

1 **CHAPTER 407**
2 **DEPARTMENT OF HUMAN SERVICES**

3
4 **DIVISION 7**
5 **CRIMINAL RECORDS AND ABUSE CHECK RULES**

6
7 **Criminal Records Checks and Abuse Checks on Providers**

8
9 **EFFECTIVE 11/1/2011**

10

11	407-007-0200	Purpose and Scope	1
12	407-007-0210	Definitions.....	1
13	407-007-0220	Background Check Required.....	8
14	407-007-0230	Qualified Entities	10
15	407-007-0240	Authorized Designees and Contact Persons.....	12
16	407-007-0250	Background Check Process	17
17	407-007-0275	Disqualifying Convictions Under ORS 443.004	20
18	407-007-0280	Potentially Disqualifying Convictions	24
19	407-007-0290	Other Potentially Disqualifying Conditions.....	41
20	407-007-0300	Weighing Test	43
21	407-007-0315	Hired on a Preliminary Basis.....	45
22	407-007-0320	Final Fitness Determinations	48
23	407-007-0325	Closed Case.....	51
24	407-007-0330	Contesting a Fitness Determination	52
25	407-007-0335	Decision and Hearing Rights for Potentially Disqualifying Abuse.....	56
26	407-007-0340	Record Keeping, Confidentiality	59
27	407-007-0350	Immunity from Liability	60
28	407-007-0370	Variances	60

- 1 124.085, 419B.030, or 430.757, or a similar report filed in another state agency or by
2 another state.
- 3 (4) Appointing authority” means the individual designated by the qualified entity
4 responsible for appointing authorized designees and contact persons. Examples include
5 but are not limited to human resources staff with the authority to offer and terminate
6 employment, business owners, a member of the board of directors, a director, or a
7 program administrator.
- 8 (5) “Approved” means, with regard to a fitness determination, that a subject individual,
9 following a final fitness determination, is fit to work, volunteer, be employed, or
10 otherwise perform in the position listed on the background check request.
- 11 (6) “Approved with restrictions” means an approval in which some restriction is made
12 including but not limited to the subject individual, the subject individual’s environment,
13 the type or number of clients for whom the subject individual may provide care, or the
14 information to which the subject individual has access.
- 15 (7) “Authority” means the Oregon Health Authority.
- 16 (8) “Authorized designee (AD)” means an individual designated by the Department, the
17 Authority, or an approved qualified entity authorized by the Department or Authority to
18 receive and process background check requests from subject individuals and criminal
19 records information from the Background Check Unit.
- 20 (9) “Background check” means a criminal records check and an abuse check under these
21 rules.
- 22 (10) “Background Check Unit (BCU)” means the Background Check Unit performing
23 background checks for the Department and the Authority.
- 24 (11) “Care” means the provision of care, treatment, education, training, instruction,
25 supervision, placement services, recreation, or support to children, the elderly, or
26 individuals with disabilities (see ORS 181.537).
- 27 (12) “Children, Adults and Families Division (CAF)” means the Department’ Children, Adults
28 and Families Division.
- 29 (13) “Client” means any individual who receives services, care, or funding for care through
30 the Department or Authority.
- 31 (14) “Closed case” means a background check request that has been closed without a final
32 fitness determination.
- 33 (15) “Contact person (CP)” means an individual who is designated by the Department, the
34 Authority, or an approved qualified entity to receive and process background check

1 requests from subject individuals, but who is not authorized to receive criminal records
2 information or abuse investigation reports, associated exhibits, or documents.

3 (16) "Criminal records check" means obtaining and reviewing criminal records as required by
4 these rules and includes any or all of the following:

5 (a) An Oregon criminal records check where criminal offender information is
6 obtained from the Oregon State Police (OSP) using the Law Enforcement Data
7 System (LEDS). The Oregon criminal records check may also include a review of
8 other criminal records information.

9 (b) A national criminal records check where records are obtained from the Federal
10 Bureau of Investigation (FBI) through the use of fingerprint cards sent to OSP and
11 other identifying information. The national criminal records check may also
12 include a review of other criminal records information.

13 (c) A state-specific criminal records check where records are obtained from law
14 enforcement agencies, courts, or other criminal records information resources
15 located in, or regarding, a state or jurisdiction outside Oregon.

16 (17) "Criminal Information Management System (CRIMS)" means the electronic records
17 system used to process and maintain background check records under these rules.

18
19 (18) "Criminal offender information" means records, including fingerprints and photographs,
20 received, compiled, and disseminated by OSP for purposes of identifying criminal
21 offenders and alleged offenders and maintained as part of an individual's records of
22 arrest, the nature and disposition of criminal charges, sentencing, confinement, and
23 release, but does not include the retention by OSP of records of transfer of inmates
24 between penal institutions or other correctional facilities.. It also includes the OSP
25 Computerized Criminal History System (see OAR 257-010-0015).

