high school must meet the following criteria in order to meet the federal definition of "highly qualified teacher." The teacher must:

(1) Hold a Basic, Standard, Initial, Professional, Five Year Teaching License, or an Approved NCLB Alternative Route Teaching License with an endorsement in the core academic area(s) taught; or

(2) Meet the HOUSSE requirements for high school teachers as defined in 584-100-0038; and

(3) Be properly assigned in the core academic subject area in grades nine (9) through twelve (12).

(4) Teachers on an approved conditional assignment permit for any core academic subject may be highly qualified based on completed coursework in the core academic subject area pursuant to OAR 584-100-0038.

Stat. Auth: ORS 342
Stats. Implemented: ORS 342.125
Hist.: TSPC 2-2004, f. & cert. ef. 3-17-04; TSPC 4-2004(Temp), f. & cert. ef. 5-14-04 thru 11-9-04; TSPC 6-2004, f. & cert. ef. 8-25-04; TSPC 2-2006(Temp), f. & cert. ef. 2-3-06 thru 8-2-06; TSPC 8-2006, f. 5-15-06, cert. ef. 7-1-06; TSPC 5-2007, f. & cert. ef. 8-15-07; TSPC 1-2015, f. & cert. ef. 2-10-15

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Rule Caption: Adopts and amends educator licensure rules and program approval standards.
Adm. Order No.: TSPC 2-2015(Temp)
Filed with Sec. of State: 2-10-2015
Certified to be Effective: 2-10-15 thru 8-7-15
Notice Publication Date:
Rules Adopted: 584-017-1026
Rules Amended: 584-042-0008, 584-042-0036
Subject: Creates standards for English Language Learner programs; makes changes to Career and Technical Education teaching licenses.
Rules Coordinator: Victoria Chamberlain—(503) 378-6813

584-017-1026
English Language Learner (ELL) Knowledge, Skills, Abilities and Dispositions for All Educator Preparation Candidates, Faculty and Programs

(1) Purpose of the Standards: It is the Commission's policy that every p-12 educator has a responsibility to meet the needs of Oregon's English Language Learner students. As such, accreditation and educator preparation requirements must support the demand for well-prepared educators to work with second language learners of all ages.

(2) These standards apply to pre-service candidates working to become teachers, administrators, personnel service educators and educator preparation program (EPP) faculty.

(3) The ELL Knowledge, Skills, Abilities and Dispositions:

(a) Language: Candidates, and higher education faculty know, understand, and use the major concepts, theories, and research related to the nature and acquisition of language to construct learning environments that support English Language Learners (ELL) and bilingual students' language and literacy development and content area achievement. Candidates and higher education faculty:

(A) Understand concepts related to academic versus social language, oracy versus literacy, and grammatical forms and linguistic functions;

(B) Are familiar with characteristics of students at different stages of second language acquisition and English Language Proficiency (ELP) levels;

(C) Recognize the role of first language (L1) in learning the second language (L2); and

(D) Are aware of personal, affective and social variables influencing second language acquisition.

(b) Culture: Candidates, and higher education faculty know and understand the major concepts, principles, theories, and research related to the nature and role of culture and cultural groups to construct learning environments that support ELL students' cultural identities, language and literacy development, and content area achievement. Candidates, and higher education faculty:

(A) Understand the impact of culture on language learning;

(B) Recognize and combat deficit perspectives and views on second language learner students;

(C) Understand that learners' skills, knowledge and experiences should be used as resources for learning; and

(D) Understand how one's own culture impacts one's teaching practice.

(c) Planning, Implementing, and Managing Instruction: Candidates and higher education faculty know and understand the use of standards-based practices and strategies related to planning, implementing, and managing ESL and content instruction, including classroom organization, teaching strategies for developing and integrating language skills, and choosing and adapting classroom resources. Candidates and higher education faculty:

(A) Are familiar with different ELL program models for language acquisition English Language Development (ELD) and content pedagogy (sheltered & bilingual models);

(B) Incorporate basic sheltered strategies (e.g., visuals, grouping strategies, frontloading, and explicit vocabulary) appropriate to learners at different levels of English language proficiency within a gradual release of responsibility model;

(C) Are familiar with state-adopted English Language Proficiencies standards, and are able to develop lessons that include both content and language objectives related to those standards; and

(D) Incorporate primary language support within instruction.

(d) Assessment: Candidates and higher education faculty understand issues of assessment and use standards-based assessment measures with ELL and bilingual learners of all ages. Candidates and higher education faculty:

(i) Understand the role of language in content assessments; and

(ii) Implement multiple and varied assessments that allow learners to demonstrate knowledge of content regardless of language proficiency level.

(e) Professionalism: Candidates and higher education faculty demonstrate knowledge of the history of ESL teaching. Candidates keep current with new instructional techniques, research results, advances in the ESL field, and public policy issues. Candidates use such information to reflect upon and improve their instructional practices. Candidates provide support and advocate for ELL and bilingual students and their families and work collaboratively to improve the learning environment. Candidates and higher education faculty:

(A) Understand the importance of fostering family and school partnerships; and

(B) Understand the importance of collaborating and consulting with English Language Development specialists.

(f) Technology: Candidates and higher education faculty use information technology to enhance learning and to enhance personal and professional productivity. Candidates and higher education faculty:

(A) Demonstrate knowledge of current technologies and application of technology with ELL students;

(B) Design, develop, and implement student learning activities that integrate information technology; and

(C) Use technologies to communicate, network, locate resources, and enhance continuing professional development.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.175 - 342.190
Hist.: TSPC 2-2015(Temp), f. & cert. ef. 2-10-15 thru 8-7-15

584-042-0008
Five-Year Career and Technical Education Teaching License

(1) The Five-Year Career and Technical Education Teaching License is only valid to teach in career and technical education programs for which the educator is specifically licensed. The license is not eligible for any other district assignment including substituting in general education classes.

(2) The Five-Year Career and Technical Education Teaching License may be transferred to another Oregon school district if the new instructional assignment is consistent with the CTE endorsement on the license and is in a career and technical education program established by the district.

(3) The Five-Year Career and Technical Education Teaching License is renewable upon completion of 125 clock hours or the equivalent of continuing professional development (CPD) pursuant to OAR 584, division 90.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.200 & 342.400
Hist.: TSPC 3-2002, f. 3-15-02, cert. ef. 1-15-03; TSPC 11-2006, f. & cert. ef. 8-17-06; TSPC 2-2007, f. & cert. ef. 4-23-07; TSPC 5-2007, f. & cert. ef. 8-15-07; TSPC 2-2012, f. & cert. ef. 2-15-12; TSPC 2-2015(Temp), f. & cert. ef. 2-10-15 thru 8-7-15

584-042-0036
Career and Technical Education II Teaching License

(1) Upon filing a correct and complete application in form and manner prescribed by the Commission, an applicant may be granted a Career and Technical Education II Teaching License, valid for three years of teaching in an approved career and technical education program.

