

**CHAPTER 407
DEPARTMENT OF HUMAN SERVICES,
ADMINISTRATIVE SERVICES DIVISION AND DIRECTOR'S OFFICE**

**DIVISION 7
CRIMINAL RECORDS AND ABUSE CHECKS**

Criminal Records Checks on Providers

407-007-0200	Purpose and Scope	1
407-007-0210	Definitions.....	1
407-007-0220	Criminal Records Check Required	7
407-007-0230	Qualified Entities	9
407-007-0240	Authorized Designees and Contact Persons	11
407-007-0250	Criminal Records Check Process.....	15
407-007-0280	Potentially Disqualifying Crimes	19
407-007-0290	Other Potentially Disqualifying Conditions	33
407-007-0300	Other Information Considered	35
407-007-0320	Fitness Determinations	37
407-007-0330	Contesting a Fitness Determination.....	42
407-007-0340	Record Keeping, Confidentiality	45
407-007-0350	Immunity from Liability	46
407-007-0355	Agreements with Other Entities.....	47

1 **407-007-0200** **Purpose and Scope**

- 2
- 3 (1) **PURPOSE.** The purpose of these rules, OAR 407-007-0200 to 407-007-0370, is to
4 provide for the reasonable screening of subject individuals to determine if they have a
5 history of criminal behavior such that they should not be allowed to oversee, live or work
6 closely with, or provide services to vulnerable individuals.
7
- 8 (2) **RULE APPLICABILITY.** These rules apply to evaluating criminal records and
9 potentially disqualifying conditions of a subject individual when conducting fitness
10 determinations based upon such information. The fact that a subject individual is
11 approved does not guarantee employment or placement. These rules do not apply to
12 individuals subject to OAR 407-007-0000 to 407-007-0100.
13

14 *Stat. Auth.: ORS 181.534, 181.537, 409.050, 410.020, 411.060, 411.122, 418.016, 418.640,*
15 *441.055, 443.730, 443.735, 678.153*
16 *Stats. Implemented: ORS 181.534, 181.537, 409.010, 411.060, 411.122*
17 *Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; Renumbered from 410-007-0200, DHSD 8-*
18 *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.*
19 *& cert. ef. 4-1-09*
20

21 **407-007-0210** **Definitions**

22

23 As used in OAR 407-007-0200 to 407-007-0370, unless the context of the rule requires
24 otherwise, the following definitions apply:
25

- 26 (1) **“APPOINTING AUTHORITY”** means the individual designated by the qualified entity
27 responsible for appointing authorized designees and contact persons. Examples include
28 but are not limited to a human resources staff with the authority to offer and terminate
29 employment, business owner, a member of the board of directors, director, or program
30 administrator.
31
- 32 (2) **“APPROVED”** means, with regard to a fitness determination, that a subject individual,
33 following a final fitness determination, is eligible to perform in positions covered by
34 these rules.
35
- 36 (3) **“AUTHORIZED DESIGNEE” (AD)** means an individual who is designated by the
37 Department, or an approved qualified entity and authorized by the Department, to receive
38 and process criminal records check request forms from subject individuals and criminal
39 records information from the Department. The AD conducts fitness determinations under
40 the authority of the Department.
41
- 42 (4) **“BACKGROUND CHECK UNIT”** means the Department’s Background Check Unit
43 (BCU).
44

DHS Criminal Records Check Rules on Providers

- 1 (5) “**CARE**” means the provision of care, treatment, education, training, instruction,
2 supervision, placement services, recreation or support to children, the elderly, or
3 individuals with disabilities (see ORS 181.537).
4
- 5 (6) “**CLIENT**” means any individual who receives services, care, or funding for care,
6 through the Department.
7
- 8 (7) “**CLOSED CASE**” means a criminal records check application that has been closed
9 without a final fitness determination.
10
- 11 (8) “**CONTACT PERSON**” (CP) means an individual who is designated by the Department
12 or an approved qualified entity to receive and process criminal records check request
13 forms from subject individuals, but who is not authorized to receive criminal records
14 information from the Department. The CP is not allowed to make final fitness
15 determinations. The CP is allowed to make the preliminary fitness determinations under
16 the authority of the Department only if there is no indication of potentially disqualifying
17 crimes or conditions.
18
- 19 (9) “**CRIMINAL RECORDS CHECK**” means obtaining and reviewing criminal records as
20 required by these rules. The result of a criminal records check is a fitness determination
21 or a closed case. The criminal records check includes any or all of the following:
22
- 23 (a) **Oregon criminal records check.** Criminal offender information is obtained from
24 the Oregon Department of State Police (OSP) using the Law Enforcement Data
25 System (LEDS). The Oregon criminal records check may also include a review of
26 information from the Oregon Judicial Information Network (OJIN), Oregon
27 Department of Corrections records, Oregon Department of Transportation Drivers
28 and Motor Vehicles Division (DMV), local or regional criminal records
29 information systems, or other official law enforcement agency or court records in
30 Oregon.
31
- 32 (b) **National criminal records check.** Criminal records are obtained from the
33 Federal Bureau of Investigation (FBI) through the use of fingerprint cards sent to
34 OSP and other identifying information.
35
- 36 (c) **State-specific criminal records check.** Criminal records are obtained from law
37 enforcement agencies, courts or other criminal records information resources
38 located in, or regarding, a state or jurisdiction outside Oregon.
39
- 40 (10) “**CRIMINAL OFFENDER INFORMATION**” means records, including fingerprints
41 and photographs, received, compiled, and disseminated by OSP for purposes of
42 identifying criminal offenders and alleged offenders and maintaining an individual’s
43 records of arrest, the nature and disposition of criminal charges, sentencing, confinement
44 (confinement shall not include the retention by OSP of records of transfer of inmates
45 between penal institutions or other correctional facilities), and release, and includes the
46 OSP Computerized Criminal History System (see OAR 257-010-0015).

DHS Criminal Records Check Rules on Providers

- 1
2 (11) **“DENIED”** means, with regard to a fitness determination, that an subject individual,
3 following a fitness determination including a weighing test, is not eligible to work,
4 volunteer, be employed, or hold a position covered by these rules; or be certified,
5 licensed, registered or otherwise authorized by the Department to provide care in an
6 environment covered by these rules.
7
- 8 (12) **“DEPARTMENT”** means the Department of Human Services (DHS).
9
- 10 (13) **“FITNESS DETERMINATION”** means the outcome of an application and preliminary
11 review, or the outcome of an application and completed criminal records check including
12 gathering other information as necessary, in a case that is not closed.
13
- 14 (14) **“GOOD CAUSE”** means a valid and sufficient reason for not complying with time
15 frames set during the criminal records check process or contested case hearing process,
16 and may include an explanation of circumstances beyond an subject individual’s
17 reasonable control.
18
- 19 (15) **“HEARING REPRESENTATIVE”** means an employee of the Department representing
20 the Department in a contested case hearing.
21
- 22 (16) **“OTHER CRIMINAL RECORDS INFORMATION”** means information obtained
23 and used in the criminal records check process that is not “criminal offender information”
24 from OSP. “Other criminal records information” includes police investigations and
25 records, justice records, court records, sexual offender registration records, warrants,
26 DMV information, information provided on the Department’s criminal records check
27 forms, disclosures by a subject individual, and any other information from any
28 jurisdiction obtained by or provided to the Department for the purpose of conducting a
29 fitness determination.
30
- 31 (17) **“POSITION”** means the position listed on the DHS Criminal History Request form for
32 the applicant subject individual. The position determines whether the individual is a
33 subject individual under these or Department program rules. The duties or obligations of
34 a position are considered in making a fitness determination.
35
- 36 (18) **“PROBATIONARY STATUS”** means a condition in which a subject individual may be
37 hired on a preliminary basis and allowed by the qualified entity to work, volunteer, be
38 trained, or reside in an environment following submission of a completed DHS Criminal
39 History Request form. The term “probationary status” is applicable only during the
40 timeframe after a preliminary fitness determination and prior to a final fitness
41 determination.
42
- 43 (19) **“QUALIFIED ENTITY”** (QE) means a community mental health or developmental
44 disability program, local health department, or an individual, business, or organization,
45 whether public, private, for-profit, nonprofit, or voluntary, that provides care, including a

DHS Criminal Records Check Rules on Providers

1 business or organization that licenses, certifies, or registers others to provide care (see
2 ORS 181.537).

3
4 (20) “**RESTRICTED APPROVAL**” means an approval in which some restriction is made
5 including but not limited to the subject individual, the subject individual’s environment,
6 the type or number of clients for whom the subject individual may care, or the
7 information to which the subject individual has access.

8
9 (21) “**SUBJECT INDIVIDUAL**” (SI) means an individual from whom the Department may
10 require fingerprints for the purpose of conducting a national criminal records check. An
11 SI is required to complete a criminal records check pursuant to these rules.

12
13 (a) **Inclusion.** An SI includes any of the following:

14
15 (A) An individual who is licensed, certified, registered, or otherwise regulated
16 or authorized for payment by the Department and who provides care.

17
18 (B) An employee, contractor, temporary worker, or volunteer who provides
19 care, or has access to client information or funds, within any entity or
20 agency licensed, certified, registered, or otherwise regulated by the
21 Department.

22
23 (C) Any direct care staff secured by any long term care facility licensed by the
24 Department pursuant to ORS chapter 441 through the services of a
25 personnel services or staffing agency who works in the long term care
26 facility.

27
28 (D) Except as provided in section (21)(b)(C) and (D) of this rule, an individual
29 who lives in a facility that is licensed, certified, registered or otherwise
30 regulated by the Department to provide care. The position of this SI
31 includes but is not limited to resident, household member, or boarder.

32
33 (E) An individual working for a private, licensed child caring agency or
34 system of care contractor providing child welfare services pursuant to
35 ORS chapter 418.

36
37 (F) A homecare worker, personal care services provider, or an independent
38 provider employed by a Department client who provides care to the client
39 if the Department helps pay for the services.

40
41 (G) A child care provider and their employees reimbursed through the
42 Department’s child care program and other individuals in child care
43 facilities that are exempt from certification or registration by the Child
44 Care Division of the Oregon Employment Department (OED). This
45 includes all individuals who reside in or who are frequent visitors to the

DHS Criminal Records Check Rules on Providers

1 residence or facility where the child care services are provided and who
2 may have unsupervised access to the children (see OAR 461-165-0180).