26 (19) "Denied" means, with regard to a fitness determination, that a subject individual:

27 (a) Following a fitness determination including a weighing test, is not fit to work,
28 volunteer, be employed, reside, or otherwise hold the position listed on the
29 background check request.

30 (b) If determined to be a subject individual under OAR 407-007-0275, is not eligible
31 to hold the position at or through the qualified entity listed on the background
32 check request due to a conviction for one or more crimes listed in OAR 407-007-
33 0275.

34 (20) "Department" means the Department of Human Services.

- 1 (21) "Fitness determination" means the decision in a case that is not closed and includes:
- 2 (a) The decision regarding a background check request and preliminary review (a
3 preliminary fitness determination); or
- 4 (b) The decision regarding a background check request, completed background
5 check, including gathering other information as necessary, and a final review by
6 an AD (a final fitness determination).
- 7 (22) "Founded or substantiated" has the meaning given in the Department's administrative
8 rules corresponding to the setting in which the abuse was alleged or investigated.
- 9 (23) "Good cause" means a valid and sufficient reason for not complying with time frames
10 set during the background check process or contested case hearing process that
11 includes but is not limited to an explanation of circumstances beyond a subject
12 individual's reasonable control.
- 13 (24) "Hearing representative" means a Department employee representing the Department
14 in a contested case hearing.
- 15 (25) "Hired on a preliminary basis" means a condition in which a qualified entity allows a
16 subject individual to work, volunteer, be trained, or reside in an environment following
17 the submission of a completed background check request. Hired on a preliminary basis
18 may also be called probationary status.
- 19 (26) "Office of Investigation and Training (OIT)" means the Office of Investigation and
20 Training, a shared service of the Department and Authority.
- 21 (27) "Other criminal records information" means information obtained and used in the
22 criminal records check process that is not criminal offender information from OSP.
23 Other criminal records information includes but is not limited to police investigations
24 and records, information from local or regional criminal records information systems,
25 justice records, court records, information from the Oregon Judicial Information
26 Network, sexual offender registration records, warrants, Oregon Department of
27 Corrections records, Oregon Department of Transportation's Driver and Motor Vehicle
28 Services Division information, information provided on the background check requests,
29 disclosures by a subject individual, and any other information from any jurisdiction
30 obtained by or provided to the Department for the purpose of conducting a fitness
31 determination.
- 32 (28) "Position" means the position listed on the background check request which determines
33 whether the individual is a subject individual under these or Department program rules.
- 34 (29) "Qualified entity (QE)" means a community mental health or developmental disability
35 program, local health department, or an individual, business, or organization, whether
36 public, private, for-profit, nonprofit, or voluntary, that provides care, including a

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

3 (30) "Subject individual (SI)" means an individual on whom the Department may conduct a
4 criminal records check and an abuse check, and from whom the Department may
5 require fingerprints for the purpose of conducting a national criminal records check.

6 (a) An SI includes any of the following:

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

9 (B) An employee, contractor, temporary worker, or volunteer who provides
10 care, or has access to clients, client information, or client funds within
11 any entity or agency licensed, certified, registered, or otherwise
12 regulated by the Department.

13 (C) Any individual who is paid directly or indirectly with public funds who has
14 or will have contact with recipients of:

15 (i) Services within an adult foster home (defined in ORS 443.705); or

16 (ii) Services within a residential facility (defined in ORS 443.400).

17 (D) Any direct care staff secured by any residential care facility, assisted living
18 facility, or nursing facility through the services of a personnel services or
19 staffing agency who works in the facility.

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

25 (F) An individual working or volunteering for a private licensed child caring
26 agency or system of care contractor providing child welfare services
27 pursuant to ORS chapter 418.

28 (G) A homecare worker as defined in ORS 410.600, a personal support
29 worker as defined in ORS 410.600, a personal care services provider, or
30 an independent provider employed by a Department client who provides
31 care to the client if the Department helps pay for the services.

32 (H) A child care provider and their employees reimbursed through the
33 Department's child care program and other individuals in child care
34 facilities that are exempt from certification or registration by the Child