(2) The Career and Technical Education II Teaching License is valid to teach in career and technical education programs in the endorsement areas for which the educator is specifically licensed. All CTE II Teaching License holders are eligible to teach within the full scope of the CTE endorsement. Any CTE teaching license is valid for assignments in diversified occupations or as work experience coordinators.

(3) The application packet must include the following:

(a) A signed and dated TSPC application and the appropriate fees;

(b) Evidence that all the requirements for the Career and Technical Education I Teaching License as set forth in OAR 584-042-0031 have been met;

(c) Evidence of one year or the equivalent of career and technical education teaching experience while holding a license valid for the assignment as verified on a Professional Educational Experience Report Form (PEER);

(d) Evidence of completion of the CTE professional development plan as prescribed by the IAC and as filed with TSPC when the CTE I was first issued, including evidence the applicant has either:

(A) Transcripts of any coursework required by the CTE professional development plan; or

(B) Official verification of work experience required by the CTE professional development plan on a form approved by the ODE.

(4) Transcripts of coursework submitted for eligibility for the Career and Technical Education II Teaching License must be completed through an approved teacher education institution or an accredited community college.

(5) The Career and Technical Education II Teaching License is renewable upon completion of 75 clock hours or the equivalent of continuing professional development in accordance with OAR 584, division 90.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 – 342.430; 342.455 – 342.495, 342.553
Hist.: TSPC 4-2010, f. & cert. ef. 7-15-10; TSPC 2-2012, f. & cert. ef. 2-15-12; TSPC 2-2015(Temp), f. & cert. ef. 2-10-15 thru 8-7-15

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291-130-0016	1-1-2015	Amend(T)	2-1-2015
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291-130-0020	1-1-2015	Amend(T)	2-1-2015
309-031-0010	12-12-2014	Amend(T)	1-1-2015
309-114-0005	12-1-2014	Amend(T)	1-1-2015
309-114-0025	12-1-2014	Amend(T)	1-1-2015
330-070-0010	1-1-2015	Amend	1-1-2015
330-070-0013	1-1-2015	Amend	1-1-2015
330-070-0014	1-1-2015	Amend	2-1-2015
330-070-0020	1-1-2015	Amend	1-1-2015
330-070-0021	1-1-2015	Amend	1-1-2015
330-070-0022	1-1-2015	Amend	1-1-2015
330-070-0025	1-1-2015	Amend	1-1-2015
330-070-0026	1-1-2015	Amend	1-1-2015
330-070-0027	1-1-2015	Amend	1-1-2015
330-070-0029	1-1-2015	Amend	1-1-2015
330-070-0040	1-1-2015	Amend	1-1-2015
330-070-0045	1-1-2015	Amend	1-1-2015
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330-070-0060	1-1-2015	Amend	1-1-2015
330-070-0062	1-1-2015	Amend	1-1-2015
330-070-0063	1-1-2015	Amend	1-1-2015
330-070-0064	1-1-2015	Amend	1-1-2015
330-070-0070	1-1-2015	Amend	1-1-2015
330-070-0073	1-1-2015	Amend	1-1-2015
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331-800-0010	1-1-2015	Amend	1-1-2015
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331-810-0025	1-1-2015	Adopt	1-1-2015
331-810-0030	1-1-2015	Repeal	1-1-2015
331-810-0031	1-1-2015	Adopt	1-1-2015
331-810-0038	1-1-2015	Repeal	1-1-2015
331-810-0040	1-1-2015	Amend	1-1-2015
331-810-0050	1-1-2015	Repeal	1-1-2015
331-810-0055	1-1-2015	Amend	1-1-2015
331-810-0060	1-1-2015	Adopt	1-1-2015
331-820-0010	1-1-2015	Repeal	1-1-2015
331-820-0020	1-1-2015	Amend	1-1-2015
331-830-0005	1-1-2015	Repeal	1-1-2015
331-830-0010	1-1-2015	Amend	1-1-2015
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332-020-0010	1-1-2015	Amend	2-1-2015
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333-014-0090	12-17-2014	Adopt	2-1-2015
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333-014-0100	12-17-2014	Adopt	2-1-2015
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340-041-0007	1-7-2015	Amend	2-1-2015
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340-041-0033	1-7-2015	Amend	2-1-2015
340-041-0124	1-7-2015	Amend	2-1-2015
340-041-0310	1-7-2015	Amend	2-1-2015
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340-041-8033	1-7-2015	Adopt	2-1-2015
340-071-0140	2-3-2015	Amend	3-1-2015
340-220-0030	1-7-2015	Amend	2-1-2015
340-220-0040	1-7-2015	Amend	2-1-2015
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340-253-0040	2-1-2015	Amend	2-1-2015
340-253-0060	2-1-2015	Amend	2-1-2015
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340-253-3010	2-1-2015	Am. & Ren.	2-1-2015
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340-253-3050	2-1-2015	Am. & Ren.	2-1-2015
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340-253-8050	2-1-2015	Adopt	2-1-2015
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407-007-0220	12-1-2014	Amend	1-1-2015
407-007-0230	12-1-2014	Amend	1-1-2015
407-007-0240	12-1-2014	Amend	1-1-2015
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407-007-0315	12-1-2014	Amend	1-1-2015
407-007-0330	12-1-2014	Amend	1-1-2015
407-007-0335	12-1-2014	Amend	1-1-2015
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407-025-0020	2-11-2015	Amend(T)	3-1-2015
407-025-0030	2-11-2015	Amend(T)	3-1-2015
407-025-0040	2-11-2015	Amend(T)	3-1-2015
407-025-0050	2-11-2015	Amend(T)	3-1-2015
407-025-0060	2-11-2015	Amend(T)	3-1-2015
407-025-0070	2-11-2015	Amend(T)	3-1-2015
407-025-0080	2-11-2015	Amend(T)	3-1-2015
407-025-0090	2-11-2015	Amend(T)	3-1-2015
407-025-0100	2-11-2015	Amend(T)	3-1-2015
407-025-0110	2-11-2015	Amend(T)	3-1-2015
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409-035-0040	2-1-2015	Amend	2-1-2015
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409-055-0045	2-1-2015	Adopt	3-1-2015
410-050-0861	12-1-2014	Amend	1-1-2015
410-050-0861(T)	12-1-2014	Repeal	1-1-2015
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410-120-1340	1-1-2015	Amend(T)	2-1-2015
410-121-0030	12-12-2014	Amend	1-1-2015
410-121-0030	12-12-2014	Amend(T)	1-1-2015
410-121-0030	1-1-2015	Amend(T)	2-1-2015
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410-122-0520	1-1-2015	Amend	2-1-2015
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410-141-3060	1-1-2015	Amend(T)	1-1-2015
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410-141-3420(T)	1-1-2015	Repeal	1-1-2015
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410-165-0040	2-3-2015	Amend(T)	3-1-2015
410-165-0060	2-3-2015	Amend(T)	3-1-2015
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410-172-0200	1-1-2015	Suspend	2-1-2015
410-172-0210	1-1-2015	Suspend	2-1-2015
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410-172-0240	1-1-2015	Suspend	2-1-2015
410-172-0250	1-1-2015	Suspend	2-1-2015
410-172-0260	1-1-2015	Suspend	2-1-2015
410-172-0270	1-1-2015	Suspend	2-1-2015
410-172-0280	1-1-2015	Suspend	2-1-2015
410-172-0290	1-1-2015	Suspend	2-1-2015
410-172-0300	1-1-2015	Suspend	2-1-2015
410-172-0310	1-1-2015	Suspend	2-1-2015
410-172-0320	1-1-2015	Suspend	2-1-2015
410-172-0330	1-1-2015	Suspend	2-1-2015
410-172-0340	1-1-2015	Suspend	2-1-2015
410-172-0350	1-1-2015	Suspend	2-1-2015
410-172-0360	1-1-2015	Suspend	2-1-2015
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410-172-0390	1-1-2015	Suspend	2-1-2015
410-172-0400	1-1-2015	Suspend	2-1-2015
410-172-0410	1-1-2015	Suspend	2-1-2015
410-172-0420	1-1-2015	Suspend	2-1-2015
410-172-0430	1-1-2015	Suspend	2-1-2015
410-172-0440	1-1-2015	Suspend	2-1-2015
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410-172-0490	1-1-2015	Suspend	2-1-2015
410-172-0500	1-1-2015	Suspend	2-1-2015
410-172-0510	1-1-2015	Suspend	2-1-2015
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410-172-0680	1-1-2015	Adopt(T)	2-1-2015
410-172-0690	1-1-2015	Adopt(T)	2-1-2015
410-172-0700	1-1-2015	Adopt(T)	2-1-2015
410-172-0710	1-1-2015	Adopt(T)	2-1-2015
410-172-0720	1-1-2015	Adopt(T)	2-1-2015
410-172-0730	1-1-2015	Adopt(T)	2-1-2015
410-172-0740	1-1-2015	Adopt(T)	2-1-2015
410-172-0750	1-1-2015	Adopt(T)	2-1-2015
410-172-0760	1-1-2015	Adopt(T)	2-1-2015
410-172-0770	1-1-2015	Adopt(T)	2-1-2015
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
410-172-0830	1-1-2015	Adopt(T)	2-1-2015
410-172-0840	1-1-2015	Adopt(T)	2-1-2015
410-172-0850	1-1-2015	Adopt(T)	2-1-2015
410-200-0010	1-30-2015	Amend	3-1-2015
410-200-0010(T)	1-30-2015	Repeal	3-1-2015
410-200-0015	1-30-2015	Amend	3-1-2015
410-200-0015(T)	1-30-2015	Repeal	3-1-2015
410-200-0100	1-30-2015	Amend	3-1-2015
410-200-0100(T)	1-30-2015	Repeal	3-1-2015