- 3
4 (H) An AD or CP in any entity or agency licensed, certified, registered, or
5 otherwise regulated by the Department.
6
7 (I) An individual providing certified nursing assistant classes for employment
8 to staff within a long term care facility.
9
10 (J) A student at a long term care facility who is enrolled in a certified nursing
11 assistant class for employment at the facility.
12
13 (K) Any individual serving as an owner, operator or manager of a room and
14 board facility pursuant to OAR chapter 411, division 68.
15
16 (L) Notwithstanding subsection (21)(b) of this rule, any individual who is
17 required to complete a criminal records check pursuant to a contract with
18 the Department or by other program rules, if the requirement is within the
19 statutory authority granted to the Department. Specific statutory authority
20 or reference to these rules, and the positions under the contract subject to a
21 criminal records check, must be specified in the contract.
22

23 (b) **Exclusion.** An SI does not include:

- 24
25 (A) Any individual under 16 years of age.
26
27 (B) An individual receiving training in a Department-licensed or Department-
28 certified facility as a part of the required curriculum through any college,
29 university or other training program and who is not an employee in the
30 facility in which training is provided. Facilities must ensure that all such
31 students or interns have passed a substantially equivalent background
32 check process through the training program or are:
33
34 (i) Actively supervised at all times as defined in OAR 407-007-0320;
35 and
36
37 (ii) Not allowed to have unsupervised access to vulnerable individuals.
38
39 (C) Residents of facilities licensed, certified, or registered by the Department
40 who are receiving care or treatment, unless specific, written permission to
41 conduct a criminal records check is received from the Department. The
42 only circumstance in which the Department will allow a check to be
43 performed on a client pursuant to this paragraph is if the client falls within
44 the definition of “subject individual” as listed in sections (21)(a)(A) –
45 (21)(a)(C) and 21(a)(E) to (21)(a)(L) of this rule.
46

DHS Criminal Records Check Rules on Providers

- 1 (D) Individuals who live in or visit relative adult foster homes. This exemption
2 does not apply to the licensee.
3
- 4 (E) Individuals working in child care facilities certified or registered by the
5 OED.
6
- 7 (F) Individuals employed by a private business that provides services to
8 clients and the general public and that is not regulated by the Department.
9
- 10 (G) Individuals employed by a business that provides appliance repair or
11 structural repair to clients and the general public, and who are temporarily
12 providing such services in an environment regulated by the Department.
13 The QE shall ensure active supervision of these individuals while on the
14 QE property and the QE may not allow unsupervised contact with QE
15 clients or residents. This exclusion does not apply to a business that
16 receives funds from the Department for care provided by an employee of
17 the business.
18
- 19 (H) Individuals employed by a private business in which a client of the
20 Department is working as part of a Department-sponsored employment
21 service program. This exclusion does not apply to an employee of a
22 business that receives funds from the Department for care provided by the
23 employee.
24
- 25 (I) Employees and volunteers working in hospitals, ambulatory surgical
26 centers, special inpatient care facilities, outpatient renal dialysis facilities,
27 and freestanding birthing centers as defined in ORS 442.015, in-home care
28 agencies as defined on ORS 443.305, and home health agencies as defined
29 in ORS 443.005.
30
- 31 (J) Volunteers who are not under the direction and control of any entity
32 licensed, certified, registered, or otherwise regulated by the Department.
33
- 34 (K) Individuals employed or volunteering in a Medicare-certified health care
35 business which is not subject to licensure or certification by the State of
36 Oregon.
37
- 38 (L) Individuals working in restaurants or at public swimming pools.
39
- 40 (M) Hemodialysis technicians.
41
- 42 (N) Individuals employed by alcohol and drug programs that are certified,
43 licensed, or approved by the Department's Addictions and Mental Health
44 Division to provide prevention, evaluation, or treatment Services. This
45 exclusion does not apply to programs specifically required by other

DHS Criminal Records Check Rules on Providers

1 Department rules to conduct criminal records checks in accordance with
2 these rules.

3
4 (O) Individuals working for a transit service provider which conducts
5 background checks pursuant to ORS 267.237.

6
7 (P) Individuals being certified by the Department as interpreters pursuant to
8 ORS 409.623. This paragraph is not intended to exempt a Department-
9 certified interpreter from a criminal records check when being considered
10 for a specific position.

11
12 (Q) Provider group categories that were authorized for payment by the
13 Department for care if the provider group categories were not covered by a
14 Department criminal record check process prior to 2004.

15
16 (R) Emergency medical technicians and first responders certified by the
17 Department's Emergency Medical Services and Trauma Systems program.

18
19 (S) An individual employed by an entity that provides services solely
20 contracted under ORS 414.022.

21
22 (22) **“WEIGHING TEST”** means a process carried out by one or more ADs in which
23 available information is considered, resulting in the outcome of a preliminary or final
24 fitness determination. A weighing test is only conducted when an SI has potentially
25 disqualifying crimes or conditions.

26
27 *Stat. Auth.: ORS 181.537, 409.050*

28 *Stats. Implemented: ORS 181.534, 181.537, 409.010*

29 *Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 77-2004(Temp), f. & cert. ef. 10-1-04*
30 *thru 3-29-05; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0210, DHSD 8-*
31 *2007, f. 8-31-07, cert. ef. 9-1-07; Hist.: DHSD 2-2008(Temp), f. & cert. ef. 3-31-08 thru 9-26-*
32 *08; DHSD 7-2008, f. 8-29-08, cert. ef. 9-1-08; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09;*
33 *DHSD 2-2009, f. & cert. ef. 4-1-09*

34 35 **407-007-0220 Criminal Records Check Required**

36
37 (1) **Who conducts criminal records check.**

38
39 (a) **The Department and QEs.** The Department, or a QE authorized by the
40 Department, shall conduct criminal records checks on all SIs through LEDS
41 maintained by OSP in accordance with ORS chapter 181 and the rules adopted
42 thereto (see OAR chapter 257, division 15).
43

DHS Criminal Records Check Rules on Providers

1 (b) **OSP.** If a nationwide criminal records check of an SI is necessary, OSP shall
2 provide the Department results of a criminal records check conducted pursuant to
3 ORS 181.534, including fingerprint identification, through the FBI.
4

5 (2) **WHEN CRIMINAL RECORDS CHECK IS REQUIRED (New Checks and Re-**
6 **Checks).** An SI is required to have a check in the following circumstances:
7

8 (a) **New SI.** An individual who becomes an SI on or after the effective date of these
9 rules.
10

11 (b) **Employer change.** The SI changes employers for a different QE. If the SI's
12 employer merges with another QE or changes names, this action is not considered
13 a change of employers.
14

15 (c) **Position change.** Except as provided in section (3) of this rule, the individual,
16 whether previously considered an SI or not, changes positions, and the new
17 position requires a criminal records check.
18

19 (d) **Qualification change.** The individual, whether previously considered an SI or
20 not, changes Department-issued licenses, certifications, or registrations, and the
21 license, certification, or registration requires a criminal records check under these
22 rules.
23

24 (e) **Criminal records check required by regulation or contract.** A check is
25 required by federal or state laws or regulations, other administrative rules adopted
26 by the Department, or by contract with the Department.
27

28 (f) **Criminal records check is justified.** The Department or the AD has reason to
29 believe that a check is justified. Examples include but are not limited to any
30 indication of possible criminal behavior and quality assurance monitoring of a
31 previously conducted criminal records check.
32

33 (3) **WHEN A CRIMINAL RECORDS CHECK IS NOT REQUIRED.**
34

35 (a) **Criminal records check not required.** A new check is not required only under
36 the following circumstances:
37

38 (A) A personal care services provider, respite care provider, or an independent
39 provider who is paid with Department funds changes or adds clients, and
40 the prior, documented criminal records check conducted within the
41 previous 24 months through the Department has been approved without
42 restrictions.
43

44 (B) The SI is a child care provider as described in OAR 461-165-0180 who
45 has been approved without restrictions and who changes or adds clients.
46

DHS Criminal Records Check Rules on Providers

1 (C) The SI has been offered a new position, there is no change of employer,
2 there is no indication of new potentially disqualifying crimes or
3 conditions, and at least one of the following is true:

4
5 (i) The previous fitness determination identified no potentially
6 disqualifying record and the AD determines that the previous
7 fitness determination is sufficient for the new position.
8

9 (ii) The AD determines that the new position requires the same or less
10 contact with vulnerable individuals, personal information, financial
11 information, or client funds.
12

13 (b) **Documentation.** When a criminal records check is not required under these rules,
14 written documentation must indicate why a new check was not completed.
15

16 (4) **CRIMINAL RECORDS CHECK NOT A SCREENING TOOL.** Criminal records
17 checks are completed on SIs who otherwise meet the qualifications of the position in
18 question. A criminal records check may not be used to screen applicants for a position.
19

20 *Stat. Auth.: ORS 181.537, 409.050*

21 *Stats. Implemented: ORS 181.534, 181.537, 409.010*

22 *Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 77-2004(Temp), f. & cert. ef. 10-1-04*
23 *thru 3-29-05; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0220, DHSD 8-*
24 *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.*
25 *& cert. ef. 4-1-09*
26

27 **407-007-0230** **Qualified Entities**

28
29 (1) **APPROVAL REQUIRED.** A QE and its appointing authority must be approved in
30 writing by the Department pursuant to these rules in order to appoint an AD or CP.
31 Unless specifically indicated in these rules, all QEs and appointing authorities discussed
32 are considered approved.
33

34 (2) **APPOINTMENT OF ADs AND CPs.** Unless indicated under section (3) of this rule, all
35 QEs are responsible for ensuring the completion of criminal records checks for SIs who
36 are the QE's employees, volunteers, or other SIs under the direction or control of the QE.
37 The QE's appointing authority must appoint ADs or CPs within 30 days of Department
38 approval.
39

40 (a) **ADs required.** Except as provided in section (3) of this rule, appointing
41 authorities in all QEs shall appoint one or more ADs, or have a written agreement
42 with another QE to handle AD responsibilities .
43

DHS Criminal Records Check Rules on Providers

- 1 (b) **CPs optional.** Appointing authorities in all QEs may also appoint one or more
2 CPs, or may have a written agreement with another QE to handle CP
3 responsibilities.
4
- 5 (3) **DEPARTMENT ADs FOR FITNESS DETERMINATIONS.** The Department’s
6 appointing authorities shall appoint ADs and CPs within the Department. Department-
7 employed ADs shall make fitness determinations for the following QEs:
8
- 9 (a) **Private QEs with fewer than 10 employees.** These QEs are not eligible to
10 appoint ADs. These QEs shall do one of the following:
11
- 12 (A) Use another QE to handle AD responsibilities instead of using the
13 Department. If another QE is used, there must be a written agreement
14 between the two QEs. The QE must provide the Department with a copy
15 of the agreement.
16
- 17 (B) Appoint one or more CPs, or have a written agreement with another QE to
18 handle CP responsibilities. The QE must provide the Department with a
19 copy of the agreement.
20
- 21 (b) **QEs with SIs not under their direction and control.** The Department shall
22 make fitness determinations for QEs with SIs not under the direction and control
23 of the QE but who provide care under programs administered by the QE.
24
- 25 (A) For these SIs, the QE shall appoint one or more CPs, or use an AD or CP
26 appointed under section (2) of this rule to handle CP responsibilities.
27
- 28 (B) Notwithstanding section (3)(b)(A), the QE may appoint an AD for these
29 SIs if the QE chooses to do so, or is required to do so under other
30 Department program administrative rules or contract with the Department.
31 The QE shall notify the Department in writing which programs are
32 affected and which AD will handle the responsibilities for each program.
33
- 34 (c) **QEs allowed only CPs by administrative rule or department program.**
35 Administrative rules governing a type of QE may prohibit AD appointment or
36 may allow only CP appointment. Department program offices may determine that
37 certain types of QEs may only appoint CPs for the criminal records check process.
38
- 39 (d) **QEs in certain circumstances.** Department-employed ADs may make fitness
40 determinations at the Department’s discretion. Examples include but are not
41 limited to initial opening of a new QE, newly effective administrative rules
42 creating a new type of QEs, or an investigation or review of the QE by the
43 Department.
44
- 45 (4) **REVOCAION OF QE APPROVAL.** Approval of the QE to appoint or maintain ADs
46 may be revoked by the Department if the Department is investigating a compliance issue

DHS Criminal Records Check Rules on Providers

1 or determines that the QE, or an AD or CP appointed by the QE, has failed to comply
2 with these rules.