- 1 Care Division of the Oregon Employment Department (OED). This
2 includes all individuals who reside in or who are frequent visitors to the
3 residence or facility where the child care services are provided and who
4 may have unsupervised access to the children (see OAR 461-165-0180).
- 5 (I) An appointing authority, AD or CP in any entity or agency licensed,
6 certified, registered, otherwise regulated by the Department, or subject
7 to these rules.
- 8 (J) An individual providing on the job certified nursing assistant classes to
9 staff within a long term care facility.
- 10 (K) A student enrolled in a long term care facility nursing assistant training
11 program for employment at the facility.
- 12 (L) Any individual serving as an owner, operator, or manager of a room and
13 board facility pursuant to OAR chapter 411, division 68.
- 14 (M) Any individual who is required to complete a criminal records check
15 pursuant to other Department program rules or a contract with the
16 Department or if the requirement is within the Department's statutory
17 authority. Specific statutory authority or reference to these rules and the
18 positions under the contract subject to a criminal records check must be
19 specified in the contract. This inclusion as a subject individual would not
20 be negated by section (30)(b) of this rule.
- 21 (b) An SI does not include:
- 22 (A) Any individual under 16 years of age.
- 23 (B) An individual receiving training in a Department-licensed or Department-
24 certified QE as part of the required curriculum through any college,
25 university, or other training program and who is not an employee in the
26 QE in which training is provided. The individual may not be considered a
27 volunteer under these rules. QEs must ensure that all students or interns
28 have passed a substantially equivalent background check process through
29 the training program or are:
- 30 (i) Actively supervised at all times as defined in OAR 407-007-0315;
31 and
- 32 (ii) Not allowed to have unsupervised access to vulnerable
33 individuals.
- 34 (C) Department clients or QE clients, unless specific written permission to
35 conduct a background check is received from the Department. The only

- 1 circumstance in which the Department shall allow a check to be
2 performed on a client pursuant to this paragraph is if the client falls
3 within the definition of “subject individual” as listed in sections
4 (30)(a)(A)-(D) and (30)(a)(F)-(M) of this rule, or if the facility is dually
5 licensed for different populations of vulnerable individuals.
- 6 (D) Individuals working in child care facilities certified or registered by the
7 OED.
- 8 (E) Individuals employed by a private business that provides services to
9 clients and the general public and is not regulated by the Department.
- 10 (F) Individuals employed by a business that provides appliance or structural
11 repair for clients and the general public, and who are temporarily
12 providing these services in an environment regulated by the Department.
13 The QE shall ensure active supervision of these individuals while on QE
14 property and the QE may not allow unsupervised contact with QE clients
15 or residents. This exclusion does not apply to a business that receives
16 funds from the Department for care provided by an employee of the
17 business.
- 18 (G) Individuals employed by a private business in which a client of the
19 Department is working as part of a Department-sponsored employment
20 service program. This exclusion does not apply to an employee of a
21 business that receives funds from the Department for care provided by
22 the employee.
- 23 (H) Employees and volunteers working in hospitals, ambulatory surgical
24 centers, special inpatient care facilities, outpatient renal dialysis facilities,
25 and freestanding birthing centers as defined in ORS 442.015.
- 26 (I) Volunteers, who are not under the direction and control of any entity
27 licensed, certified, registered, or otherwise regulated by the Department.
- 28 (J) Individuals employed or volunteering in a Medicare-certified health care
29 business which is not subject to licensure or certification by the State of
30 Oregon.
- 31 (K) Individuals working in restaurants or at public swimming pools.
- 32 (L) Hemodialysis technicians.
- 33 (M) Employees, contractors, temporary workers, or volunteers who provide
34 care, or have access to clients, client information, or client funds of an
35 alcohol and drug program that is certified, licensed, or approved by the
36 Department’s Addictions and Mental Health Division to provide

1 prevention, evaluation, or treatment services. This exclusion does not
2 apply to programs specifically required by other Department rules to
3 conduct criminal records checks in accordance with these rules.

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

6 (O) Individuals being certified by the Department as interpreters pursuant to
7 ORS 409.623. This exclusion does not apply to Department-certified
8 interpreters when being considered for a specific position.

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

12 (Q) Emergency medical technicians and first responders certified by the
13 Department's Emergency Medical Services and Trauma Systems program.

14 (R) Employees, contractors, temporary workers, or volunteers of continuing
15 care retirement communities registered under OAR chapter 411, division
16 67.

17 (31) "Weighing test" means a process in which one or more ADs consider available
18 information to make a fitness determination when an SI has potentially disqualifying
19 convictions or conditions.

20
21 *Stat. Auth.: ORS 181.537, 409.027 & 409.050*

22 *Stats. Implemented: ORS 181.534, 181.537, 409.010, 409.027 & 443.004*

23

24 **407-007-0220 Background Check Required**

25 (1) The Department or a Department authorized QE shall conduct criminal records checks
26 on all SIs through LEDS maintained by OSP in accordance with ORS chapter 181 and the
27 rules adopted thereto (see OAR chapter 257, division 15).

28 (2) If a national criminal records check of an SI is necessary, OSP shall provide the
29 Department the results of national criminal records checks conducted pursuant to ORS
30 181.534, including fingerprint identification, through the FBI.

31 (3) The Department shall conduct abuse checks on all SIs using available abuse investigation
32 reports and associated documents.

33 (4) An SI is required to have a background check in the following circumstances:

34 (a) An individual who becomes an SI on or after the effective date of these rules.