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410-200-0105	1-30-2015	Amend	3-1-2015
410-200-0105(T)	1-30-2015	Repeal	3-1-2015
410-200-0110	1-30-2015	Amend	3-1-2015
410-200-0110(T)	1-30-2015	Repeal	3-1-2015
410-200-0111	1-30-2015	Amend	3-1-2015
410-200-0111(T)	1-30-2015	Repeal	3-1-2015
410-200-0115	1-30-2015	Amend	3-1-2015
410-200-0115(T)	1-30-2015	Repeal	3-1-2015
410-200-0120	1-30-2015	Amend	3-1-2015
410-200-0120(T)	1-30-2015	Repeal	3-1-2015
410-200-0125	1-30-2015	Amend	3-1-2015
410-200-0125(T)	1-30-2015	Repeal	3-1-2015
410-200-0130	1-30-2015	Amend	3-1-2015
410-200-0130(T)	1-30-2015	Repeal	3-1-2015
410-200-0135	1-30-2015	Amend	3-1-2015
410-200-0135(T)	1-30-2015	Repeal	3-1-2015
410-200-0140	1-30-2015	Amend	3-1-2015
410-200-0140(T)	1-30-2015	Repeal	3-1-2015
410-200-0145	1-30-2015	Amend	3-1-2015
410-200-0145(T)	1-30-2015	Repeal	3-1-2015
410-200-0146	1-30-2015	Amend	3-1-2015
410-200-0146(T)	1-30-2015	Repeal	3-1-2015
410-200-0200	1-30-2015	Amend	3-1-2015
410-200-0200(T)	1-30-2015	Repeal	3-1-2015
410-200-0205	1-30-2015	Amend	3-1-2015
410-200-0205(T)	1-30-2015	Repeal	3-1-2015
410-200-0210	1-30-2015	Amend	3-1-2015
410-200-0210(T)	1-30-2015	Repeal	3-1-2015
410-200-0215	1-30-2015	Amend	3-1-2015
410-200-0215(T)	1-30-2015	Repeal	3-1-2015
410-200-0220	1-30-2015	Amend	3-1-2015
410-200-0220(T)	1-30-2015	Repeal	3-1-2015
410-200-0225	1-30-2015	Amend	3-1-2015
410-200-0225(T)	1-30-2015	Repeal	3-1-2015
410-200-0230	1-30-2015	Amend	3-1-2015
410-200-0230(T)	1-30-2015	Repeal	3-1-2015
410-200-0235	1-30-2015	Amend	3-1-2015
410-200-0235(T)	1-30-2015	Repeal	3-1-2015
410-200-0240	1-30-2015	Amend	3-1-2015
410-200-0240(T)	1-30-2015	Repeal	3-1-2015
410-200-0305	1-30-2015	Amend	3-1-2015
410-200-0305(T)	1-30-2015	Repeal	3-1-2015
410-200-0310	1-30-2015	Amend	3-1-2015
410-200-0310(T)	1-30-2015	Repeal	3-1-2015
410-200-0315	1-30-2015	Amend	3-1-2015
410-200-0315	3-1-2015	Amend(T)	3-1-2015
410-200-0315(T)	1-30-2015	Repeal	3-1-2015
410-200-0400	1-30-2015	Amend	3-1-2015
410-200-0400(T)	1-30-2015	Repeal	3-1-2015
410-200-0405	1-30-2015	Amend	3-1-2015
410-200-0405(T)	1-30-2015	Repeal	3-1-2015
410-200-0410	1-30-2015	Amend	3-1-2015
410-200-0410(T)	1-30-2015	Repeal	3-1-2015
410-200-0415	1-30-2015	Amend	3-1-2015
410-200-0415(T)	1-30-2015	Repeal	3-1-2015
410-200-0420	1-30-2015	Amend	3-1-2015
410-200-0420(T)	1-30-2015	Repeal	3-1-2015
410-200-0425	1-30-2015	Amend	3-1-2015
410-200-0425(T)	1-30-2015	Repeal	3-1-2015
410-200-0435	1-30-2015	Amend	3-1-2015
410-200-0435(T)	1-30-2015	Repeal	3-1-2015
410-200-0440	1-30-2015	Amend	3-1-2015
410-200-0440(T)	1-30-2015	Repeal	3-1-2015
410-200-0500	1-30-2015	Amend	3-1-2015
410-200-0500(T)	1-30-2015	Repeal	3-1-2015
410-200-0505	1-30-2015	Amend	3-1-2015
410-200-0505(T)	1-30-2015	Repeal	3-1-2015
410-200-0510	1-30-2015	Amend	3-1-2015
410-200-0510(T)	1-30-2015	Repeal	3-1-2015
411-015-0100	1-1-2015	Amend(T)	2-1-2015
411-020-0000	1-1-2015	Amend	1-1-2015
411-020-0002	1-1-2015	Amend	1-1-2015
411-020-0010	1-1-2015	Amend	1-1-2015
411-020-0015	1-1-2015	Amend	1-1-2015
411-020-0020	1-1-2015	Amend	1-1-2015
411-020-0025	1-1-2015	Amend	1-1-2015
411-020-0030	1-1-2015	Amend	1-1-2015
411-020-0040	1-1-2015	Amend	1-1-2015
411-020-0060	1-1-2015	Amend	1-1-2015
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
411-020-0120	1-1-2015	Amend	1-1-2015
411-020-0123	1-1-2015	Amend	1-1-2015
411-020-0130	1-1-2015	Amend	1-1-2015
411-030-0040	1-1-2015	Amend(T)	2-1-2015
411-032-0050	12-28-2014	Adopt	2-1-2015
411-032-0050(T)	12-28-2014	Repeal	2-1-2015
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
411-054-0012	1-15-2015	Amend	2-1-2015
411-054-0090	1-15-2015	Amend	2-1-2015
411-054-0093	1-15-2015	Amend	2-1-2015
411-054-0120	1-29-2015	Amend(T)	3-1-2015
411-054-0200	1-15-2015	Amend	2-1-2015
411-054-0300	1-15-2015	Amend	2-1-2015
411-085-0005	1-1-2015	Amend(T)	2-1-2015
411-085-0010	1-1-2015	Amend(T)	2-1-2015
411-085-0013	1-1-2015	Amend(T)	2-1-2015