3
4 (a) **Communication with program office.** BCU and the appropriate entity or
5 program office within the Department shall work together regarding any
6 compliance issues.

7
8 (b) **Plan of action.** The Department may develop a plan of action to resolve the
9 compliance issues.

10
11 (5) **MANAGING CRIMINAL RECORDS CHECK PROCESS.** The QE's appointing
12 authority shall appoint ADs and CPs as needed to remain in compliance with these rules.
13 If a QE no longer has an AD or CP for any reason, the appointing authority shall ensure
14 that new ADs or CPs are appointed within 30 days.

15
16 (6) **TRAINING AND TECHNICAL ASSISTANCE.** The Department shall provide QEs
17 with periodic training and on-going technical assistance.

18
19 (7) **DEPARTMENT DECISION FINAL.** Any decisions made by the Department in regard
20 to these rules are final and may not be overturned by any QE, its ADs, or its CPs.

21
22 *Stat. Auth.: ORS 181.537, 409.050*

23 *Stats. Implemented: ORS 181.534, 181.537, 409.010*

24 *Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 77-2004(Temp), f. & cert. ef. 10-1-04*
25 *thru 3-29-05; OMAP 85-2004(Temp), f. & cert. ef. 11-4-04 thru 3-29-05; OMAP 22-2005, f. &*
26 *cert. ef. 3-29-05; Renumbered from 410-007-0230, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07;*
27 *DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09*
28

29 **407-007-0240 Authorized Designees and Contact Persons**

30
31 (1) **REQUIREMENTS.** All requirements in this section must be completed within a 90-day
32 time period. To receive Department approval, all ADs and CPs must meet the following
33 requirements:

34
35 (a) **Employment.** ADs and CPs for the Department must be employed by the
36 Department. For QEs, the ADs and CPs must be one of the following:

37
38 (A) Employed by the agency for which they will handle criminal records
39 check information.

40
41 (B) Contracted with the QE to perform as an AD or CP.

42
43 (C) Employed by another similar QE or a parent QE (e.g., assisted living
44 facility AD helping another assisted living facility).
45

DHS Criminal Records Check Rules on Providers

1 (b) **Application.** An appointing authority shall appoint an AD or CP in writing on a
2 form provided by the Department. The applicant AD or CP shall complete the
3 form and submit it to the Department for processing and registration.
4

5 (c) **Criminal records check.** The Department shall conduct an Oregon criminal
6 records check, a national criminal records check, and if necessary, state-specific
7 criminal records checks. The AD or CP must have:
8

9 (A) No conviction for a potentially disqualifying permanent review crime;
10

11 (B) No convictions for any other crime in the past 15 years;
12

13 (C) No potentially disqualifying conditions; and
14

15 (D) If an AD, Criminal Justice Information Systems (CJIS) clearance and
16 approval to view criminal records in accordance with OSP rules.
17

18 (d) **Training.** Complete a training program and successfully pass any testing as
19 required by the Department.
20

21 (2) **DENIAL OF AD OR CP STATUS.** An individual's status as an AD or CP shall be
22 denied if the individual does not meet the requirements to be an AD or CP. Once denied,
23 the individual can no longer perform the duties of an AD or CP. There are no exceptions
24 for individuals who do not meet the requirements to be an AD or CP.
25

26 (3) **RESPONSIBILITIES.**
27

28 (a) **Responsibilities of both ADs and CPs.** An AD or CP shall:
29

30 (A) Demonstrate understanding of and adherence to these rules in all actions
31 pertaining to the criminal records check process.
32

33 (B) Act as the Department's designee in any action pursuant to these rules and
34 the criminal records check process. The AD or CP may not advocate for
35 an SI during any part of the criminal records check process, including the
36 contesting of a fitness determination.
37

38 (C) Ensure that adequate measures are taken to protect the confidentiality of
39 the records and documents required by these rules.
40

41 (D) Verify the identity of a SI. This includes asking the SI for current and
42 valid government-issued photo identification (e.g. drivers license) and
43 confirming the information on the photo identification with the SI, the
44 information written on the DHS Criminal History Request form, and the
45 information written on the fingerprint card if a national criminal records
46 check is conducted. Note: If an AD or CP is verifying the identity of an SI

DHS Criminal Records Check Rules on Providers

1 who is being rechecked, review of government-issued photo identification
2 may not be necessary, but the AD or CP shall verify the SI's name, any
3 aliases or previous names, and the SI's current address.
4

5 (E) Ensure that an SI is not permitted to work, volunteer, reside, or otherwise
6 hold a position before the completion of a preliminary fitness
7 determination and submission of the DHS Criminal History Request form
8 to the Department along with a fingerprint card if the SI discloses out of
9 state criminal records or residency.

10 (F) Ensure that when an SI is granted probationary status, the need for active
11 supervision pursuant to OAR 407-007-0320(1)(d) is understood by each
12 individual responsible for ensuring that active supervision is provided.
13

14 (G) Notify the Department of any changes regarding a SI who still has a
15 criminal records check being processed, including but not limited to
16 change of address or change in employment status.
17

18 (H) Monitor status of criminal records check applications and investigate any
19 delays in processing.
20

21 (I) Ensure that required documentation required by these rules is processed
22 and maintained in accordance with these rules.
23

24 (J) Notify the BCU immediately if arrested, charged, or convicted of any
25 crime.
26

27
28 (b) **Specific CP limits on preliminary fitness determinations.** The CP may review
29 the DHS Criminal History Request form completed by the SI to determine if the
30 SI has any potentially disqualifying crimes or conditions.
31

32 (A) The CP may allow the SI to work or function on probationary status only
33 after the CP has reviewed the DHS Criminal History Request form and
34 determined there is no indication that the SI has any potentially
35 disqualifying crimes or conditions.
36

37 (B) The CP shall not allow an SI who discloses any potentially disqualifying
38 crimes or conditions to work or function on probationary status.
39

40 (C) If the SI discloses potentially disqualifying crimes or conditions, the CP
41 shall forward the DHS Criminal History Request form to an AD for
42 preliminary fitness determination, or to the BCU for processing if there is
43 no local AD available.
44

45 (c) **Specific AD responsibilities.** In addition to the responsibilities listed in (3)(a) of
46 this rule, an AD shall:

DHS Criminal Records Check Rules on Providers

- 1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
- (A) Review the completed DHS Criminal History Request form (if not already done so by a CP) and conduct a preliminary fitness determination to determine eligibility for probationary status before forwarding the DHS Criminal History Request form to the BCU.
 - (B) Conduct a final fitness determination.
 - (C) Participate in the appeal process if requested by the Department.
- (4) **AD CONFLICT OF INTEREST.** An AD must not have access to LEDS information or make a fitness determination if there is a conflict of interest between the AD and the SI.
- (a) **Conflict exists.** A conflict of interest exists includes but is not limited to the following circumstances:
 - (A) The AD is related to the SI. In this context, “related” means spouse, domestic partner, natural parent, child, sibling, adopted child, adopted parent, stepparent, stepchild, stepbrother, stepsister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, grandchild, aunt, uncle, niece, nephew or cousin.
 - (B) The AD has a close personal or financial relationship, other than an employee-employer relationship, with the SI.
 - (b) **Department completes determination.** When there is a conflict of interest and the QE has no other ADs available to conduct the fitness determination, the Department shall complete the fitness determination.
- (5) **TERMINATION OF AD OR CP STATUS.**
- (a) **Position ends.** When the AD’s or CP’s position with the QE ends or when the QE terminates the appointment, the Department’s registration of an AD or CP is revoked. The QE shall notify the Department immediately upon the end of the position or the termination of the appointment.
 - (b) **Noncompliance with rules.** The Department or the QE shall suspend or revoke the appointment if a AD or CP fails to comply with responsibilities or fails to continue to meet the requirements for AD or CP, as applicable. After suspending or revoking the appointment, the QE must immediately notify the BCU in writing. If the Department takes the action, it must immediately notify the QE in writing.
- (6) **APPEAL RIGHTS.** Denial or termination of AD or CP status is not subject to appeal rights unless the denial or termination results in loss of employment or position. Individuals losing employment or position have the same hearing rights as other SIs under these rules.

- 1
- 2 (7) **NOT TRANSFERABLE.** If an AD or CP leaves employment of the QE for any reason,
- 3 the individual will no longer be considered an AD or CP. If the individual finds
- 4 employment with another QE, a new appointment, application, and registration must be
- 5 conducted.
- 6
- 7 (8) **REVIEW OF APPOINTMENT.** The Department shall review and update appointments
- 8 of ADs and CPs, up to and including a new application, criminal records check, and
- 9 recertification training, to assure that all requirements are met:
- 10
- 11 (a) **Scheduled review.** Every three years; or
- 12
- 13 (b) **Justified review.** If the Department has reason to believe the individual no longer
- 14 meets the qualifications to be an AD or CP such as but not limited to indication of
- 15 criminal behavior.
- 16

17 *Stat. Auth.: ORS 181.537, 409.050*

18 *Stats. Implemented: ORS 181.534, 181.537, 409.010*

19 *Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05;*

20 *Renumbered from 410-007-0240, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f.*
21 *12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09*

22

23 **407-007-0250 Criminal Records Check Process**

- 24
- 25 (1) **FORMS REQUIRED.** A QE and SI shall use the Department’s form to request the
- 26 criminal records check. The DHS Criminal History Request form shall include the
- 27 following:
- 28
- 29 (a) **Identifying information required.** Indication of what identifying information
- 30 and other information the SI is required to provide for the criminal records check
- 31 process, including but not limited to name, aliases, date of birth, address, recent
- 32 residency information, drivers license, disclosure of criminal record, and
- 33 disclosure of other information to be considered in the event of a weighing test.
- 34
- 35 (b) **Notice regarding Social Security number.** A notice regarding disclosure of
- 36 Social Security number indicating that:
- 37
- 38 (A) Disclosure is voluntary; and
- 39
- 40 (B) The Department requests the Social Security number solely for the
- 41 purpose of positively identifying the SI during the criminal records check
- 42 process.
- 43
- 44 (c) **Fingerprinting.** A notice that the SI is subject to fingerprinting as part of a
- 45 criminal records check.