- 1 (b) The SI changes employers to a different QE.
- 2 (c) Except as provided in section (5) of this rule, the individual, whether previously
3 considered an SI or not, changes positions under the same QE, and the new
4 position requires a background check.
- 5 (d) The individual, whether previously considered an SI or not, changes Department-
6 issued licenses, certifications, or registrations, and the license, certification, or
7 registration requires a background check under these rules.
- 8 (e) For a student enrolled in a long term care facility nursing assistant training
9 program for employment at the facility, a new background check is required
10 when the student becomes an employee at the facility. A new background check
11 is not required by the Department or the Authority at graduation from the
12 training program or at the granting of certification by the Board of Nursing
13 unless the Department or the AD have reason to believe that a background
14 check is justified.
- 15 (f) A background check is required by federal or state laws or regulations, other
16 Department administrative rules, or by contract with the Department.
- 17 (g) When the Department or AD has reason to believe that a background check is
18 justified. Examples include but are not limited to any indication of possible
19 criminal or abusive behavior by an SI or quality assurance monitoring of a
20 previously conducted criminal records check or abuse check.
- 21 (5) If QEs or Department program rules require an SI to report any new arrests, charges, or
22 convictions, the QE or Department may determine if personnel action is required,
23 including whether a new background check is needed.
- 24 (6) A background check is not required under the following circumstances:
- 25 (a) A homecare worker, personal support worker, personal care services provider,
26 Lifespan Respite or other respite care provider, or an independent provider paid
27 with Department funds who changes or adds clients within the same QE or
28 Department district, and the prior, documented criminal records check or abuse
29 check conducted within the previous 24 months through the Department has
30 been approved without restrictions.
- 31 (b) The SI is a child care provider as described in OAR 461-165-0180 who has been
32 approved without restrictions and who changes or adds clients.
- 33 (c) The SI remains with a QE in the same position listed on the background check
34 request while the QE merges with another QE, is sold to another QE, or changes
35 names. The changes may be noted in documentation attached to the notice of
36 fitness determination but do not warrant a background check.

1 (7) An AD must document in writing the reason why a new background check was not
2 completed.

3 (8) Background checks are completed on SIs who otherwise meet the qualifications of the
4 position listed on the background check request. A background check may not be used
5 to screen applicants for a position.
6

7 *Stat. Auth.: ORS 181.537, 409.027 & 409.050*

8 *Stats. Implemented: ORS 181.534, 181.537, 409.010, 409.027 & 443.004*
9

10 **407-007-0230 Qualified Entities**

11 (1) A QE and its appointing authorities must be approved in writing by the Department
12 pursuant to these rules in order to appoint an AD or CP. Unless specifically indicated
13 otherwise in these rules, all QEs and appointing authorities discussed in these rules are
14 considered approved.

15 (2) Except as provided in section (3) of this rule, all QEs shall ensure the completion of
16 background checks for SIs who are the QE's employees, volunteers, or other SIs under
17 the direction or control of the QE.

18 (a) The QE's appointing authority shall appoint ADs or CPs within 30 calendar days
19 following Department approval, or within time frames required by Department
20 program offices.

21 (b) Unless specifically allowed by the Department, an appointing authority may not
22 appoint themselves as an AD.

23 (c) Appointing authorities in all QEs shall appoint one or more ADs, or have a
24 written agreement with another QE to handle AD responsibilities.

25 (d) Appointing authorities in all QEs may also appoint one or more CPs, or may have
26 a written agreement with another QE to perform CP responsibilities.

27 (3) The Department's appointing authorities shall appoint ADs and CPs within the
28 Department. Department-employed ADs shall make fitness determinations for the
29 following QEs:

30 (a) Private QEs with fewer than 10 employed SIs are not eligible to appoint ADs.
31 These QEs shall do one of the following:

32 (A) Use another QE to perform AD responsibilities instead of using the
33 Department. If another QE is used, the two QEs must have a written