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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
411-089-0070	1-1-2015	Amend(T)	2-1-2015
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
411-300-0100	2-16-2015	Amend	3-1-2015
411-300-0110	2-16-2015	Amend	3-1-2015
411-300-0110(T)	2-16-2015	Repeal	3-1-2015
411-300-0120	2-16-2015	Amend	3-1-2015
411-300-0120(T)	2-16-2015	Repeal	3-1-2015
411-300-0130	2-16-2015	Amend	3-1-2015
411-300-0130(T)	2-16-2015	Repeal	3-1-2015
411-300-0140	2-16-2015	Repeal	3-1-2015
411-300-0150	2-16-2015	Amend	3-1-2015
411-300-0150(T)	2-16-2015	Repeal	3-1-2015
411-300-0155	2-16-2015	Amend	3-1-2015
411-300-0165	2-16-2015	Adopt	3-1-2015
411-300-0165(T)	2-16-2015	Repeal	3-1-2015
411-300-0170	2-16-2015	Amend	3-1-2015
411-300-0170(T)	2-16-2015	Repeal	3-1-2015
411-300-0175	2-16-2015	Adopt	3-1-2015
411-300-0190	2-16-2015	Amend	3-1-2015
411-300-0190(T)	2-16-2015	Repeal	3-1-2015
411-300-0200	2-16-2015	Amend	3-1-2015
411-300-0200(T)	2-16-2015	Repeal	3-1-2015
411-300-0205	2-16-2015	Amend	3-1-2015
411-300-0205(T)	2-16-2015	Repeal	3-1-2015
411-300-0210	2-16-2015	Repeal	3-1-2015
411-300-0220	2-16-2015	Repeal	3-1-2015
411-308-0010	12-28-2014	Amend	2-1-2015
411-308-0010	1-29-2015	Amend	3-1-2015
411-308-0020	12-28-2014	Amend	2-1-2015
411-308-0020	1-29-2015	Amend	3-1-2015
411-308-0020(T)	12-28-2014	Repeal	2-1-2015
411-308-0030	12-28-2014	Amend	2-1-2015
411-308-0030	1-29-2015	Amend	3-1-2015
411-308-0030(T)	12-28-2014	Repeal	2-1-2015
411-308-0040	12-28-2014	Amend	2-1-2015
411-308-0040	1-29-2015	Amend	3-1-2015
411-308-0050	12-28-2014	Amend	2-1-2015
411-308-0050	1-29-2015	Amend	3-1-2015
411-308-0050(T)	12-28-2014	Repeal	2-1-2015
411-308-0060	12-28-2014	Amend	2-1-2015
411-308-0060	1-29-2015	Amend	3-1-2015
411-308-0060(T)	12-28-2014	Repeal	2-1-2015
411-308-0070	12-28-2014	Amend	2-1-2015
411-308-0070	1-29-2015	Amend	3-1-2015
411-308-0070(T)	12-28-2014	Repeal	2-1-2015
411-308-0080	12-28-2014	Amend	2-1-2015
411-308-0080	1-29-2015	Amend	3-1-2015
411-308-0080(T)	12-28-2014	Repeal	2-1-2015
411-308-0090	12-28-2014	Amend	2-1-2015
411-308-0090	1-29-2015	Amend	3-1-2015
411-308-0100	12-28-2014	Amend	2-1-2015
411-308-0100	1-29-2015	Amend	3-1-2015
411-308-0100(T)	12-28-2014	Repeal	2-1-2015
411-308-0110	12-28-2014	Amend	2-1-2015
411-308-0110	1-29-2015	Amend	3-1-2015
411-308-0120	12-28-2014	Amend	2-1-2015
411-308-0120	1-29-2015	Amend	3-1-2015
411-308-0120(T)	12-28-2014	Repeal	2-1-2015
411-308-0130	12-28-2014	Amend	2-1-2015
411-308-0130	1-29-2015	Amend	3-1-2015
411-308-0130(T)	12-28-2014	Repeal	2-1-2015
411-308-0135	12-28-2014	Adopt	2-1-2015
411-308-0135	1-29-2015	Amend	3-1-2015
411-308-0135(T)	12-28-2014	Repeal	2-1-2015
411-308-0140	12-28-2014	Amend	2-1-2015
411-308-0140	1-29-2015	Amend	3-1-2015
411-308-0150	12-28-2014	Amend	2-1-2015
411-308-0150	1-29-2015	Amend	3-1-2015
411-317-0000	12-28-2014	Adopt	2-1-2015
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
411-318-0005(T)	12-28-2014	Repeal	2-1-2015
411-318-0010	12-28-2014	Adopt	2-1-2015
411-318-0010(T)	12-28-2014	Repeal	2-1-2015
411-318-0015	12-28-2014	Adopt	2-1-2015
411-318-0015(T)	12-28-2014	Repeal	2-1-2015
411-318-0020(T)	12-28-2014	Repeal	2-1-2015
411-318-0025	12-28-2014	Adopt	2-1-2015
411-318-0025(T)	12-28-2014	Repeal	2-1-2015
411-318-0030	12-28-2014	Adopt	2-1-2015
411-318-0030(T)	12-28-2014	Repeal	2-1-2015
411-320-0020	12-28-2014	Amend	2-1-2015
411-320-0020(T)	12-28-2014	Repeal	2-1-2015
411-320-0040	12-28-2014	Amend	2-1-2015
411-320-0040(T)	12-28-2014	Repeal	2-1-2015
411-320-0060	12-28-2014	Amend	2-1-2015
411-320-0060(T)	12-28-2014	Repeal	2-1-2015
411-320-0070	12-28-2014	Amend	2-1-2015
411-320-0080	12-28-2014	Amend	2-1-2015
411-320-0080(T)	12-28-2014	Repeal	2-1-2015
411-320-0090	12-28-2014	Amend	2-1-2015
411-320-0090(T)	12-28-2014	Repeal	2-1-2015