DHS Criminal Records Check Rules on Providers

- 1
2 (2) **REVIEW OF DHS CRIMINAL HISTORY REQUEST FORM.** The BCU shall
3 review each form received for completeness and timeliness. If the BCU rejects the form,
4 the QE's AD or CP shall immediately resolve the reasons for rejection and re-submit the
5 form, or remove the SI from the position.
6
- 7 (3) **OREGON CRIMINAL RECORDS CHECK.**
8
- 9 (a) **Obtaining information.** Using information submitted on the DHS Criminal
10 History Request form, the Department obtains criminal offender information from
11 LEDS and requests other criminal records information as needed.
12
- 13 (b) **QE access.** Only an approved QEs holding a contract with OSP for LEDS access
14 may obtain criminal offender information. The QE's AD may:
15
- 16 (A) Receive and evaluate Oregon criminal records information from the
17 Department as allowed by applicable statutes.
18
- 19 (B) Conduct fitness determinations.
20
- 21 (c) **Handling of information.** Criminal offender information obtained through LEDS
22 shall be handled in accordance with applicable OSP requirements in ORS chapter
23 181 and the rules adopted pursuant thereto (see OAR chapter 257, division 15).
24
- 25 (4) **NATIONAL CRIMINAL RECORDS CHECK.**
26
- 27 (a) **Fingerprints required.** In addition to an Oregon criminal records check, a
28 fingerprint-based national criminal records check is required under any of the
29 following circumstances:
30
- 31 (A) The SI has lived outside Oregon:
32
- 33 (i) Child care providers (18 months). The SI is a child care provider or
34 other individual included in OAR 461-165-0180 who has lived
35 outside Oregon for 60 or more consecutive days during the
36 previous 18 months.
37
- 38 (ii) All other SIs (5 years). The SI is has lived outside Oregon for 60 or
39 more consecutive days during the previous five years.
40
- 41 (B) The LEDS check, SI disclosures, or any other information obtained by the
42 Department indicate there may be criminal records outside of Oregon.
43
- 44 (C) The SI has an out-of-state drivers license.
45

DHS Criminal Records Check Rules on Providers

- 1 (D) The Department has reason to question the identity or criminal record of
2 the SI.
3
- 4 (E) A fingerprint-based criminal records check is required by federal or state
5 laws or regulations, other rules adopted by the Department, or by contract
6 with the Department.
7
- 8 (F) The SI is an AD or CP.
9
- 10 (b) **Fingerprints may be required.** In addition to an Oregon criminal records check,
11 the Department may require a fingerprint-based national criminal records check if
12 the Department has reason to believe that fingerprints are needed to make a final
13 fitness determination.
14
- 15 (c) **Fingerprinting a juvenile.** Consent of the parent or guardian is required to obtain
16 fingerprints from an SI under 18 years of age.
17
- 18 (d) **Processing.** The SI shall complete and submit a fingerprint card when requested
19 by the Department.
20
- 21 (A) The SI shall use a fingerprint card (e.g. FBI Form FD 258) provided by
22 the Department. The Department shall give the SI notice regarding the
23 Social Security number as set forth in OAR 407-007-0250(1)(b).
24
- 25 (B) The SI shall submit the card within 21 days of the request to the BCU.
26
- 27 (i) If the card is not received within 21 days, the Department will
28 close the application. When a case is closed, the SI shall not be
29 allowed to work, volunteer, be employed, or otherwise perform in
30 positions covered by these rules, and shall be immediately
31 terminated and removed from the position.
32
- 33 (ii) The Department may extend the time allowed for good cause.
34
- 35 (C) The Department may require new fingerprint cards if previous cards are rejected
36 by OSP or the FBI.
37
- 38 (5) **STATE-SPECIFIC CRIMINAL RECORDS CHECK.** The Department may also
39 conduct a state-specific criminal records check instead of or in addition to a national
40 criminal records check. Reasons for a state-specific criminal records check include but
41 are not limited to:
42
- 43 (a) **Out-of-state history.** When the Department has reason to believe that out-of-state
44 criminal history may exist.
45

DHS Criminal Records Check Rules on Providers

- 1 (b) **Illegible fingerprints.** When the Department has been unable to complete a
2 national criminal records check due to illegible fingerprints.
3
- 4 (c) **Incomplete information.** When the national criminal records check results show
5 incomplete information about charges or criminal records without final
6 disposition.
7
- 8 (d) **State not included in FBI.** When there is indication of residency or criminal
9 records in a state that does not submit all criminal records to the FBI.
10
- 11 (e) **Other reasons.** When, based on available information, the Department has reason
12 to believe that a state-specific check is necessary.
13
- 14 (6) **ADDITIONAL INFORMATION REQUIRED.** To complete a criminal records check
15 and fitness determination, the Department may require additional information from the SI
16 including but not limited to additional criminal, judicial, or other background
17 information; or proof of identity.
18
- 19 (7) **IMMINENT DANGER.**
20
- 21 (a) **New criminal records check.** If the Department determines there is indication of
22 criminal behavior that could pose a potential immediate risk to vulnerable
23 individuals, the Department shall conduct a new criminal records check on an SI
24 without the completion of a new DHS Criminal History Request form.
25
- 26 (b) **Opportunity to disclose.** If the Department determines that a fitness
27 determination based on the new criminal records check would be adverse to the
28 SI, the Department shall provide the SI, if available, the opportunity to disclose
29 criminal records, potentially disqualifying conditions, and other information as
30 indicated in OAR 407-007-0300 before the completion of the fitness
31 determination.
32
- 33 (8) **DOCUMENTATION.** All criminal records checks conducted under this rule shall be
34 documented in writing.
35

36 *Stat. Auth.: ORS 181.537, 409.050*

37 *Stats. Implemented: ORS 181.534, 181.537, 409.010*

38 *Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05;*

39 *Renumbered from 410-007-0250, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f.*
40 *12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09*
41

407-007-0280 Potentially Disqualifying Crimes

A conviction of any of the following crimes is potentially disqualifying. The list includes offenses that are crimes and are not intended to include offenses that are classified or treated as violations (see ORS 161.505 to 161.565).

(1) **PERMANENT REVIEW.** The crimes listed in this section are crimes which require that a fitness determination be completed regardless of date of conviction.

- (a) ORS 162.155, Escape II
- (b) ORS 162.165, Escape I
- (c) ORS 162.285, Tampering with a witness
- (d) ORS 162.325, Hindering prosecution
- (e) ORS 163.005, Criminal homicide
- (f) ORS 163.095, Aggravated murder
- (g) ORS 163.115, Murder
- (h) ORS 163.118, Manslaughter I
- (i) ORS 163.125, Manslaughter II
- (j) ORS 163.145, Criminally negligent homicide
- (k) ORS 163.160, Assault IV
- (L) ORS 163.165, Assault III
- (m) ORS 163.175, Assault II
- (n) ORS 163.185, Assault I
- (o) ORS 163.187, Strangulation
- (p) ORS 163.190, Menacing
- (q) ORS 163.200, Criminal mistreatment II
- (r) ORS 163.205, Criminal mistreatment I

DHS Criminal Records Check Rules on Providers

- 1 (s) ORS 163.207, Female genital mutilation
2
3 (t) ORS 163.208, Assault of public safety officer
4
5 (u) ORS 163.213, Unlawful use of an electrical stun gun, tear gas, or mace I
6
7 (v) ORS 163.225, Kidnapping II
8
9 (w) ORS 163.235, Kidnapping I
10
11 (x) ORS 163.257, Custodial interference I
12
13 (y) ORS 163.275, Coercion
14
15 (z) ORS 163.355, Rape III
16
17 (aa) ORS 163.365, Rape II
18
19 (bb) ORS 163.375, Rape I
20
21 (cc) ORS 163.385, Sodomy III
22
23 (dd) ORS 163.395, Sodomy II
24
25 (ee) ORS 163.405, Sodomy I
26
27 (ff) ORS 163.408, Unlawful sexual penetration II
28
29 (gg) ORS 163.411, Unlawful sexual penetration I
30
31 (hh) ORS 163.415, Sexual abuse III
32
33 (ii) ORS 163.425, Sexual abuse II
34
35 (jj) ORS 163.427, Sexual abuse I
36
37 (kk) ORS 163.435, Contributing to the sexual delinquency of a minor
38
39 (LL) ORS 163.445, Sexual misconduct
40
41 (mm) ORS 163.452, Custodial sexual misconduct I
42
43 (nn) ORS 163.454, Custodial sexual misconduct II
44
45 (oo) ORS 163.465, Public indecency
46

DHS Criminal Records Check Rules on Providers

1	(pp)	ORS 163.515, Bigamy
2		
3	(qq)	ORS 163.525, Incest
4		
5	(rr)	ORS 163.535, Abandonment of a child
6		
7	(ss)	ORS 163.537, Buying or selling a person under 18 years of age
8		
9	(tt)	ORS 163.545, Child neglect II
10		
11	(uu)	ORS 163.547, Child neglect I
12		
13	(vv)	ORS 163.555, Criminal nonsupport
14		
15	(ww)	ORS 163.575, Endangering the welfare of a minor
16		
17	(xx)	ORS 163.670, Using child in display of sexually explicit conduct
18		
19	(yy)	ORS 163.673, Dealing sexual condition of children
20		
21	(zz)	ORS 163.675, Sale sexual condition of children
22		
23	(aaa)	ORS 163.680, Paying for sexual view of children
24		
25	(bbb)	ORS 163.684, Encouraging child sexual abuse I
26		
27	(ccc)	ORS 163.686, Encouraging child sexual abuse II
28		
29	(ddd)	ORS 163.687, Encouraging child sexual abuse III
30		
31	(eee)	ORS 163.688, Possession of materials depicting sexually explicit conduct of a child I
32		
33		
34	(fff)	ORS 163.689, Possession of materials depicting sexually explicit conduct of a child II
35		
36		
37	(ggg)	ORS 163.693, Failure to report child pornography
38		
39	(hhh)	ORS 163.700, Invasion of personal privacy
40		
41	(iii)	ORS 163.732, Stalking
42		
43	(jjj)	ORS 163.750, Violating court's stalking protective order
44		
45	(kkk)	ORS 164.057, Aggravated theft I
46		

DHS Criminal Records Check Rules on Providers

1	(LLL)	ORS 164.055, Theft I
2		
3	(mmm)	ORS 164.075, Theft by extortion
4		
5	(nnn)	ORS 164.085, Theft by deception
6		
7	(ooo)	ORS 164.125, Theft of services
8		
9	(ppp)	ORS 164.135, Unauthorized use of a vehicle
10		
11	(qqq)	ORS 164.225, Burglary I
12		
13	(rrr)	ORS 164.215, Burglary II
14		
15	(sss)	ORS 164.315, Arson II
16		
17	(ttt)	ORS 164.325, Arson I
18		
19	(uuu)	ORS 164.377, Computer crime
20		
21	(vvv)	ORS 164.395, Robbery III
22		
23	(www)	ORS 164.405, Robbery II
24		
25	(xxx)	ORS 164.415, Robbery I
26		
27	(yyy)	ORS 165.013, Forgery I
28		
29	(zzz)	ORS 165.022, Criminal possession of a forged instrument I
30		
31	(aaaa)	ORS 165.055, Fraudulent use of a credit card
32		
33	(bbbb)	ORS 165.065, Negotiating a bad check
34		
35	(cccc)	ORS 165.581, Cellular counterfeiting I
36		
37	(dddd)	ORS 165.800, Identity theft
38		
39	(eeee)	ORS 166.005, Treason
40		
41	(ffff)	ORS 166.085, Abuse of corpse II
42		
43	(gggg)	ORS 166.087, Abuse of corpse I
44		
45	(hhhh)	ORS 166.155, Intimidation II
46		