- 1 agreement. The QE must provide the Department with a copy of the
2 agreement.
- 3 (B) Appoint one or more CPs, or have a written agreement with another QE
4 to perform CP responsibilities. The QE must provide the Department with
5 a copy of the agreement.
- 6 (b) QEs whose employees do not have work-related access to the internet and
7 CRIMS. These QEs shall do one of the following:
- 8 (A) Use another QE to perform AD responsibilities instead of using the
9 Department. If another QE is used, the two QEs must have a written
10 agreement. The QE must provide the Department with a copy of the
11 agreement.
- 12 (B) Appoint one or more CPs, or have a written agreement with another QE
13 to perform CP responsibilities. The QE must provide the Department with
14 a copy of the agreement.
- 15 (c) QEs with SIs not under the direction and control of the QE but who provide care
16 under programs administered by the QE may have the Department ADs make
17 fitness determinations.
- 18 (A) The QE shall appoint one or more CPs, or use an AD or CP appointed
19 under section (2) of this rule to perform CP responsibilities.
- 20 (B) The QE may appoint an AD for SIs not under the direction and control of
21 the QE if the QE chooses to do so or is required to do so under other
22 Department program rules or contract with the Department. The QE shall
23 notify the Department in writing which programs are affected and which
24 AD shall perform the responsibilities for each program.
- 25 (d) QEs may have specific direction by administrative rule or Department program
26 about AD or CP appointments.
- 27 (A) Administrative rules governing certain QEs may prohibit AD appointment
28 or CP appointment, such as private licensed child caring agencies.
- 29 (B) Department program offices may determine that:
- 30 (i) Certain QEs may not have their own ADs or CPs, but must use ADs
31 or CPs at a local Department branch or a local QE. Examples
32 include but are not limited to adult foster homes and child foster
33 homes.

- 1 (ii) Specific QEs may have specific AD or CP requirements resulting
2 from licensing actions, sanctions, or from quality assurance
3 monitoring.
- 4 (e) The Department may require certain QEs to use Department-employed ADs to
5 make fitness determinations. Examples include but are not limited to initial
6 opening of a new QE, newly adopted administrative rules creating a new type of
7 QE, or Department investigation or review of the QE.
- 8 (4) The Department may revoke approval of the QE to appoint or maintain ADs if the
9 Department is investigating a compliance issue or determines that the QE, or an AD or
10 CP appointed by the QE, has failed to comply with these rules. The BCU and the
11 appropriate entity or program office within the Department may develop a plan of
12 action to resolve the compliance issues.
- 13 (5) The QE's appointing authorities shall appoint ADs and CPs as needed to remain in
14 compliance with these rules and shall communicate any changes to the BCU.
- 15 (a) If a QE no longer has an AD for any reason, the QE shall ensure the
16 confidentiality and security of background check records by immediately
17 providing all background check related documents to the BCU or to another QE
18 as determined by the BCU.
- 19 (b) If a QE no longer has an AD or CP for any reason, the appointing authorities shall
20 ensure that new ADs or CPs are appointed within 30 calendar days from the date
21 of no longer having ADs or CPs.
- 22 (6) The Department shall provide QEs with periodic training and on-going technical
23 assistance.
- 24 (7) Any decisions made by the Department in regard to these rules are final and may not be
25 overturned by any QE, its ADs or CPs.

26
27 *Stat. Auth.: ORS 181.537, 409.027 & 409.050*

28 *Stats. Implemented: ORS 181.534, 181.537, 409.010, 409.027 & 443.004*

29

30 **407-007-0240 Authorized Designees and Contact Persons**

- 31 (1) All requirements in this section must be completed within 90 calendar days. To receive
32 Department approval, all ADs and CPs must meet the following requirements:
- 33 (a) ADs and CPs for the Department must be employed by the Department. For QEs,
34 the ADs and CPs must be one of the following:

- 1 (A) Employed by the agency for which they will handle criminal records check
2 information.
- 3 (B) Contracted with the QE to perform as an AD or CP.
- 4 (C) Employed by another similar QE or a parent QE (e.g., assisted living
5 facility AD helping another assisted living facility).
- 6 (b) ADs and CPs shall complete a certification program and successfully pass any
7 testing as required by the Department.
- 8 (c) An appointing authority shall appoint an AD or CP in writing on a form provided
9 by the Department. The applicant AD or CP shall complete and submit the form
10 to the Department for processing and registration.
- 11 (d) The Department shall conduct an abuse check, an Oregon criminal records
12 check, a national criminal records check, and if necessary, a state-specific
13 criminal records check. The AD or CP must have:
- 14 (A) No conviction for a potentially disqualifying permanent review crime;
- 15 (B) No convictions for any other crime in the past 15 years;
- 16 (C) No potentially disqualifying conditions; and
- 17 (D) If an AD, Criminal Justice Information Systems (CJIS) clearance and
18 approval to view criminal records in accordance with OSP rules.
- 19 (E) With consideration of OAR 407-007-0290(11), no determination that the
20 AD or CP was found responsible for potentially disqualifying abuse of a
21 vulnerable person.
- 22 (2) The Department shall deny the individual's status as an AD or CP if the individual does
23 not meet the AD or CP requirements. Once denied, the individual may no longer
24 perform the duties of an AD or CP. There are no exceptions for individuals who do not
25 meet the AD or CP requirements.
- 26 (3) Approved ADs and CPs shall have the following responsibilities:
- 27 (a) Demonstrate understanding of and adherence to these rules in all actions
28 pertaining to the background check process.
- 29 (b) Act as the Department's designee in any action pursuant to these rules and the
30 background check process. The AD or CP may not advocate for an SI during any
31 part of the background check process, including contesting a fitness
32 determination.