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411-320-0100	12-28-2014	Amend	2-1-2015
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
411-320-0160	12-28-2014	Amend	2-1-2015
411-320-0170	12-28-2014	Amend	2-1-2015
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
411-320-0190	12-28-2014	Amend	2-1-2015
411-320-0200	12-28-2014	Amend	2-1-2015
411-323-0010	12-28-2014	Amend	2-1-2015
411-323-0010(T)	12-28-2014	Repeal	2-1-2015
411-323-0020	12-28-2014	Amend	2-1-2015
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
411-328-0700	12-28-2014	Amend	2-1-2015
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
411-328-0740	12-28-2014	Repeal	2-1-2015
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
411-328-0780	12-28-2014	Amend	2-1-2015
411-328-0790	12-28-2014	Amend	2-1-2015
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
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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
411-340-0020	12-28-2014	Amend	2-1-2015
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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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411-340-0120(T)	12-28-2014	Repeal	2-1-2015
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411-340-0130	12-28-2014	Amend	2-1-2015
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411-340-0135	12-28-2014	Adopt	2-1-2015
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411-340-0140	12-28-2014	Amend	2-1-2015
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
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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
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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
411-345-0030	12-28-2014	Amend	2-1-2015
411-345-0030(T)	12-28-2014	Repeal	2-1-2015
411-345-0050	12-28-2014	Amend	2-1-2015
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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
411-345-0170	12-28-2014	Amend	2-1-2015
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411-345-0260(T)	12-28-2014	Repeal	2-1-2015
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411-350-0020(T)	2-16-2015	Repeal	3-1-2015
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411-350-0030(T)	2-16-2015	Repeal	3-1-2015
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411-350-0040(T)	2-16-2015	Repeal	3-1-2015
411-350-0050	2-16-2015	Amend	3-1-2015
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411-350-0080(T)	2-16-2015	Repeal	3-1-2015
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413-015-0432(T)	12-24-2014	Repeal	2-1-2015
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413-070-0450	1-1-2015	Amend	2-1-2015
413-070-0470	1-1-2015	Amend	2-1-2015
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461-125-0190	1-1-2015	Repeal	2-1-2015
461-125-0370	12-8-2014	Amend(T)	1-1-2015
461-125-0370	1-29-2015	Amend	3-1-2015
461-125-0370(T)	12-8-2014	Suspend	1-1-2015
461-135-0780	1-1-2015	Amend	2-1-2015
461-145-0200	1-1-2015	Amend(T)	2-1-2015
461-145-0220	1-1-2015	Amend	2-1-2015
461-155-0180	2-1-2015	Amend	3-1-2015
461-155-0250	1-1-2015	Amend	2-1-2015
461-155-0270	1-1-2015	Amend	2-1-2015
461-155-0300	1-1-2015	Amend	2-1-2015
461-160-0015	1-1-2015	Amend	2-1-2015
461-160-0015(T)	1-1-2015	Repeal	2-1-2015
461-160-0580	1-1-2015	Amend	2-1-2015
461-160-0620	1-1-2015	Amend	2-1-2015
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574-050-0005	2-12-2015	Amend	3-1-2015
577-050-0050	1-23-2015	Amend(T)	3-1-2015
579-020-0006	12-1-2014	Amend(T)	1-1-2015
581-015-2000	12-17-2014	Amend	2-1-2015
581-015-2245	12-17-2014	Amend	2-1-2015
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581-020-0065	12-4-2014	Renumber	1-1-2015
581-020-0065	1-26-2015	Am. & Ren.	3-1-2015
581-020-0070	12-4-2014	Renumber	1-1-2015
581-020-0075	12-4-2014	Renumber	1-1-2015
581-020-0080	12-4-2014	Renumber	1-1-2015
581-020-0080	1-26-2015	Am. & Ren.	3-1-2015
581-020-0085	12-4-2014	Renumber	1-1-2015
581-020-0090	12-4-2014	Renumber	1-1-2015
581-022-0102	7-1-2015	Amend	3-1-2015
581-022-1130	12-17-2014	Amend	2-1-2015
581-022-1131	7-1-2015	Amend	3-1-2015
581-022-1133	12-17-2014	Amend	2-1-2015
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581-022-1620	7-1-2015	Amend	3-1-2015
581-022-1661	12-4-2014	Amend	1-1-2015
581-026-0065	12-17-2014	Amend	2-1-2015
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
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584-010-0006	2-10-2015	Amend	3-1-2015
584-010-0090	2-10-2015	Amend	3-1-2015
584-017-1026	2-10-2015	Adopt(T)	3-1-2015
584-017-1028	2-10-2015	Amend	3-1-2015
584-017-1030	2-10-2015	Amend	3-1-2015
584-017-1032	2-10-2015	Amend	3-1-2015
584-017-1035	2-10-2015	Amend	3-1-2015
584-018-0110	2-10-2015	Amend	3-1-2015
584-018-0115	2-10-2015	Amend	3-1-2015
584-018-0120	2-10-2015	Amend	3-1-2015
584-018-0130	2-10-2015	Amend	3-1-2015
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584-018-0165	2-10-2015	Adopt	3-1-2015
584-018-0305	2-10-2015	Amend	3-1-2015
584-019-0002	2-10-2015	Repeal	3-1-2015
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584-036-0083	2-10-2015	Amend	3-1-2015
584-038-0003	2-10-2015	Amend	3-1-2015
584-042-0008	2-10-2015	Amend(T)	3-1-2015
584-042-0021	2-10-2015	Amend	3-1-2015
584-042-0022	2-10-2015	Amend	3-1-2015
584-042-0036	2-10-2015	Amend(T)	3-1-2015
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584-042-0051	2-10-2015	Amend	3-1-2015
584-050-0021	2-10-2015	Amend	3-1-2015
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584-065-0090	2-10-2015	Amend	3-1-2015
584-065-0120	2-10-2015	Amend	3-1-2015
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584-070-0132	2-10-2015	Amend	3-1-2015
584-070-0310	2-10-2015	Amend	3-1-2015
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584-100-0036	2-10-2015	Amend	3-1-2015
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603-011-0810	12-30-2014	Adopt(T)	2-1-2015
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603-052-0870	1-13-2015	Amend	2-1-2015
603-052-0880	1-13-2015	Amend	2-1-2015
603-052-0882	1-13-2015	Amend	2-1-2015
603-052-0884	1-13-2015	Amend	2-1-2015
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635-004-0275	1-1-2015	Amend(T)	1-1-2015
635-004-0350	1-15-2015	Amend	2-1-2015
635-004-0355	1-1-2015	Amend(T)	1-1-2015
635-004-0355	1-15-2015	Amend	2-1-2015
635-004-0355(T)	1-15-2015	Repeal	2-1-2015
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635-005-0355	2-6-2015	Amend(T)	3-1-2015
635-005-0465	11-25-2014	Amend(T)	1-1-2015
635-005-0485	11-25-2014	Amend(T)	1-1-2015
635-006-0209	1-1-2015	Amend(T)	1-1-2015
635-006-0209	1-15-2015	Amend	2-1-2015
635-006-0209(T)	1-15-2015	Repeal	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
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635-016-0090	1-1-2015	Amend	2-1-2015
635-017-0080	1-1-2015	Amend	2-1-2015
635-017-0090	1-1-2015	Amend	2-1-2015
635-017-0095	1-1-2015	Amend	2-1-2015
635-018-0080	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
635-023-0090	1-1-2015	Amend	2-1-2015
635-023-0095	1-1-2015	Amend	2-1-2015
635-023-0095	1-1-2015	Amend(T)	2-1-2015
635-023-0125	1-1-2015	Amend	2-1-2015
635-023-0125	3-1-2015	Amend(T)	3-1-2015
635-023-0128	1-1-2015	Amend	2-1-2015
635-023-0130	1-1-2015	Amend	2-1-2015
635-023-0134	1-1-2015	Amend	2-1-2015
635-023-0140	1-1-2015	Amend	2-1-2015
635-039-0080	1-1-2015	Amend	2-1-2015
635-039-0090	1-1-2015	Amend	2-1-2015
635-039-0090	1-15-2015	Amend	2-1-2015
635-039-0090	1-15-2015	Amend(T)	2-1-2015
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635-042-0145	2-9-2015	Amend(T)	3-1-2015
635-042-0160	2-9-2015	Amend(T)	3-1-2015
635-042-0170	2-9-2015	Amend(T)	3-1-2015
635-042-0180	2-9-2015	Amend(T)	3-1-2015
635-043-0151	1-15-2015	Adopt(T)	2-1-2015
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635-048-0005	12-10-2014	Amend	1-1-2015
635-065-0001	1-6-2015	Amend	2-1-2015
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
635-065-0625	1-6-2015	Amend	2-1-2015
635-065-0705	1-6-2015	Amend	2-1-2015
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635-065-0760	1-1-2015	Amend(T)	1-1-2015
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635-067-0032	1-6-2015	Amend	2-1-2015
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635-075-0001	1-6-2015	Amend	2-1-2015
635-075-0005	1-6-2015	Amend	2-1-2015
635-075-0010	1-6-2015	Amend	2-1-2015
635-075-0020	1-6-2015	Amend	2-1-2015
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690-210-0310	11-25-2014	Amend	1-1-2015

