

Secretary of State
Certificate and Order for Filing
TEMPORARY ADMINISTRATIVE RULES
A Statement of Need and Justification accompanies this form..

I certify that the attached copies* are true, full and correct copies of the TEMPORARY Rule(s) adopted on [**Upon Filing**] by the
Date prior to or same as filing date

Oregon Health Authority (Authority)	943
Agency and Division	Administrative Rules Chapter Number
Kym Gasper	500 Summer St. NE, Salem, Oregon 97301
Rules Coordinator	Address
	503-945-6302
	Telephone

to become effective [**July 1, 2011**] through [**December 27, 2011**].
Date upon filing or later A maximum of 180 days including the effective date.

RULE CAPTION

Authority Employees, Volunteers and Contractors Background Checks and Contesting Fitness Determinations
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

List each rule number separately, 000-000-0000.

Secure approval of new rule numbers (Adopted rules) with the Administrative Rules Unit prior to filing

ADOPT: OAR 943-007-0000; 943-007-0500

AMEND:

SUSPEND:

Stat. Auth.: **ORS 181.534; 181.537& 413.042**

Other Auth.: **HB 2009, enacted in 2009 Or Laws, chapter 595 Sections 19-25**

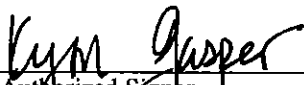
Stats. Implemented: **ORS 181.534; 181.537; 183.341**

RULE SUMMARY

These rules adopt and incorporate by reference the Department of Human Services' Background Check Unit rules chapter 407-007-0000 to 0075; 407-007-0090 to 0100; 407-0200 to 0325; and 407-007-0340 to 0370 for matters that involve employees, volunteers, providers or contractors of the Authority who are subject to background checks before the individual may work, volunteer be employed, hold the position, or provide services.

HB 2009 (2009) created the Oregon Health Authority and transferred to the Authority the Department of Human Services' (Department) Division with respect to health and health care. Effective July 1, 2011 the Authority needs to adopt and incorporate by reference the Department's rules which provide the Authority with the legal authority to conduct background checks and screenings on behalf of the Authority.

The Authority needs to adopt OAR 943-007-0500 which explains how an individual may contest a fitness determination.


Authorized Signer

Kym Gasper
Printed name

10/27/2011
Date

*With this original and Statement of Need, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules. ARC 940-2005

STATEMENT OF NEED AND JUSTIFICATION

A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Oregon Health Authority (Authority)

943

Agency and Division

Administrative Rules Chapter Number

In the Matter of: **The adoption of OAR 943-007-0000; 943-007-0500**

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

Authority Employees, Volunteers and Contractors Background Checks and Contesting Fitness Determinations

Statutory Authority: **ORS 181.534; 181.537& 413.042**

Other Authority: **HB 2009, enacted in 2009 Or Laws, chapter 595 Sections 9-25**

Stats. Implemented: **ORS 181.534; 181.537; 183.341**

Need for the Temporary Rule(s):

These rules adopt and incorporate by reference the Department of Human Services' Background Check Unit rules chapter 407-007-000 to 0075; 407-007-0090 to 0100; 407-0200 to 0325; and 407-007-0340 to 0370 for matters that involve employees, volunteers, providers or contactors of the Authority are subject to background checks before the individual may work, volunteer be employed, hold the position, or provide services.

HB 2009 created the Oregon Health Authority and transferred to the Authority the Department of Human Services' Divisions with respect to health and health care. Effective July 1, 2011 the Authority will no longer be able to rely on the Department of Human Services' general rules found in OAR chapter 407. With the creation of a new agency, the Department of Human Services' Background Check Unit will conduct background checks and screenings on behalf of the Authority. The Authority needs to adopt and incorporate by reference the Department's rules which provide the Authority with the authority to conduct background checks and screenings.


The Authority needs to adopt OAR 943-007-0500 which explains how an individual may contest a fitness determination.

Documents Relied Upon, and where they are available:

OAR 407-007-0000 to 0370 available at: http://arcweb.sos.state.or.us/rules/OARS_400/OAR_407/407_007.html

Justification of Temporary Rule(s):

The Authority finds that failure to act promptly will result in serious prejudice to the public interest, the Authority, and employees, volunteers, providers or contactors of the Authority. These rules need to be adopted promptly so that the Authority may conduct background checks and screenings to determine if an individual is determined fit to provide services to Authority clients.