DHS Criminal Records Check Rules on Providers

1	(iii)	ORS 166.165, Intimidation I
2		
3	(jjj)	ORS 166.220, Unlawful use of weapon
4		
5	(kkk)	ORS 166.270, Possession of weapons by certain felons
6		
7	(LLL)	ORS 166.272, Unlawful possession of machine guns, certain short-barreled firearms and firearm silencers
8		
9		
10	(mmm)	ORS 166.275, Possession of weapons by inmates of institutions
11		
12	(nnn)	ORS 166.429, Firearms used in felony
13		
14	(ooo)	ORS 166.720, Racketeering activity unlawful
15		
16	(ppp)	ORS 167.012, Promoting prostitution
17		
18	(qqq)	ORS 167.017, Compelling prostitution
19		
20	(rrr)	ORS 167.062, Sadomasochistic abuse or sexual conduct in live show
21		
22	(sss)	ORS 167.065, Furnishing obscene materials to minors
23		
24	(ttt)	ORS 167.070, Sending obscene materials to minors
25		
26	(uuu)	ORS 167.075, Exhibiting an obscene performance to a minor
27		
28	(vvv)	ORS 167.080, Displaying obscene materials to minors
29		
30	(www)	ORS 167.087, Disseminating obscene material
31		
32	(xxx)	ORS 167.212, Tampering with drug records
33		
34	(yyy)	ORS 167.262, Adult using minor in commission of controlled substance offense
35		
36		
37	(zzz)	ORS 167.315, Animal abuse II
38		
39	(aaaa)	ORS 167.320, Animal abuse I
40		
41	(bbbb)	ORS 167.322, Aggravated animal abuse I
42		
43	(cccc)	ORS 167.333, Sexual assault of animal
44		
45	(dddd)	ORS 181.599, Failure to report as sex offender
46		

DHS Criminal Records Check Rules on Providers

1	(eeee)	ORS 433.010, Spreading disease (willfully) prohibited
2		
3	(ffff)	ORS 475.525, Sale of drug paraphernalia prohibited
4		
5	(ggggg)	ORS 475.805, Providing hypodermic device to minor prohibited
6		
7	(hhhhh)	ORS 475.840, Prohibited acts generally (regarding drug crimes)
8		
9	(iiii)	ORS 475.846, Unlawful manufacture of heroin
10		
11	(jjjj)	ORS 475.848, Unlawful manufacture of heroin within 1,000 feet of school
12		
13	(kkkkk)	ORS 475.850, Unlawful delivery of heroin
14		
15	(LLLLL)	ORS 475.852, Unlawful delivery of heroin within 1,000 feet of school
16		
17	(mmmmm)	ORS 475.854, Unlawful possession of heroin
18		
19	(nnnnn)	ORS 475.856, Unlawful manufacture of marijuana
20		
21	(ooooo)	ORS 475.858, Unlawful manufacture of marijuana within 1,000 feet of school
22		
23		
24	(ppppp)	ORS 475.860, Unlawful delivery of marijuana
25		
26	(qqqqq)	ORS 475.862, Unlawful delivery of marijuana within 1,000 feet of school
27		
28	(rrrrr)	ORS 475.864, Unlawful possession of marijuana
29		
30	(sssss)	ORS 475.866, Unlawful manufacture of 3,4-methylenedioxymethamphetamine
31		
32		
33	(ttttt)	ORS 475.868, Unlawful manufacture of 3,4-methylenedioxymethamphetamine within 1,000 feet of school
34		
35		
36	(uuuuu)	ORS 475.870, Unlawful delivery of 3,4-methylenedioxymethamphetamine
37		
38	(vvvvv)	ORS 475.872, Unlawful delivery of 3,4-methylenedioxymethamphetamine within 1,000 feet of school
39		
40		
41	(wwwww)	ORS 475.874, Unlawful possession of 3,4-methylenedioxymethamphetamine
42		
43		
44	(xxxxx)	ORS 475.876, Unlawful manufacture of cocaine
45		

DHS Criminal Records Check Rules on Providers

1	(yyyyy)	ORS 475.878, Unlawful manufacture of cocaine within 1,000 feet of school
2		
3		
4	(zzzzz)	ORS 475.880, Unlawful delivery of cocaine
5		
6	(aaaaa)	ORS 475.882, Unlawful delivery of cocaine within 1,000 feet of school
7		
8	(bbbbbb)	ORS 475.884, Unlawful possession of cocaine
9		
10	(ccccc)	ORS 475.886, Unlawful manufacture of methamphetamine
11		
12	(dddddd)	ORS 475.888, Unlawful manufacture of methamphetamine within 1,000 feet of school
13		
14		
15	(eeeeee)	ORS 475.890, Unlawful delivery of methamphetamine
16		
17	(ffffff)	ORS 475.892, Unlawful delivery of methamphetamine within 1,000 feet of school
18		
19		
20	(gggggg)	ORS 475.894, Unlawful possession of methamphetamine
21		
22	(hhhhhh)	ORS 475.904, Unlawful delivery of controlled substance within 1,000 feet of school
23		
24		
25	(iiiiii)	ORS 475.906, Penalties for distribution to minors
26		
27	(jjjjjj)	ORS 475.910, Application of controlled substance to the body of another person
28		
29		
30	(kkkkkk)	ORS 475.914, Prohibited acts for registrants (with the State Board of Pharmacy)
31		
32		
33	(LLLLLL)	ORS 677.080, Prohibited acts (regarding the practice of medicine)
34		
35	(mmmmmm)	ORS 685.990, Penalties (pertaining to naturopathic medicine)
36		
37	(nnnnnn)	Any federal crime
38		
39	(oooooo)	Any U.S. military crime
40		
41	(pppppp)	Any unclassified felony defined in Oregon Revised Statutes not listed elsewhere in this rule
42		
43		
44	(qqqqqq)	Any other felony in Oregon Revised Statutes not listed elsewhere in this rule that is serious and indicates behavior that poses a threat or jeopardizes the safety of vulnerable persons, as determined by the AD
45		
46		

DHS Criminal Records Check Rules on Providers

- 1
2 (rrrrrr) Any felony in a jurisdiction outside Oregon that is not the substantial
3 equivalent of any of the Oregon crimes listed in this section but that is
4 serious and indicates behavior that poses a threat or jeopardizes the safety
5 of vulnerable persons, as determined by the AD
6
- 7 (ssssss) Any crime of attempt, solicitation, or conspiracy to commit a crime listed
8 in this section pursuant to ORS 161.405, 161.435, or 161.450, including
9 any crime based on criminal liability for conduct of another pursuant to
10 ORS 161.155
11
- 12 (tttttt) Any crime in any other jurisdiction that is the substantial equivalent of any
13 of the Oregon crimes listed in section (1) as determined by the AD
14
- 15 (uuuuuu) Any crime that is no longer codified in Oregon or other jurisdiction but
16 that is the substantial equivalent of any of the crimes listed in section (1)
17 as determined by the AD
18
- 19 (2) **TEN-YEAR REVIEW.** The crimes listed in this section are crimes that require that a
20 fitness determination be completed if the date of conviction is within ten years of the date
21 the DHS Criminal History Request form was signed or the date the Department
22 conducted a criminal records check due to imminent risk.
23
- 24 (a) ORS 133.076 Failure to appear on criminal citation
25
- 26 (b) ORS 162.015, Bribe giving
27
- 28 (c) ORS 162.025, Bribe receiving
29
- 30 (d) ORS 162.065, Perjury
31
- 32 (e) ORS 162.075, False swearing
33
- 34 (f) ORS 162.117, Public investment fraud
35
- 36 (g) ORS 162.145, Escape III
37
- 38 (h) ORS 162.175, Unauthorized departure
39
- 40 (i) ORS 162.185, Supplying contraband
41
- 42 (j) ORS 162.195, Failure to appear II
43
- 44 (k) ORS 162.205, Failure to appear I
45
- 46 (L) ORS 162.247, Interfering with a peace officer

DHS Criminal Records Check Rules on Providers

- 1
2 (m) ORS 162.265, Bribing a witness
3
4 (n) ORS 162.275, Bribe receiving by a witness
5
6 (o) ORS 162.295, Tampering with physical evidence
7
8 (p) ORS 162.305, Tampering with public records
9
10 (q) ORS 162.315, Resisting arrest
11
12 (r) ORS 162.335, Compounding
13
14 (s) ORS 162.355, Simulating legal process
15
16 (t) ORS 162.365, Criminal impersonation
17
18 (u) ORS 162.367, Criminal impersonation of peace officer
19
20 (v) ORS 162.369, Possession of false law enforcement identification card
21
22 (w) ORS 162.375, Initiating a false report
23
24 (x) ORS 162.385, Giving false information to police officer for a citation
25
26 (y) ORS 162.405, Official misconduct II
27
28 (z) ORS 162.415, Official misconduct I
29
30 (aa) ORS 162.425, Misuse of confidential information
31
32 (bb) ORS 163.195, Recklessly endangering another person
33
34 (cc) ORS 163.212, Unlawful use of an electrical stun gun, tear gas, or mace II
35
36 (dd) ORS 163.245, Custodial interference II
37
38 (ee) ORS 163.467, Private indecency
39
40 (ff) ORS 164.043, Theft III
41
42 (gg) ORS 164.045, Theft II
43
44 (hh) ORS 164.095, Theft by receiving
45
46 (ii) ORS 164.140, Criminal possession of rented or leased personal property

DHS Criminal Records Check Rules on Providers

1		
2	(jj)	ORS 164.162, Mail theft or receipt of stolen mail
3		
4	(kk)	ORS 164.235, Possession of a burglary tool or theft device
5		
6	(LL)	ORS 164.255, Criminal trespass I
7		
8	(mm)	ORS 164.265, Criminal trespass while in possession of firearm
9		
10	(nn)	ORS 164.272, Unlawful entry into motor vehicle
11		
12	(oo)	ORS 164.354, Criminal mischief II
13		
14	(pp)	ORS 164.365, Criminal mischief I
15		
16	(qq)	ORS 164.369, Interfering with police animal
17		
18	(rr)	ORS 165.007, Forgery II
19		
20	(ss)	ORS 165.017, Criminal possession of a forged instrument II
21		
22	(tt)	ORS 165.032, Criminal possession of a forgery device
23		
24	(uu)	ORS 165.037, Criminal simulation
25		
26	(vv)	ORS 165.042, Fraudulently obtaining a signature
27		
28	(ww)	ORS 165.070, Possessing fraudulent communications device
29		
30	(xx)	ORS 165.074, Unlawful factoring of credit card transaction
31		
32	(yy)	ORS 165.080, Falsifying business records
33		
34	(zz)	ORS 165.085, Sports bribery
35		
36	(aaa)	ORS 165.090, Sports bribe receiving
37		
38	(bbb)	ORS 165.095, Misapplication of entrusted property
39		
40	(ccc)	ORS 165.100, Issuing a false financial statement
41		
42	(ddd)	ORS 165.102, Obtaining execution of documents by deception
43		
44	(eee)	ORS 165.540, Obtaining contents of communication
45		
46	(fff)	ORS 165.543, Interception of communications