- 1 (c) Ensure that adequate measures are taken to protect the confidentiality of the
2 records and documents required by these rules. Only an AD may view criminal
3 offender information. A CP may not view criminal offender information. ADs and
4 CPs at QEs may not view abuse investigation reports and associated abuse
5 investigation exhibits or documents as part of the background check process
6 under these rules.
- 7 (d) Verify the identity of an SI. The AD or CP shall verify identity or ensure that the
8 same verification requirements are understood by each individual responsible
9 for verifying identity.
- 10 (A) If conducting a background check on the SI for the first time or at rehire
11 of the SI, the AD or CP shall verify identity by using methods which
12 include but are not limited to reviewing the SI's current and valid
13 government-issued photo identification and confirming the information
14 on the photo identification with the SI, the information written on the
15 background check request, and the information written on the fingerprint
16 card if a national criminal records check is conducted.
- 17 (B) If an AD or CP is verifying the identity of an SI who is being rechecked,
18 review of government-issued photo identification may not be necessary,
19 but the AD or CP shall verify the SI's name, current address, and any
20 aliases or previous names.
- 21 (e) Ensure that an SI is not permitted to work, volunteer, reside, or otherwise hold
22 any position covered by these rules before the completion of a preliminary
23 fitness determination and submission of the background check request to the
24 Department along with a fingerprint card if the SI discloses out-of-state criminal
25 records or residency.
- 26 (f) Ensure that when an SI is hired on a preliminary basis, the need for active
27 supervision is understood by each individual responsible for providing active
28 supervision.
- 29 (g) Ensure that if an SI is removed from working on a preliminary basis, the SI is
30 immediately removed from the position and remains removed until the
31 completion of a final fitness determination or unless the BCU reinstates hired on
32 a preliminary basis.
- 33 (h) Notify the Department of any changes regarding an SI who still has a background
34 check being processed, including but not limited to address or employment
35 status changes.
- 36 (i) Monitor the status of background check applications and investigate any delays
37 in processing.

- 1 (j) Ensure that documentation required by these rules is processed and maintained
2 in accordance with these rules.
- 3 (k) Notify the BCU immediately if arrested, charged, or convicted of any crime, or if
4 found responsible for abuse by the Department.
- 5 (4) A CP may not conduct final fitness determinations. A CP has the following limitations
6 when making preliminary fitness determinations:
- 7 (a) The CP may review the SI's completed background check request to ensure
8 completeness of the form, verify identity, and to determine if the SI has any
9 potentially disqualifying convictions or conditions.
- 10 (b) The CP may allow the SI to be hired on a preliminary basis only after the CP has
11 reviewed the background check request and determined there is no indication
12 that the SI has any potentially disqualifying convictions under OAR 407-007-0280
13 or conditions under OAR 407-007-0290.
- 14 (c) The CP shall not allow an SI who discloses any potentially disqualifying
15 convictions or conditions to work on a preliminary basis.
- 16 (d) If the SI discloses potentially disqualifying convictions or conditions, the CP shall
17 forward the background check request to an AD for preliminary fitness
18 determination, or to the BCU for processing if there is no local AD available.
- 19 (5) In addition to the responsibilities listed in section (3) of this rule, the AD shall:
- 20 (a) Review the completed background check request (if not already done so by a CP)
21 and conduct a preliminary fitness determination to determine eligibility for
22 probationary status before forwarding the background check request to the BCU.
- 23 (b) Make a final fitness determination on all SIs when the Department returns their
24 background check request to the AD for final review. The decision of an AD may
25 not be overruled by an employee, owner, or board member of a QE who is not
26 an AD.
- 27 (c) Participate in the appeal process if requested by the Department.
- 28 (d) Ensure the confidentiality and integrity of criminal records check documents.
29 After the completion of a background check, ADs not involved with original
30 fitness determinations may not review criminal records check documents to gain
31 information on an SI's criminal history unless a new background check is being
32 conducted. If a review is necessary, the AD must have written approval from the
33 Department prior to reviewing any documents.