Authorized Signer

Kym Gasper

Printed name

6/27/2011

Date

Secretary of State
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TEMPORARY ADMINISTRATIVE RULES
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Date prior to or same as filing date

Oregon Health Authority (Authority) 943
Agency and Division Administrative Rules Chapter Number
Evonne Alderete 500 Summer St. NE, Salem, Oregon 97301 503-932-9663
Rules Coordinator Address Telephone

to become effective [**September 1, 2011**] through [**December 27, 2011**].
Date upon filing or later A maximum of 180 days including the effective date.

RULE CAPTION

Authority Employees, Volunteers and Contractors Background Checks and Contesting Fitness Determinations
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

List each rule number separately, 000-000-0000.
Secure approval of new rule numbers (Adopted rules) with the Administrative Rules Unit prior to filing

AMEND: OAR 943-007-0000(T)

SUSPEND: OAR 943-007-0000(T)

Stat. Auth.: ORS 181.534; 181.537& 413.042

Other Auth.: HB 2009, enacted in 2009 Or Laws, chapter 595 Sections 19-25 and HB 2100(2011) Section 50a

Stats. Implemented: ORS 181.534; 181.537; 183.341

RULE SUMMARY

HB 2009 (2009) created the Oregon Health Authority and transferred to the Authority the Department of Human Services' (Department) Divisions with respect to health and health care. Effective July 1, 2011 the Authority adopted and incorporate by reference the Department's rules chapter 407-007-000 to 0075; 407-007-0090 to 0100; 407-0200 to 0325; and 407-007-0340 to 0370 for matters that involve employees, volunteers, providers or contactors of the Authority are subject to background checks before the individual may work, volunteer be employed, hold the position, or provide services.

HB 2100(2011) was signed by the Governor on August 5, 2011, with an emergency clause. HB 2100 allows the Authority to use reports of abuse or neglect when conducting background checks on individuals who are employed, seek employment, volunteer, or seek to be a volunteer, provide care, or seek to be a care provider on behalf of the Authority for clients of the Authority.

This rule is being amended to adopt and incorporate by reference the Department of Human Services' Background Check Unit rules chapter 407-007-0400 to 0460 for matters that involve abuse and neglect checks for employees, volunteers, providers or contactors of the Authority who are subject to background checks before the individual may work, volunteer be employed, hold the position, or provide services.

The Authority needs to amend OAR 943-007-0000 which allows the Authority to use reports of abuse and neglect when conducting background checks on subject individuals.

 Evonne Alderete 8/29/2011
Authorized Signer Printed name Date

*With this original and Statement of Need, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules. ARC 940-2005

STATEMENT OF NEED AND JUSTIFICATION

A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Oregon Health Authority (Authority)

943

Agency and Division

Administrative Rules Chapter Number

In the Matter of: The temporary amendment of OAR 943-007-0000

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

Authority Employees, Volunteers and Contractors Background Checks and Contesting Fitness Determinations

Statutory Authority: ORS 181.534; 181.537& 413.042

Other Authority: HB 2009, enacted in 2009 Or Laws, chapter 595 Sections 9-25 and HB 2100(2011) Section 50a

Stats. Implemented: ORS 181.534; 181.537; 183.341

Need for the Temporary Rule(s):

HB 2009 (2009) created the Oregon Health Authority and transferred to the Authority the Department of Human Services' (Department) Divisions with respect to health and health care. Effective July 1, 2011 the Authority adopted and incorporate by reference the Department's rules chapter 407-007-000 to 0075; 407-007-0090 to 0100; 407-0200 to 0325; and 407-007-0340 to 0370 for matters that involve employees, volunteers, providers or contactors of the Authority are subject to background checks before the individual may work, volunteer be employed, hold the position, or provide services.

HB 2100(2011) was signed by the Governor on August 5, 2011, with an emergency clause. HB 2100 allows the Authority to use reports of abuse or neglect when conducting background checks on individuals who are employed, seek employment, volunteer, or seek to be a volunteer, provide care, or seek to be a care provider on behalf of the Authority for clients of the Authority.

This rule is being amended to adopt and incorporate by reference the Department of Human Services' Background Check Unit rules chapter 407-007-0400 to 0460 for matters that involve abuse and neglect checks for employees, volunteers, providers or contactors of the Authority who are subject to background checks before the individual may work, volunteer be employed, hold the position, or provide services.

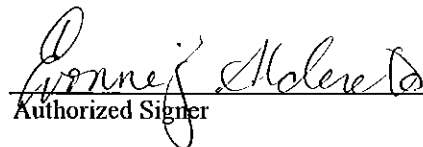
The Authority needs to amend OAR 943-007-0000 which allows the Authority to use reports of abuse and neglect when conducting background checks on subject individuals.