DHS Criminal Records Check Rules on Providers

1		
2	(ggg)	ORS 165.570, Improper use of 9-1-1 emergency reporting system
3		
4	(hhh)	ORS 165.572, Interference with making a report
5		
6	(iii)	ORS 165.577, Cellular counterfeiting III
7		
8	(jjj)	ORS 165.579, Cellular counterfeiting II
9		
10	(kkk)	ORS 165.692, Making false claim for health care payment
11		
12	(LLL)	ORS 166.015, Riot
13		
14	(mmm)	ORS 166.023, Disorderly conduct I
15		
16	(nnn)	ORS 166.025, Disorderly conduct II
17		
18	(ooo)	ORS 166.065, Harassment
19		
20	(ppp)	ORS 166.076, Abuse of a memorial to the dead
21		
22	(qqq)	ORS 166.090, Telephonic harassment
23		
24	(rrr)	ORS 166.116, Interfering with public transportation
25		
26	(sss)	ORS 166.180, Negligently wounding another
27		
28	(ttt)	ORS 166.190, Pointing firearm at another
29		
30	(uuu)	ORS 166.240, Carrying of concealed weapon
31		
32	(vvv)	ORS 166.250, Unlawful possession of firearms
33		
34	(www)	ORS 166.370, Possession of firearm or dangerous weapon in public building or court facility; exceptions; discharging firearm at school
35		
36		
37	(xxx)	ORS 166.382, Possession of destructive device prohibited
38		
39	(yyy)	ORS 166.384, Unlawful manufacture of destructive device
40		
41	(zzz)	ORS 166.470, Limitations and conditions for sales of firearms
42		
43	(aaaa)	ORS 166.480, Sale or gift of explosives to children
44		
45	(bbbb)	ORS 166.649, Throwing an object off an overpass II
46		

DHS Criminal Records Check Rules on Providers

1	(cccc)	ORS 166.651, Throwing an object off an overpass I
2		
3	(dddd)	ORS 166.660, Unlawful paramilitary activity
4		
5	(eeee)	ORS 167.007, Prostitution
6		
7	(ffff)	ORS 167.090, Publicly displaying nudity or sex for advertising purposes
8		
9	(gggg)	ORS 167.222, Frequenting a place where controlled substances are used
10		
11	(hhhh)	ORS 167.325, Animal neglect II
12		
13	(iiii)	ORS 167.330, Animal neglect I
14		
15	(jjjj)	ORS 167.355, Involvement in animal fighting
16		
17	(kkkk)	ORS 167.365, Dogfighting
18		
19	(LLLL)	ORS 167.370, Participation in dogfighting
20		
21	(mmmm)	ORS 167.820, Concealing the birth of an infant
22		
23	(nnnn)	ORS 192.865 Criminal penalty (pertaining to Address Confidentiality Program)
24		
25		
26	(oooo)	ORS 411.630, Unlawfully obtaining public assistance
27		
28	(pppp)	ORS 411.675, Submitting wrongful claim or payment (e.g., public assistance)
29		
30		
31	(qqqq)	ORS 411.840, Unlawfully obtaining or disposing of food stamp benefits
32		
33	(rrrr)	ORS 417.990, Penalty for placement of children in violation of compact
34		
35	(ssss)	ORS 418.130, Unauthorized use and custody of records of temporary assistance for needy families program
36		
37		
38	(tttt)	ORS 418.140, Sharing assistance prohibited
39		
40	(uuuu)	ORS 418.250, Supervision of child-caring agencies
41		
42	(vvvv)	ORS 418.327, Licensing of certain schools and organizations offering residential programs
43		
44		
45	(wwww)	ORS 418.630, Operate uncertified foster home
46		

DHS Criminal Records Check Rules on Providers

1	(xxxx)	ORS 471.410, Providing liquor to persons under 21 or to intoxicated persons; allowing consumption by minor on property
2		
3		
4	(yyyy)	ORS 475.990, Commercial drug offense
5		
6	(zzzz)	ORS 475.912, Unlawful delivery of imitation controlled substance
7		
8	(aaaaa)	ORS 475.916, Prohibited acts involving records and fraud
9		
10	(bbbbb)	ORS 475.950, Failure to report precursor substances transaction
11		
12	(ccccc)	ORS 475.955, Failure to report missing precursor substances
13		
14	(ddddd)	ORS 475.960, Illegally selling drug equipment
15		
16	(eeeee)	ORS 475.965, Providing false information on precursor substances report
17		
18	(fffff)	ORS 657A.280, Failure to certify child care facility
19		
20	(ggggg)	ORS 803.230, Forging, altering or unlawfully producing or using title or registration
21		
22		
23	(hhhhh)	ORS 807.620, Giving false information to police officer
24		
25	(iiiiii)	ORS 811.060, Vehicular assault of bicyclist or pedestrian
26		
27	(jjjjj)	ORS 811.140, Reckless driving
28		
29	(kkkkk)	ORS 811.540, Fleeing or attempting to elude police officer
30		
31	(LLLLL)	ORS 811.700, Failure to perform duties of driver when property is damaged
32		
33		
34	(mmmmm)	ORS 811.705, Failure to perform duties of driver to injured persons
35		
36	(nnnnn)	ORS 819.300, Possession of a stolen vehicle
37		
38	(ooooo)	ORS 830.475, Failure to perform the duties of an operator (boat)
39		
40	(ppppp)	Any unclassified misdemeanor defined in Oregon Revised Statutes not listed elsewhere in this rule
41		
42		
43	(qqqqq)	Any other misdemeanor in Oregon Revised Statutes not listed elsewhere in this rule that is serious and indicates behavior that poses a threat or jeopardizes the safety of vulnerable persons, as determined by the AD
44		
45		
46		

DHS Criminal Records Check Rules on Providers

- 1 (rrrrr) Any misdemeanor in a jurisdiction outside Oregon that is not the
2 substantial equivalent of any of the Oregon crimes listed in section (2) but
3 that is serious and indicates behavior that poses a threat or jeopardizes the
4 safety of vulnerable persons, as determined by the AD. If a misdemeanor
5 in a jurisdiction outside Oregon is similar to a violation in Oregon, then it
6 cannot be considered potentially disqualifying under this section.
7
- 8 (sssss) Any crime of attempt, solicitation or conspiracy to commit a crime listed
9 in this section pursuant to ORS 161.405 or 161.435, including any
10 conviction based on criminal liability for conduct of another pursuant to
11 ORS 161.155
12
- 13 (ttttt) Any crime in any other jurisdiction which is the substantial equivalent of
14 any of the Oregon crimes listed in section (2) as determined by the AD
15
- 16 (uuuuu) Any crime which is no longer codified in Oregon, but which is the
17 substantial equivalent of any of the crimes listed in section (2) as
18 determined by the AD
19
- 20 (3) **FIVE-YEAR REVIEW.** The crimes listed in this section are crimes which require that a
21 fitness determination be completed if the date of conviction is within five years of the
22 date the DHS Criminal History Request form was signed or the date the Department
23 conducted a criminal records check due to imminent risk.
24
- 25 (a) ORS 162.085, Unsworn falsification
26
- 27 (b) ORS 162.235, Obstructing governmental or judicial administration
28
- 29 (c) ORS 164.245, Criminal trespass II
30
- 31 (d) ORS 164.335, Reckless burning
32
- 33 (e) ORS 164.345, Criminal mischief III
34
- 35 (f) ORS 165.555, Unlawful telephone solicitation of contributions for
36 charitable purposes
37
- 38 (g) ORS 166.075, Abuse of venerated objects
39
- 40 (h) ORS 166.095, Misconduct with emergency telephone calls
41
- 42 (i) ORS 167.340, Animal abandonment
43
- 44 (j) ORS 811.182, Criminal driving while suspended or revoked
45
- 46 (k) ORS 813.010, Driving under the influence of intoxicants (DUII)

DHS Criminal Records Check Rules on Providers

- 1
- 2 (L) ORS 830.315, Reckless operation of a boat
- 3
- 4 (m) ORS 830.325, Operating boat while under influence of intoxicating liquor
- 5 or controlled substance
- 6
- 7 (n) ORS 830.730, False information to peace officer or State Marine Board
- 8
- 9 (o) Any conviction for attempt, solicitation or conspiracy to commit a crime
- 10 listed in this section pursuant to ORS 161.405 or 161.435, including any
- 11 conviction based on criminal liability for conduct of another pursuant to
- 12 ORS 161.155
- 13
- 14 (p) Any crime in any other jurisdiction which is the substantial equivalent of
- 15 any of the Oregon crimes listed in section (3) as determined by the AD
- 16
- 17 (q) Any crime which is no longer codified in Oregon, but which is the
- 18 substantial equivalent of any of the crimes listed in section (3) as
- 19 determined by the AD
- 20

- 21 (4) **EVALUATION BASED ON OREGON LAWS.** Evaluations of crimes may be based
- 22 on Oregon laws and laws in other jurisdictions in effect at the time of the fitness
- 23 determination, regardless of the jurisdiction in which the conviction occurred.
- 24
- 25 (5) **JUVENILE RECORDS.** Under no circumstances shall a SI be denied under these rules
- 26 due to the existence or contents of a juvenile record that has been expunged pursuant to
- 27 ORS 419A.260 through 419A.262.
- 28
- 29 (6) **ADULT RECORDS.** Under no circumstances shall an SI be denied under these rules
- 30 due to the existence or contents of an adult record that has been set aside pursuant to ORS
- 31 137.225.
- 32

33 *Stat. Auth.: ORS 181.537, 409.050*
34 *Stats. Implemented: ORS 181.534, 181.537, 409.010*
35 *Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05;*
36 *Renumbered from 410-007-0280, DHS 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHS 10-2008, f.*
37 *12-26-08, cert. ef. 1-1-09; DHS 2-2009, f. & cert. ef. 4-1-09*
38

39 **407-007-0290 Other Potentially Disqualifying Conditions**

40
41 The following are potentially disqualifying conditions:

- 42
- 43 (1) **FALSE STATEMENT.** A “false statement” by the SI to the QE, AD, or Department,
- 44 including provision of materially false information, false information regarding criminal
- 45 records, or failure to disclose information regarding criminal records.

DHS Criminal Records Check Rules on Providers

- 1
2 (2) **SEX OFFENDER.** The SI is a registered sex offender in Oregon or any other
3 jurisdiction. There is a rebuttable presumption that an SI is likely to engage in conduct
4 that would pose a significant risk to vulnerable individuals if the SI has been designated a
5 predatory sex offender as provided in ORS 181.585 or found to be a sexually violent
6 dangerous offender under ORS 144.635 (or similar statutes in other jurisdictions).
7
- 8 (3) **WARRANTS.** An outstanding warrant against the SI for any crime in any jurisdiction.
9
- 10 (4) **DEFERRED SENTENCE, DIVERSION PROGRAM.** The SI has a deferred sentence,
11 conditional discharge, or is participating in a diversion program for any potentially
12 disqualifying crime.
13
- 14 (5) **PROBATION, PAROLE, OR POST-SUPERVISION.** The SI is currently on
15 probation, parole, or post-prison supervision for any crime, regardless of the original
16 conviction date (or date of guilty or no contest plea if there is no conviction date).
17
- 18 (6) **PAROLE OR PROBATION VIOLATION.** The SI is found in violation of post-prison
19 supervision, parole, or probation for any crime regardless of the original conviction date
20 (or date of guilty or no contest plea if there is no conviction date) within five years or less
21 from the date the DHS Criminal History Request form was signed or the date the
22 Department conducted a criminal records check due to imminent danger.
23
- 24 (7) **UNRESOLVED ARRESTS, CHARGES OR INDICTMENTS.** An unresolved arrest,
25 charge, or a pending indictment, for any crime in any jurisdiction.
26
- 27 (8) **JUVENILE ADJUDICATION.** Adjudication in a juvenile court, finding that the SI was
28 responsible for a potentially disqualifying crime that would result in a conviction if
29 committed by an adult.
30
- 31 (9) **GUILTY EXCEPT FOR INSANITY.** A finding of “guilty except for insanity,” “guilty
32 except by reason of insanity,” “not guilty by reason of insanity,” “responsible except for
33 insanity,” or similarly worded disposition regarding a potentially disqualifying crime.
34
- 35 (10) **CHILD PROTECTIVE SERVICES IN CERTAIN DEPARTMENT PROGRAMS.**
36 Child protective services reports that show behavior or conduct by the SI that would pose
37 a risk to or jeopardize the safety of vulnerable individuals. This potentially disqualifying
38 condition only applies when Department administrative rules specifically require a
39 protective services background check as part of the application process including but not
40 limited to child foster homes, adoptive families, licensed private child caring agencies, or
41 child care providers.
42