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690-240-0046	11-25-2014	Amend	1-1-2015
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690-325-0110	11-25-2014	Adopt	1-1-2015
690-340-0030	1-1-2015	Amend	1-1-2015
690-340-0040	1-1-2015	Amend	1-1-2015
690-382-0400	1-1-2015	Amend	1-1-2015
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715-045-0018	12-18-2014	Amend	2-1-2015
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734-035-0040	12-8-2014	Amend	1-1-2015
734-035-0200	12-8-2014	Adopt	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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735-062-0007	12-1-2014	Amend	1-1-2015
735-062-0010	12-1-2014	Amend	1-1-2015
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735-062-0040	12-1-2014	Amend	1-1-2015
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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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735-170-0020	7-1-2015	Amend	1-1-2015
735-170-0035	7-1-2015	Adopt	1-1-2015
735-170-0040	7-1-2015	Amend	1-1-2015
735-170-0045	7-1-2015	Amend	1-1-2015
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800-020-0015	2-1-2015	Amend	3-1-2015
800-020-0022	2-1-2015	Amend	3-1-2015
800-020-0030	2-1-2015	Amend	3-1-2015
800-020-0031	2-1-2015	Amend	3-1-2015
800-025-0010	2-1-2015	Amend	3-1-2015
800-025-0023	2-1-2015	Amend	3-1-2015
800-025-0025	2-1-2015	Amend	3-1-2015
800-025-0030	2-1-2015	Amend	3-1-2015

