The Department of Human Services (Department) needs to immediately amend OAR 407-045-0940 to provide the Department's Director or designee the opportunity for good cause, to reconsider a substantiated abuse finding regarding a person or child caring agency (CCA) investigated by the Office of Adult Abuse Prevention and Investigations (OAAPI). Recent legislation mandates the Department to take certain actions when abuse is founded, which may include placing conditions, suspension or revocation of a license, certificate or authorization of the CCA. This temporary rule amendment outlines the Director's or designee's ability to initiate action that may affirm, modify, reverse or remand a substantiated abuse finding. This temporary rule amendment does not affect current rule provisions that affords a person or CCA with a substantiated abuse finding the right to request an administrative review of the OAAPI determination by the Substantiation Review Committee, as stated in OAR 407-045-0800 through 407-045-0955.

Secretary of State

STATEMENT OF NEED AND JUSTIFICATION
A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Department of Human Services, Administrative Services Division and Director's Office

Agency and Division

Administrative Rules Chapter Number

407

Additional Process for Review of Substantiated Abuse Finding

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

The temporary amendment of OAR 407-045-0940.

Statutory Authority:

ORS 409.050 & 418.005

Other Authority:

Statutes Implemented:

ORS 418.005 & OL 2016, chapter 106

Need for the Temporary Rule(s):

The Department of Human Services (Department) needs to immediately amend OAR 407-045-0940 to provide the Department's Director or designee the opportunity for good cause, to reconsider a substantiated abuse finding regarding a person or child caring agency (CCA) investigated by the Office of Adult Abuse Prevention and Investigations (OAAPI). Recent legislation mandates the Department to take certain actions when abuse is founded, which may include placing conditions, suspension or revocation of a license, certificate or authorization of the CCA. This temporary rule amendment outlines the Director's or designee's ability to initiate action that may affirm, modify, reverse or remand a substantiated abuse finding. This temporary rule amendment does not affect current rule provisions that affords a person or CCA with a substantiated abuse finding the right to request an administrative review of the OAAPI determination by the Substantiation Review Committee, as stated in OAR 407-045-0800 through 407-045-0955.

Documents Relied Upon, and where they are available:


Justification of Temporary Rule(s):

Failure to act promptly will result in serious prejudice to the public interest, the Department, children and young adult in care who receive services through a child-caring agency, and providers and employees of child-caring agencies who are responsible for the health and welfare of the child in care. This rule needs to be amended promptly to allow the Department's Director or designee to reconsider a substantiated abuse finding to ensure program integrity of providers along with the obligation to ensure quality care to protect the children in the Department's care and custody. This rule also needs to be amended promptly so the Department can attest actions taken are in the best interests of children in care while fulfilling the commitment to support providers in providing necessary services.

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CHAPTER 407  
DEPARTMENT OF HUMAN SERVICES  
DIVISION 45  
OFFICE OF ADULT ABUSE PREVENTION AND INVESTIGATIONS  
Investigation of Reported Abuse in Certain Child-Caring Agencies  

407-045-0940  
Review of Substantiated Abuse Finding  
(1) When OAAPI has determined abuse has occurred, the person with substantiated abuse or a CCA against whom the finding has been made, has the right to request an administrative review of the OAAPI decision by the OSRC. The OSRC must consist of Department employees who are knowledgeable about the dynamics of child abuse and neglect, including the assessment or investigation of child abuse, and Department employees with knowledge of abuse investigations, especially where abuse is alleged to have occurred in out-of-home settings.  
(2) A person with substantiated abuse or CCA requesting a review must use information contained in the notice of OAAPI substantiation to either meet with the OSRC or prepare a written request for review. The written request for review must be received by OAAPI within 30 calendar days of the receipt of the notice of OAAPI substantiation. If the request is submitted by mail, it must be postmarked within 30 calendar days. The request must include the following:  
(a) Date the request for review is written;  
(b) Case number found on the notice of OAAPI substantiation;  
(c) Full name of the person with substantiated abuse or CCA;  
(d) The person with substantiated abuse or CCA’s current name (if it has changed from the name noted in section (c) of this rule);  
(e) A full explanation, responsive to the information provided in the Department’s notice, explaining why the person with substantiated abuse or CCA believes the OAAPI substantiation is wrong and any additional information and documents the person with substantiated abuse or CCA wants considered during the review;  
(f) The person with substantiated abuse or CCA’s current street address and telephone number; and  
(g) The person with substantiated abuse signature or the signature of a CCA employee authorized to sign on behalf of the organization.  
(3) Except as provided in OAR 407-045-0950, within 60 calendar days of OAAPI’s receipt of a completed request for review, the OSRC must conduct a review and issue a notice of OSRC decision that includes the following:  
(a) Whether there is reasonable cause to believe that abuse occurred;  
(b) Whether there is reasonable cause to believe that the person with substantiated abuse or CCA was responsible for the abuse;  
(c) Whether the OSRC is changing the OAAPI substantiation;  
(d) If the OAAPI substantiation is changed, whether the changed conclusion is being changed to “unsubstantiated” or “inconclusive;” and  
(e) A summary of the information used by the OSRC and its reasoning in reaching its decision.  
(4) The OSRC must operate as follows:  
(a) The OSRC must consider relevant documentary information contained in the OAAPI investigation file, investigative report and exhibits, and information provided by the person with substantiated abuse.
(b) The OSRC may not re-interview the victim; interview or meet with others associated with the person with substantiated abuse or CCA, or with others mentioned in the report; or conduct a field assessment or investigation of the allegation of abuse.
(c) All OSRC decisions must be decided by majority vote of the three participating committee members, all of whom must be present.
(d) The OSRC must make a determination as to:
(A) Whether there is reasonable cause to believe that abuse occurred; and
(B) Whether there is reasonable cause to believe that the person with substantiated abuse or CCA is responsible for the abuse.
(e) The OSRC must decide to either uphold the OAAPI substantiation, or change that conclusion to unsubstantiated or inconclusive.
(5) OSRC must send the notice of OSRC decision to the person with substantiated abuse or CCA, the OAAPI investigator who conducted the investigation, applicable public agencies, other entities or individuals who received notice of the original substantiation, and the OAAPI Director.
(6) The Department must provide the person with substantiated abuse a notice of rights to appeal the OSRC determination.

(7) Notwithstanding the other provisions of this rule, the Director or Director’s designee on his or her own initiative and for good cause, within 60 days of a finding of substantiated abuse, may affirm, modify, reverse, or remand a substantiated finding of abuse regarding a person or CCA.
Stat. Auth.: ORS 409.050 & 418.005
Stats. Implemented: ORS 418.005 & OL 2016, chapter 106