43 *Stat. Auth.: ORS 181.537, 409.050*

44 *Stats. Implemented: ORS 181.534, 181.537, 409.010*

1 *Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05;*
2 *Renumbered from 410-007-0290, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f.*
3 *12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09*
4

5 **407-007-0300** **Other Information Considered**

6
7 (1) **CONSIDERATION OF OTHER INFORMATION.** If a SI has potentially
8 disqualifying crimes or conditions, the AD shall perform a weighing test, considering the
9 potentially disqualifying crimes or conditions and any other information disclosed by the
10 SI or which is otherwise known by the AD. This information includes but is not limited
11 to:

- 12
- 13 (a) **Potentially disqualifying crimes or conditions.** Circumstances regarding the
14 nature of potentially disqualifying crimes and conditions And the details of
15 incidents leading to the charges of potentially disqualifying crimes or resulting in
16 potentially disqualifying conditions.
- 17
- 18 (b) **Age.** Age of the SI at time of the potentially disqualifying crime or condition.
- 19
- 20 (c) **Relationships.** Domestic relationships or situations, when applicable.
- 21
- 22 (d) **Supporting facts.** Facts that support the conviction or potentially disqualifying
23 condition.
- 24
- 25 (e) **Time.** Passage of time since commission of the potentially disqualifying crime or
26 condition.
- 27
- 28 (f) **Other laws.** Consideration of Oregon or federal laws, regulations, or rules
29 covering the position, facility, employer, or QE, in regard to the potentially
30 disqualifying crimes or conditions.
- 31
- 32 (g) **Additional criminal activity or other related behavior.** Other information
33 related to criminal activity including charges, arrests, pending indictments, and
34 convictions. Other behavior involving contact with law enforcement may also be
35 reviewed if information is relevant to other criminal records or shows a pattern
36 relevant to criminal record.
- 37
- 38 (h) **Incarceration.** Periods of incarceration.
- 39
- 40 (i) **Community supervision.** Status of and compliance with parole, post-prison
41 supervision, or probation.
- 42
- 43 (j) **Expungement.** Whether a conviction was set aside and the legal effect of setting
44 aside the conviction.
- 45

1 not respond in a stated time period, the AD shall make a fitness determination, if
2 possible, based on the potentially disqualifying crimes or conditions and the available
3 information, or close the case.
4

5 *Stat. Auth.: ORS 181.537, 409.050*

6 *Stats. Implemented: ORS 181.534, 181.537, 409.010*

7 *Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05;*

8 *Renumbered from 410-007-0300, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f.*
9 *12-26-08, cert. ef. 1-1-09*
10

11 **407-007-0320 Fitness Determinations**

12
13 (1) **PRELIMINARY FITNESS DETERMINATION.** A preliminary fitness determination
14 is required to determine if an SI may work, volunteer, be employed, or otherwise perform
15 in positions prior to a final fitness determination. The Department or QE may not allow
16 an SI to work, volunteer, or otherwise perform in positions covered by these rules prior to
17 the completion of a preliminary fitness determination.
18

19 (a) **DHS Criminal History Request form completed.** A DHS Criminal History
20 Request form must have been completed by the SI and reviewed by the AD or CP.
21

22 (b) **Probationary status not allowed by program rules.** If probationary status is not
23 allowed by program rules, then a preliminary fitness determination is not
24 required, and the QE may not allow an SI to work, volunteer, or otherwise
25 perform in positions covered by these rules prior to the completion of the final
26 fitness determination.
27

28 (c) **Preliminary fitness determination outcomes.** After review of the DHS Criminal
29 History Request form, the AD or CP shall make one of the following
30 determinations:
31

32 (A) **Probationary status.** Probationary status is applicable only during the
33 timeframe prior to a final fitness determination. An SI may be hired or
34 accepted into a position on a preliminary basis and allowed to participate
35 in training, orientation, and work activities of volunteering, employment,
36 or other positions covered by these rules, under the one of the following
37 circumstances:
38

39 (i) If there is no indication of a potentially disqualifying crime or
40 condition on the DHS Criminal History Request form and the
41 AD or CP have no reason to believe the SI has potentially
42 disqualifying history.
43

44 (ii) When the SI discloses convictions or arrests for a potentially
45 disqualifying crime, or any other potentially disqualifying

DHS Criminal Records Check Rules on Providers

1 condition, the SI may be hired on a preliminary basis only after
2 the completion of a weighing test by an AD. The SI may be
3 placed on probationary status only if, based on information
4 available at the time, the AD determines that more likely than not
5 that the SI poses no potential threat to vulnerable individuals.
6

7 (B) **No hiring allowed.** The AD may not place an SI on probationary status if
8 the local AD or Department determines that:

- 9
- 10 (i) The SI may pose a potential threat to vulnerable individuals;
 - 11 (ii) The SI is currently involved in contesting a criminal records check
12 under these or other Department criminal records check rules; or
 - 13 (iii) The SI has previously been denied under these rules or other
14 Department criminal records check rules.
 - 15 (iv) This prohibition against hiring may only be waived by the
16 Department.
17

18 (d) **Active supervision.** An SI who is on probationary status shall be actively
19 supervised at all times by an individual who has been approved without
20 restrictions pursuant to these rules or previous Department criminal records check
21 rules.
22

23 (A) At all times the individual providing active supervision shall follow all of
24 these conditions:
25

- 26 (i) Be in the same building as the SI or, if outdoors of QE buildings or
27 any location off the QE property, be within line-of-sight and within
28 hearing, except as provided in subsection (1)(d)(B) of this rule;
- 29 (ii) Know where the SI is and what the SI is doing; and
- 30 (iii) Periodically observe the actions of the SI.
31

32 (B) A client of the Department, an adult client's adult relation, or a child's
33 parent or guardian, may provide active supervision without a criminal
34 records check:
35

- 36 (i) The client may actively supervise a homecare worker, personal
37 care services provider, or independent provider if the client makes
38 an informed decision to employ the provider. Someone related to
39 the client may also provide active supervision if the relative has
40 been approved by the AD.
41

DHS Criminal Records Check Rules on Providers

- 1 (ii) A child’s parent or guardian has the responsibility for providing
- 2 active supervision in the case of child care providers. The
- 3 supervision is not required to be performed by someone in the
- 4 same building as the child.
- 5
- 6 (e) **Exemption from active supervision.** An SI who was approved without
- 7 restrictions within the previous 24 months through a documented criminal records
- 8 check pursuant to these rules or prior Department criminal records check rules
- 9 may function on probationary status without active supervision. Twenty-four
- 10 months is calculated from date of previous approval to the date of hire in the new
- 11 position. This exemption is not allowed in any of the following situations:
- 12
- 13 (A) If the SI cannot provide documented proof that he or she worked
- 14 continuously under the previous approval for at least one year.
- 15
- 16 (B) If there is evidence of criminal activity within the previous 24 months.
- 17
- 18 (C) If, as determined by the AD or the Department, the job duties in the new
- 19 position are so substantially different from the previous position that the
- 20 previous fitness determination is inadequate for the current position.
- 21
- 22 (f) **Revocation.** Revocation of probationary status is not subject to hearing or appeal.
- 23 The QE or the Department may immediately revoke probationary status based on
- 24 any of the following reasons:
- 25
- 26 (A) There is any indication of falsification of application.
- 27
- 28 (B) The SI fails to disclose convictions for any potentially disqualifying
- 29 crimes, any arrests that did not result in convictions, or any out of state
- 30 arrests or convictions.
- 31
- 32 (C) The QE or Department determines that probationary status is not
- 33 appropriate, based on the application, criminal record, position duties, or
- 34 program rules.
- 35
- 36 (g) **Hiring or placement not required.** Nothing in this rule is intended to require
- 37 that an SI who is eligible for probationary status be hired or accepted into a
- 38 position covered by these rules on a preliminary basis or be allowed to participate
- 39 in training, orientation, and work activities of volunteering, employment, or other
- 40 positions covered by these rules.
- 41
- 42 (2) **FINAL FITNESS DETERMINATION.** The AD shall conduct a final fitness
- 43 determination after all necessary criminal records checks have been completed. The AD
- 44 may obtain and consider additional information as necessary to complete the final fitness
- 45 determination.
- 46

DHS Criminal Records Check Rules on Providers

- 1 (a) **Final fitness determination outcomes.** The AD may make one of the following
2 fitness determinations:
3
- 4 (A) **Approved.** The AD may approve an SI if:
5
- 6 (i) The SI has no potentially disqualifying crimes or potentially
7 disqualifying conditions; or
8
- 9 (ii) The SI has potentially disqualifying crimes or potentially
10 disqualifying conditions and, after a weighing test, the AD
11 determines that more likely than not that the SI poses no risk to
12 vulnerable individuals.
13
- 14 (B) **Approved with restrictions.** The AD may approve an SI with restrictions
15 if the AD determines that more likely than not that the SI poses no risk to
16 the physical, emotional or financial well-being of vulnerable individuals,
17 if certain restrictions are placed on the SI. Such restrictions may include
18 but are not limited to restrictions to one or more specific clients, job
19 duties, or environments. A new criminal records check and fitness
20 determination shall be completed on the SI before removing a restriction.
21
- 22 (C) **Denied.** The AD shall deny an SI whom it determines, after a weighing
23 test, more likely than not poses a risk to the physical, emotional or
24 financial well-being of vulnerable individuals.
25
- 26 (b) **Fitness determination by the Department.**
27
- 28 (A) The Department shall complete a fitness determinations for any SI for
29 whom a national or state-specific criminal records check is completed.
30
- 31 (B) The Department may make the fitness determination for any new DHS
32 Criminal History Request form received regarding an SI with the
33 following history:
34
- 35 (i) The SI has previously been denied under these rules or other
36 Department criminal records check rules; or
37
- 38 (ii) The SI has a history of previous fitness determinations requiring
39 weighing tests which were completed by the Department.
40
- 41 (C) If after conducting a criminal records check the Department determines
42 that, based on the presence of a potentially disqualifying crime or
43 condition, there is a potential for imminent danger to vulnerable
44 individuals, the Department may make a fitness determination.
45