Documents Relied Upon, and where they are available:

HB 2100 available on the web at: <http://www.leg.state.or.us/11reg/mcaspdf/hb2100.dir/hb2100.en.pdf>

Justification of Temporary Rule(s):

The Authority finds that failure to act promptly will result in serious prejudice to the public interest, the Authority, and employees, volunteers, providers or contactors of the Authority These rules need to be adopted promptly so that the Authority may include abuse and neglect reports when conducting background checks and screenings to determine if an individual is determined fit to provide services to Authority clients.


Authorized Signer

Evonne Alderete
Printed Name

8/29/2011
Date

DIVISION 7

CRIMINAL HISTORY CHECKS

943-007-0000

Criminal History Checks

Employees, volunteers, providers and contractors for the Oregon Health Authority (Authority) are subject to background checks and screening to determine if they have a history of criminal behavior such that they should not be allowed to work, volunteer, be employed, or otherwise perform in positions covered by these rules.

(1) The Authority adopts and incorporates by reference the rules established in: OAR 407-007-0000 to 0075 and 407-007-0090 to 0100 (Employees, Volunteers and Contractors); for those matters that involve employees, volunteers, or contractors of the Authority, except as otherwise provided in this rule.

(2) The Authority adopts and incorporates by reference the rules established in: OAR 407-007-0200 to 0325; and 407-007-0335 to 0370 (Providers) for those matters that involve any entity or agency licensed, certified, registered, or otherwise regulated by the Authority, except as otherwise provided in this rule.

(3) The Authority adopts and incorporates by reference the rules established in OAR 407-007-0400 to 0460 for those matters that involve abuse checks for Authority employees, volunteers, and applicants for employment or volunteer positions, except as otherwise provided in this rule.

~~(43)~~ Any reference to any rule from OAR 407-007-0000 to 407-007-0100 in rules or contracts of the Authority are deemed to be references to the requirements of this rule, and shall be construed to apply to employees, volunteers, providers, or contractors of the Authority.

~~(54)~~ References in OAR 407-007-0000 to 407-007-~~00400~~ 370 to the Department of Human Services (Department) or to the Oregon Health Authority shall be construed to be references to either or both agencies.

~~(65)~~ The Authority authorizes the Department to act on its behalf in carrying out background checks and screening associated with the administration of programs or activities administered by the Authority.

~~(76)~~ Appeals shall be conducted by the Authority pursuant to OAR 943-007-0500.

Stat. Auth.: ORS 181.534, 181.537, 413.042

Stats. Implemented: ORS 181.534, 181.537, 183.341

943-007-0500

Contesting a Final Fitness Determination

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

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

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

(4) An SI may challenge the accuracy or completeness of information provided by the OSP, the FBI, or other agencies reporting information to the Authority, by appealing to the entity providing the information. These challenges are not subject to the Authority's appeal process.

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

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

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

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

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

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

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

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

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

(8) The Authority may conduct an administrative review before referring the appeal to OAH.

(a) The SI must participate in the administrative review. Participation may include but is not limited to providing additional information or additional documents requested by the Authority within a specified amount of time.

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

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

(10) The Authority shall be represented by a hearing representative in contested case hearings. The Authority may also be represented by the Department of Justice's Office of the Attorney General.

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

(b) SIs may not have access to confidential information contained in records collected or developed during the criminal records check process without a protective order limiting further disclosure of the information.

(A) A protective order issued pursuant to this section must be issued by an administrative law judge as provided for in OAR 137-003-0570(8) or by a court of law.

(B) In conjunction with a protective order issued pursuant to this section, individually identifying information relating to clients, witnesses, and other persons identified in abuse investigation reports or other records collected or developed during the criminal records check process shall be redacted prior to disclosure, except for the information identifying the SI.

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

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

(e) The only remedy that an administrative law judge may grant is a fitness determination that the SI is approved, approved with restrictions (if allowed by rule), or denied. Under no circumstances shall the Authority or Qualified Entity (QE) be required to place an SI in any position, nor shall the Authority or QE be required to accept services or enter into a contractual agreement with an SI.

(f) For providers, a hearing pursuant to these rules may be conducted in conjunction with a licensure or certification hearing for the SI.

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

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

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

(B) The SI withdraws the request for hearing at any time during the appeal process.

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

(c) The Authority shall issue a dismissal order in the following situations:

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

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

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

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

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

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

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

(13) The Authority may provide the QE's AD with the results of the appeal.

[NOTE: The publications referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 181.534, 181.537, 413.042

Stats. Implemented: ORS 181.534, 181.537, 183.341