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800-025-0070	2-1-2015	Amend	3-1-2015
800-030-0030	2-1-2015	Amend	3-1-2015
800-030-0050	2-1-2015	Amend	3-1-2015
801-001-0000	1-8-2015	Amend	1-1-2015
801-001-0005	1-8-2015	Amend	1-1-2015
801-001-0015	1-8-2015	Repeal	1-1-2015
801-001-0020	1-8-2015	Repeal	1-1-2015
801-001-0035	1-8-2015	Amend	1-1-2015
801-005-0010	1-8-2015	Amend	1-1-2015
801-010-0010	1-8-2015	Amend	1-1-2015
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
801-010-0078	1-8-2015	Repeal	1-1-2015
801-010-0079	1-8-2015	Amend	1-1-2015
801-010-0080	1-8-2015	Amend	1-1-2015
801-010-0100	1-8-2015	Amend	1-1-2015
801-010-0110	1-8-2015	Amend	1-1-2015
801-010-0120	1-8-2015	Amend	1-1-2015
801-010-0125	1-8-2015	Repeal	1-1-2015
801-010-0130	1-8-2015	Amend	1-1-2015
801-010-0345	1-8-2015	Amend	1-1-2015
801-030-0005	1-8-2015	Amend	1-1-2015
801-030-0010	1-8-2015	Amend	1-1-2015
801-030-0015	1-8-2015	Amend	1-1-2015
801-030-0020	1-8-2015	Amend	1-1-2015
804-003-0000	11-19-2014	Amend	1-1-2015
804-010-0000	11-19-2014	Amend	1-1-2015
804-010-0010	11-19-2014	Amend	1-1-2015
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804-020-0001	11-19-2014	Amend	1-1-2015
804-020-0003	11-19-2014	Amend	1-1-2015
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808-003-0040	2-1-2015	Amend	3-1-2015
808-003-0045	2-1-2015	Amend	3-1-2015
808-003-0065	12-1-2014	Amend	1-1-2015
808-003-0065	2-1-2015	Amend	3-1-2015
808-003-0065	2-12-2015	Amend(T)	3-1-2015
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
809-040-0001	12-5-2014	Amend	1-1-2015
809-050-0020	12-5-2014	Repeal	1-1-2015
809-050-0050	12-5-2014	Amend	1-1-2015
809-050-0050(T)	12-5-2014	Repeal	1-1-2015
813-055-0001	12-2-2014	Amend	1-1-2015
813-055-0095	12-2-2014	Repeal	1-1-2015
813-055-0105	12-2-2014	Repeal	1-1-2015
813-055-0115	12-2-2014	Repeal	1-1-2015
813-090-0005	12-2-2014	Amend	1-1-2015
813-090-0005(T)	12-2-2014	Repeal	1-1-2015
813-090-0010	12-2-2014	Amend	1-1-2015
813-090-0010(T)	12-2-2014	Repeal	1-1-2015
813-090-0015	12-2-2014	Amend	1-1-2015
813-090-0015(T)	12-2-2014	Repeal	1-1-2015
813-090-0027	12-2-2014	Repeal	1-1-2015
813-090-0031	12-2-2014	Amend	1-1-2015
813-090-0031(T)	12-2-2014	Repeal	1-1-2015
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
813-090-0039	12-2-2014	Amend	1-1-2015
813-090-0039(T)	12-2-2014	Repeal	1-1-2015
813-090-0055	12-2-2014	Adopt	1-1-2015
813-090-0064	12-2-2014	Adopt	1-1-2015
813-090-0080	12-2-2014	Amend	1-1-2015
813-090-0080(T)	12-2-2014	Repeal	1-1-2015
813-090-0095	12-2-2014	Repeal	1-1-2015
813-090-0110(T)	12-2-2014	Repeal	1-1-2015
813-110-0005	12-2-2014	Amend	1-1-2015
813-110-0005(T)	12-2-2014	Repeal	1-1-2015
813-110-0015	12-2-2014	Amend	1-1-2015
813-110-0020	12-2-2014	Amend	1-1-2015
813-110-0021	12-2-2014	Amend	1-1-2015
813-110-0026	12-2-2014	Amend	1-1-2015
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813-110-0040	12-2-2014	Repeal	1-1-2015
813-110-0045	12-2-2014	Repeal	1-1-2015
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820-010-0463	2-3-2015	Amend	3-1-2015
820-010-0505	2-3-2015	Amend	3-1-2015
820-010-0520	2-3-2015	Amend	3-1-2015
820-010-0730	2-3-2015	Amend	3-1-2015
820-015-0026	2-3-2015	Amend	3-1-2015
820-050-0010	2-3-2015	Amend	3-1-2015
824-030-0030	12-2-2014	Amend(T)	1-1-2015
836-051-0210	1-1-2015	Amend	2-1-2015
836-051-0220	1-1-2015	Amend	2-1-2015
836-051-0230	1-1-2015	Amend	2-1-2015
836-051-0235	1-1-2015	Adopt	2-1-2015
837-085-0260	1-1-2015	Amend	2-1-2015
837-085-0270	1-1-2015	Amend	2-1-2015
837-085-0280	1-1-2015	Amend	2-1-2015
837-085-0290	1-1-2015	Amend	2-1-2015
837-085-0300	1-1-2015	Amend	2-1-2015
837-085-0305	1-1-2015	Amend	2-1-2015