DHS Criminal Records Check Rules on Providers

- 1 (D) The Department shall conduct a fitness determination if requested by a QE
2 when the QE is temporarily unable to provide an AD to conduct a fitness
3 determination.
4
- 5 (E) If an AD requests technical assistance, the Department may provide
6 technical assistance or make the fitness determination.
7
- 8 (F) If the Department has reason to believe a fitness determination has not
9 been conducted in compliance with these rules, the Department may
10 repeat the criminal records check and conduct a fitness determination.
11
- 12 (G) The Department may review fitness determinations made by local ADs
13 and make a new fitness determination at its discretion.
14
- 15 (H) The Department may conduct the fitness determination if the QE or AD is
16 under investigation regarding compliance with these rules.
17
- 18 (c) **Department decision.** A QE, including its ADs and CPs, may not overturn a
19 fitness determination made by the Department.
20
- 21 (3) CLOSED CASE.
22
- 23 (a) **Incomplete application.** If the SI discontinues the application or fails to
24 cooperate with the criminal records check process, the application is considered
25 incomplete and will be closed. Discontinuance or failure to cooperate includes but
26 is not limited to the following circumstances:
27
- 28 (A) The SI refuses to be fingerprinted when required by these rules.
29
- 30 (B) The SI fails to respond within a stated period of time to a request for
31 corrections to the application, fingerprints or provide any other
32 information necessary to conduct a criminal records check and there is not
33 enough information available to make a fitness determination.
34
- 35 (C) The SI withdraws the application, leaves the position prior to completion
36 of the check, or cannot be located or contacted by the QE or Department.
37
- 38 (D) The SI is determined to be ineligible for the position for reasons other than
39 the criminal records check.
40
- 41 (b) **No hearing rights.** When the application is closed without a final fitness
42 determination, there is no right to contesting the closure.
43
- 44 (4) **NOTICE TO SI.** Upon completion of a final fitness determination, the Department or
45 AD making the decision shall provide written notice to the SI. The notice shall:
46

DHS Criminal Records Check Rules on Providers

- 1 (a) **Format.** Be in a format approved by the Department;
- 2
- 3 (b) **Appeal rights.** If denied or approved with restrictions, include information
- 4 regarding appeal rights and the notice becoming a final order in the event of a
- 5 withdrawal or failure to appear at the hearing; and
- 6
- 7 (c) **Timely delivery.** Be mailed or hand-delivered to the SI as soon as possible, but
- 8 no later than 14 calendar days after the decision. The effective date of action shall
- 9 be recorded on the form.
- 10
- 11 (5) **TERMINATION FOLLOWING DENIAL OR CLOSED CASE.** When an SI is
- 12 denied or a case is closed, the SI shall not be allowed to work, volunteer, be employed, or
- 13 otherwise perform in positions covered by these rules. A denial or closed case applies
- 14 only to the position and application in question. A denial or closed case shall result in
- 15 immediate dismissal.
- 16
- 17 (6) **DOCUMENTATION.** Preliminary and final fitness determinations must be documented
- 18 in writing, including any details as needed including but not limited to the weighing test,
- 19 restrictions in a restricted approval, the potentially disqualifying crimes or convictions in
- 20 a denial, or the reasons for a closed case.
- 21
- 22 (7) **NO BINDING PRECEDENT.** The Department or AD shall make new fitness
- 23 determinations for each application. The outcome of previous fitness determinations does
- 24 not ensure the same outcome of a new fitness determination.
- 25

26 *Stat. Auth.: ORS 181.537, 409.050*

27 *Stats. Implemented: ORS 181.537, 409.010*

28 *Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05;*

29 *Renumbered from 410-007-0320, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f.*

30 *12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09*

31

32 **407-007-0330 Contesting a Fitness Determination**

- 33
- 34 (1) **FITNESS DETERMINATIONS TO CONTEST.** A final fitness determination of
- 35 denied or approved with restrictions is considered an adverse outcome. An SI with an
- 36 adverse outcome may contest that fitness determination.
- 37
- 38 (2) **WORK PENDING APPEAL PROHIBITED.** If an SI is denied, the SI may not hold
- 39 the position, provide services or be employed, licensed, certified, or registered; or
- 40 otherwise perform in positions covered by these rules. An SI appealing a restricted
- 41 approval may only work under the terms of the restriction during the appeal.
- 42
- 43 (3) **EMPLOYMENT NOT GUARANTEED.** If an adverse outcome is changed at any time
- 44 during the appeal process, the change does not guarantee employment or placement.
- 45

DHS Criminal Records Check Rules on Providers

- 1 (4) **CRIMINAL RECORD DISPUTED.** If an SI wishes to challenge the accuracy or
2 completeness of information provided by the OSP, the FBI, or other agencies reporting
3 information to the Department, the SI may appeal to the entity providing the information.
4 Such challenges are not subject to the Department’s appeal process.
5
- 6 (5) **LEGAL REPRESENTATION.** An SI may represent himself or herself or have a legal
7 representative during the appeal process. The SI may not be represented by a lay person.
8 In this rule, the term “SI” shall be considered to include the SI’s legal representative.
9
- 10 (6) **CHALLENGING THE FITNESS DETERMINATION.** An SI who wishes to
11 challenge an adverse fitness determination may appeal the determination by requesting a
12 contested case hearing. The appeal process is conducted in accordance with ORS 183.411
13 to 183.497 and the Attorney General’s Uniform and Model Rules of Procedure, “Office
14 of Administrative Hearings,” OAR 137-003-0501 to 137-003-0700. The SI must be
15 notified of the opportunity for appeal on a form available from the Department.
16
- 17 (a) **Appeal.** To request a contested case hearing, the SI shall complete and sign the
18 hearing request form. The form is provided to the SI at the time of the notice of
19 denial and is also available by contacting the BCU.
20
- 21 (b) **Deadline for appeal.** The completed and signed form must be received by the
22 Department no later than 45 days after the notice of the fitness determination is
23 signed by the AD.
24
- 25 (c) **Untimely appeal.** In the event an appeal is not timely, the Department will
26 determine, based on a written statement from the SI and available information, if
27 there is good cause to proceed with the appeal.
28
- 29 (d) **Hearing on timeliness.** The Department may refer an untimely request to the
30 Office of Administrative Hearings (OAH) for a hearing on the issue of
31 timeliness.
32
- 33 (7) **INFORMAL ADMINISTRATIVE REVIEW.**
34
- 35 (a) **Department conducts review.** When an SI requests a contested case hearing, the
36 Department may conduct an informal administrative review before referring the
37 appeal to OAH.
38
- 39 (b) **Participation.** The SI must participate in the informal administrative review.
40 Participation may include but is not limited to providing additional information or
41 additional documents requested by the BCU within a specified amount of time.
42
- 43 (8) **CRIMINAL RECORDS CHECK.** The Department may conduct additional criminal
44 records checks during the appeal process to update or verify the SI’s criminal records.
45

1 (9) **CONTESTED CASE HEARING.**

- 2
- 3 (a) **Procedural documents and exhibits.** The Department shall provide to the
4 administrative law judge and the SI a complete copy of available information. The
5 notice of contested case and prehearing summary shall be mailed by certified mail
6 through the U.S. Postal Service. All other documents may be mailed by regular
7 first class mail.
- 8
- 9 (b) **Public attendance.** The informal conference and hearing are not open to the
10 public.
- 11
- 12 (c) **New fitness determination.** The administrative law judge shall make a new
13 fitness determination based on evidence and the contested case hearing record.
- 14
- 15 (d) **Coordination with licensure or certification hearing.** A hearing pursuant to
16 these rules may be conducted in conjunction with a licensure or certification
17 hearing for the SI.

18

19 (10) **PROPOSED AND FINAL ORDERS.**

- 20
- 21 (a) **Notice of fitness determination as final order.** In the following situations, the
22 notice of fitness determination issued is final as if the SI never requested a
23 hearing:
- 24
- 25 (A) Failure to request a hearing in the time allotted in this rule. No other
26 document will be issued after the notice of fitness determination.
- 27
- 28 (B) Withdrawal of the request for hearing at any time during the appeal
29 process.
- 30
- 31 (b) **Informal disposition.** The Department may make an informal disposition based
32 on the informal administrative review. The Department shall issue a final order
33 and new notice of fitness determination. If the resulting fitness determination is an
34 adverse outcome, the appeal shall proceed to contested case hearing.
- 35
- 36 (c) **Dismissal order.**
- 37
- 38 (A) The SI may withdraw a hearing request verbally or in writing at any time
39 before the issuance of a final order. A dismissal order due to the
40 withdrawal is effective the date the withdrawal is received by the
41 Department or the OAH. The SI may cancel the withdrawal in writing up
42 to 14 calendar days after the date of withdrawal.
- 43
- 44 (B) The Department shall dismiss a hearing request when the SI fails to
45 participate in the informal administrative review. Failure to participate in
46 the informal administrative review shall result in termination of hearing

rights. The order is effective on the due date for participation in the informal administrative review. The Department will review a good cause request to reinstate hearing rights if received in writing by the Department within 14 days.

(C) The Department 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 Department will review a good cause request to reinstate hearing rights if received in writing by the Department within 14 days.

(d) **Order after hearing.** After a hearing, the administrative law judge issues a proposed and final order.

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

(B) If timely written exceptions to the proposed and final order are received by the Department, the Department Director or the Director’s 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.

(e) **Reconsideration and rehearing.** Final orders after a contested case hearing are subject to reconsideration or rehearing petitions within 60 calendar days after the order is served, pursuant to OAR 137-003-0675.

(f) Results to QE. The Department may provide the QE with the results of the appeal.

Stat. Auth.: ORS 181.537, 409.050

Stats. Implemented: ORS 181.534, 181.537, 183.341, 409.010

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05;

Renumbered from 410-007-0330, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 2-

2008(Temp), f. & cert. ef. 3-31-08 thru 9-26-08; DHSD 7-2008, f. 8-29-08, cert. ef. 9-1-08;

DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09

407-007-0340 Record Keeping, Confidentiality

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

(a) **LEDS access.** LEDS reports are confidential and may only be shared with another AD if there is a need to know consistent with these rules.

(b) **SI Access.** The LEDS report and photocopies of the LEDS report shall not be shown or given to the SI.

(2) **NATIONAL (FBI) INFORMATION.** The results of a national criminal records check provided by the FBI or the OSP are confidential and may not be disseminated by the Department with following exceptions:

(a) **SI access.** If a fingerprint-based criminal records check was conducted on the SI, the SI shall be provided a copy of the records if requested.

(b) **Contested case hearing exhibits.** The state and national criminal offender information shall be provided as exhibits during the contested case hearing.

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

(4) **Retention.** All criminal records check documents shall be retained and destroyed in accordance with records retention schedules published by Oregon State Archives and in accordance with federal law. The Department may not re-create notices of fitness determinations to replace destroyed or lost originals.

Stat. Auth.: ORS 181.537, 409.050

Stats. Implemented: ORS 181.534, 181.537, 409.010

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05;

Renumbered from 410-007-0340, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09

407-007-0350 Immunity from Liability

(1) **FITNESS DETERMINATION.** The Department, QE, AD, or CP, acting within the course and scope of employment, have immunity from any civil liability that might otherwise be incurred or imposed for determining, in accordance with ORS 181.537 that an SI is fit or not fit to hold a position, provide services, or be employed, licensed, certified, or registered.

(2) **HIRING.** The Department, QE, AD, or CP, acting within the course and scope of employment, and an employer or employer’s agent are not liable for the failure to hire a prospective employee or the decision to discharge an employee on the basis of the QE’s decision if they in good faith comply with:

(a) ORS 181.537; and