- 1 (6) ADs must have work-related access to the internet for the processing of background
2 checks. CPs may also submit background checks through the internet if they have work-
3 related access to the internet.
- 4 (7) An AD may not have access to criminal offender information, other criminal information
5 (except the background check request), or make a fitness determination if there is a
6 conflict of interest between the AD and the SI.
- 7 (a) A conflict of interest includes but is not limited to the following situations:
- 8 (A) If the AD is related to the SI. In this context, “related” means spouse,
9 domestic partner, natural parent, child, sibling, adopted child, adopted
10 parent, stepparent, stepchild, stepbrother, stepsister, father-in-law,
11 mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law,
12 grandparent, grandchild, aunt, uncle, niece, nephew, or cousin.
- 13 (B) If the AD has a close personal or financial relationship, other than an
14 employee-employer relationship, with the SI.
- 15 (b) When there is a conflict of interest and the QE has no other ADs available to
16 conduct the fitness determination, the Department shall complete the fitness
17 determination.
- 18 (8) The Department may change AD or CP status in the following circumstances which
19 include but are not limited to:
- 20 (a) The Department shall inactivate AD or CP status when the AD or CP position with
21 the QE ends or when the QE terminates the appointment. The QE shall notify the
22 Department immediately upon the end of the position or termination of the
23 appointment.
- 24 (b) The Department or QE shall suspend or revoke the appointment if an AD or CP
25 fails to comply with responsibilities or fails to continue to meet the requirements
26 for AD or CP, as applicable. After suspending or revoking the appointment, the
27 QE must immediately notify the BCU in writing. If the Department takes the
28 action, it must immediately notify the QE in writing.
- 29 (c) The Department shall revoke AD or CP status if an AD or CP fails to recertify.
- 30 (9) Any changes to AD or CP status are not subject to appeal rights unless the denial or
31 termination results in immediate loss of employment or position. ADs or CPs losing
32 employment or position have the same hearing rights as other SIs under these rules.
- 33 (10) If an AD or CP leaves employment with the QE for any reason, the Department shall
34 inactivate AD or CP status. If the individual finds employment with another QE, a new
35 appointment, application, and registration must be completed.

1 (11) The Department shall review and recertify appointments of ADs and CPs, up to and
2 including a new application, background check, and additional training, under the
3 following circumstances:

4 (a) Every three years; or

5 (b) Any time the Department has reason to believe the individual no longer meets
6 the AD or CP requirements including but not limited to indication of criminal or
7 abusive behavior or indication of noncompliance with these rules.

8

9 *Stat. Auth.: ORS 181.537, 409.027 & 409.050*

10 *Stats. Implemented: ORS 181.534, 181.537, 409.010, 409.027 & 443.004*

11

12 **407-007-0250 Background Check Process**

13 (1) A QE and SI shall use the background check request or internet-based equivalent to
14 request a background check which shall include the following information:

15 (a) Name and aliases;

16 (b) Date of birth;

17 (c) Address and recent residency information;

18 (d) Driver license or identification card information;

19 (e) Position for the SI is completing the background check request;

20 (f) Disclosure of all criminal history;

21 (A) The SI must disclose all arrests, charges, and convictions regardless of
22 outcome or when the arrests, charges, or convictions occurred.

23 (B) The disclosed crimes and the dates must reasonably match the SI's
24 criminal offender information and other criminal records information, as
25 determined by the Department.

26 (g) Disclosure of other information to be considered in the event of a weighing test.

27 (2) The background check request shall include the following notices:

28 (a) A notice regarding disclosure of Social Security number indicating that:

29 (A) The SI's disclosure is voluntary; and

- 1 (B) The Department requests the Social Security number solely for the
2 purpose of positively identifying the SI during the criminal records check
3 process.
- 4 (b) A notice that the SI may be subject to fingerprinting as part of a criminal records
5 check.
- 6 (c) A notice that the BCU shall conduct an abuse check on the SI. The SI is not
7 required to disclose any history of potentially disqualifying abuse, but may
8 provide the BCU with mitigating or other information.
- 9 (3) The BCU shall review each background check request received for completeness and
10 timeliness. If the BCU rejects the form, the QE's AD or CP shall immediately remove the
11 SI from the position. If the QE still plans to hire the SI, the QE shall resolve the reasons
12 for rejection and re-submit the form.
- 13 (4) Using identifying information submitted on the Department's background check
14 request, the BCU shall conduct an abuse check to determine if the subject individual has
15 potentially disqualifying abuse.
- 16 (5) The BCU shall conduct an Oregon criminal records check after a completed background
17 check request is received. Using information submitted on the background check
18 request, the Department or QE may obtain criminal offender information from LEDS and
19 may request other criminal records information as needed.
- 20 (6) The Department and all QEs receiving LEDS information shall handle criminal offender
21 information in accordance with applicable OSP requirements in ORS chapter 181 and
22 the rules adopted pursuant thereto (see OAR chapter 257, division 15).
- 23 (7) The Department may conduct a fingerprint-based national criminal records check after
24 an Oregon criminal records check has been completed.
- 25 (a) A fingerprint-based national criminal records check may be completed under any
26 of the following circumstances:
- 27 (A) The SI has been outside Oregon:
- 28 (i) For 60 or more consecutive days during the previous 18 months
29 and the SI is a child care provider or other individual included in
30 OAR 461-165-0180.
- 31 (ii) For 60 or more consecutive days during the previous five years for
32 all other SIs.