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837-095-0030	1-1-2015	Adopt	2-1-2015
837-095-0040	1-1-2015	Adopt	2-1-2015
837-095-0050	1-1-2015	Adopt	2-1-2015
839-002-0065	1-6-2015	Amend(T)	2-1-2015
839-009-0210	11-20-2014	Amend(T)	1-1-2015
839-009-0340	11-20-2014	Amend(T)	1-1-2015
839-010-0000	1-28-2015	Amend	3-1-2015
839-010-0010	1-28-2015	Amend	3-1-2015
839-010-0020	1-28-2015	Amend	3-1-2015
839-010-0100	1-28-2015	Amend	3-1-2015
839-010-0200	1-28-2015	Amend	3-1-2015
839-010-0205	1-28-2015	Amend	3-1-2015
839-010-0210	1-28-2015	Amend	3-1-2015
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847-070-0005	1-13-2015	Amend	2-1-2015
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847-070-0015	1-13-2015	Amend	2-1-2015
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847-070-0022	1-13-2015	Amend	2-1-2015
847-070-0045	1-13-2015	Amend	2-1-2015
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851-050-0142	1-1-2015	Amend	1-1-2015
851-056-0000	1-1-2015	Amend	1-1-2015
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851-056-0006	1-1-2015	Amend	1-1-2015
851-056-0008	1-1-2015	Amend	1-1-2015
851-056-0010	1-1-2015	Amend	1-1-2015
851-056-0012	1-1-2015	Amend	1-1-2015
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851-056-0018	1-1-2015	Amend	1-1-2015
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851-056-0022	1-1-2015	Amend	1-1-2015
851-056-0026	1-1-2015	Amend	1-1-2015
851-061-0020	1-1-2015	Amend	1-1-2015
851-061-0030	1-1-2015	Amend	1-1-2015
851-061-0040	1-1-2015	Amend	1-1-2015
851-061-0050	1-1-2015	Amend	1-1-2015
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851-061-0080	1-1-2015	Amend	1-1-2015
851-061-0090	1-1-2015	Amend	1-1-2015
851-062-0010	1-1-2015	Amend	1-1-2015
851-062-0016	1-1-2015	Repeal	1-1-2015
851-062-0050	1-1-2015	Amend	1-1-2015
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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
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851-063-0090	1-1-2015	Amend	1-1-2015
851-063-0100	1-1-2015	Amend	1-1-2015
851-063-0110	1-1-2015	Amend	1-1-2015
852-005-0005	1-1-2015	Amend	1-1-2015
852-005-0005	1-1-2015	Amend	2-1-2015
852-010-0005	1-1-2015	Amend	1-1-2015
852-010-0005	1-1-2015	Amend	2-1-2015
852-010-0015	1-1-2015	Amend	1-1-2015
852-010-0015	1-1-2015	Amend	2-1-2015
852-010-0020	1-1-2015	Amend	1-1-2015
852-010-0020	1-1-2015	Amend	2-1-2015
852-010-0023	1-1-2015	Amend	1-1-2015
852-010-0023	1-1-2015	Amend	2-1-2015
852-010-0024	1-1-2015	Adopt	1-1-2015
852-010-0024	1-1-2015	Adopt	2-1-2015
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852-010-0051	1-1-2015	Amend	2-1-2015
852-010-0080	1-1-2015	Amend	1-1-2015
852-010-0080	1-1-2015	Amend	2-1-2015
852-020-0029	1-1-2015	Amend	1-1-2015
852-020-0029	1-1-2015	Amend	2-1-2015
852-020-0031	1-1-2015	Amend	1-1-2015
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
852-020-0060	1-1-2015	Amend	1-1-2015
852-020-0060	1-1-2015	Amend	2-1-2015
852-050-0001	1-1-2015	Amend	1-1-2015
852-050-0001	1-1-2015	Amend	2-1-2015
852-050-0005	1-1-2015	Amend	1-1-2015
852-050-0005	1-1-2015	Amend	2-1-2015
852-050-0006	1-1-2015	Amend	1-1-2015
852-050-0006	1-1-2015	Amend	2-1-2015
852-050-0012	1-1-2015	Amend	1-1-2015
852-050-0012	1-1-2015	Amend	2-1-2015
852-050-0013	1-1-2015	Amend	1-1-2015
852-050-0013	1-1-2015	Amend	2-1-2015
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852-050-0014	1-1-2015	Amend	2-1-2015
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852-050-0018	1-1-2015	Amend	2-1-2015
852-050-0021	1-1-2015	Amend	1-1-2015
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852-050-0025	1-1-2015	Amend	2-1-2015
852-060-0025	1-1-2015	Amend	1-1-2015
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852-070-0016	1-1-2015	Amend	1-1-2015
852-070-0016	1-1-2015	Amend	2-1-2015
852-070-0020	1-1-2015	Amend	1-1-2015
852-070-0020	1-1-2015	Amend	2-1-2015
852-070-0025	1-1-2015	Amend	1-1-2015
852-070-0025	1-1-2015	Amend	2-1-2015
852-070-0030	1-1-2015	Amend	1-1-2015
852-070-0030	1-1-2015	Amend	2-1-2015
852-070-0035	1-1-2015	Amend	1-1-2015
852-070-0035	1-1-2015	Amend	2-1-2015
852-070-0055	1-1-2015	Amend	1-1-2015
852-070-0055	1-1-2015	Amend	2-1-2015
852-080-0040	1-1-2015	Amend	1-1-2015
852-080-0040	1-1-2015	Amend	2-1-2015
855-001-0005	1-1-2015	Amend	2-1-2015
855-019-0100	1-1-2015	Amend	2-1-2015
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855-019-0171	1-1-2015	Adopt	2-1-2015
855-019-0205	1-1-2015	Amend	2-1-2015
855-019-0320	1-1-2015	Repeal	2-1-2015
855-021-0005	7-1-2015	Amend	2-1-2015
855-021-0010	7-1-2015	Amend	2-1-2015
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855-021-0055	7-1-2015	Amend	2-1-2015
855-025-0001	1-1-2015	Amend	2-1-2015
855-025-0005	1-1-2015	Amend	2-1-2015
855-025-0010	1-1-2015	Amend	2-1-2015
855-025-0012	1-1-2015	Adopt	2-1-2015
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855-044-0070	12-4-2014	Amend	1-1-2015
855-080-0022	1-1-2015	Amend	2-1-2015
855-110-0003	4-1-2015	Amend	2-1-2015
855-110-0005	4-1-2015	Amend	2-1-2015
856-010-0010	11-26-2014	Amend	1-1-2015
856-010-0011	11-26-2014	Amend	1-1-2015
856-010-0012	11-26-2014	Amend	1-1-2015
858-010-0010	11-17-2014	Amend	1-1-2015
858-010-0015	11-17-2014	Amend	1-1-2015
858-010-0036	11-17-2014	Amend	1-1-2015
858-010-0062	1-21-2015	Adopt	3-1-2015
858-030-0005	11-17-2014	Amend	1-1-2015
858-040-0015	1-21-2015	Amend	3-1-2015
859-001-0005	12-18-2014	Amend	2-1-2015
859-001-0010	12-18-2014	Amend	2-1-2015
859-010-0005	12-18-2014	Amend	2-1-2015
859-050-0100	12-18-2014	Adopt	2-1-2015
859-050-0105	12-18-2014	Adopt	2-1-2015
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860-085-0650	12-3-2014	Adopt	1-1-2015
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877-020-0060	1-1-2015	Amend	2-1-2015
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918-200-0070	1-1-2015	Amend	2-1-2015
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976-001-0010	12-17-2014	Adopt	2-1-2015