- 1 (B) The LEDS check, SI disclosures, or any other criminal records information
2 obtained by the Department indicate there may be criminal records
3 outside of Oregon.
- 4 (C) The SI has an out-of-state driver license or out-of-state identification
5 card.
- 6 (D) The Department has reason to question the identity or criminal record of
7 the SI.
- 8 (E) A fingerprint-based criminal records check is required by federal or state
9 laws or regulations, other Department rules, or by contract with the
10 Department.
- 11 (F) The SI is an AD or CP.
- 12 (G) The Department has reason to believe that fingerprints are needed to
13 make a final fitness determination.
- 14 (b) The Department must receive consent from the parent or guardian to obtain
15 fingerprints from an SI under 18 years of age.
- 16 (c) The SI shall complete and submit a fingerprint card when requested by the
17 Department. The Department shall send the request to the QE and the AD or CP
18 shall notify the SI.
- 19 (A) The SI shall use a fingerprint card provided by the Department. The
20 Department shall give the SI notice regarding the Social Security number
21 as set forth in OAR 407-007-0250(2)(a).
- 22 (B) The SI shall submit the fingerprint card to the BCU within 21 calendar
23 days of the request.
- 24 (i) The Department shall close the application, making it a closed
25 case, if the fingerprint card is not received within 21 calendar
26 days. When a case is closed, the SI may not be allowed to work,
27 volunteer, be employed, or otherwise perform in positions
28 covered by these rules, and shall be immediately terminated and
29 removed from the position.
- 30 (ii) The Department may extend the time allowed for good cause
31 provided by the SI or QE.
- 32 (C) The Department may require new fingerprint cards if previous cards are
33 rejected by OSP or the FBI.

- 1 (8) The Department may also conduct a state-specific criminal records check instead of or in
2 addition to a national criminal records check. Reasons for a state-specific criminal
3 records check include but are not limited to:
- 4 (a) When the Department has reason to believe that out-of-state criminal records
5 may exist and a national criminal records check may not be accomplished.
- 6 (b) When the Department has been unable to complete a national criminal records
7 check due to illegible fingerprints.
- 8 (c) When the national criminal records check results show incomplete information
9 about charges or criminal records without final disposition.
- 10 (d) When there is indication of residency or criminal records in a state that does not
11 submit all criminal records to the FBI.
- 12 (e) When, based on available information, the Department has reason to believe
13 that a state-specific criminal records check is necessary.
- 14 (9) In order to complete a background check and fitness determination, the Department
15 may require additional information from the SI including but not limited to additional
16 criminal, judicial, other background information, or proof of identity.
- 17 (10) The Department may conduct a background check in situations of imminent danger.
- 18 (a) If the Department determines there is indication of criminal or abusive behavior
19 that could more likely than not pose an immediate risk to vulnerable individuals,
20 the Department shall conduct a new criminal records check on an SI without the
21 completion of a new background check request.
- 22 (b) If the Department determines that a fitness determination based on the new
23 background check would be adverse to the SI, the Department shall provide the
24 SI, if available, the opportunity to disclose criminal records, potentially
25 disqualifying conditions, and other information as indicated in OAR 407-007-
26 0300 before completion of the fitness determination.
- 27 (11) All criminal records checks conducted under this rule shall be documented in writing.
28

29 *Stat. Auth.: ORS 181.537, 409.027 & 409.050*
30 *Stats. Implemented: ORS 181.534, 181.537, 409.010*
31

32 **407-007-0275 Disqualifying Convictions Under ORS 443.004**

- 33 (1) The crimes listed in section (3) of this rule are disqualifying crimes for those employees
34 and individuals subject to ORS 443.004, and as specified in the relevant program

1 administrative rules. For the purpose of this rule, a subject individual does not include a
2 peer support specialist who:

- 3 (a) Is providing peer support services as defined by OAR 309-032-1505;
- 4 (b) Is under the supervision of a qualified clinical supervisor;
- 5 (c) Has completed training required by the Department; and
- 6 (d) Is currently receiving or has formerly received mental health services, or is in
7 recovery from a substance use disorder and meets the abstinence requirements
8 for staff providing services in alcohol or other drug treatment programs.

9 (2) Individuals who are employees and hired prior to July 28, 2009 are exempt from section
10 (3) of this rule provided that the employee remains in the same position working for the
11 same employer after July 28, 2009. This exemption is not applicable to licensees.

12 (3) Public funds may not be used to support, in whole or in part, the employment of an
13 individual in any capacity identified in section (1) of this rule who has been convicted:

- 14 (a) In the last 10 years of a crime involving the delivery or manufacture of a
15 controlled substance; or
- 16 (b) Of any of the following crimes:
 - 17 (A) ORS 163.095, Aggravated murder
 - 18 (B) ORS 163.115, Murder
 - 19 (C) ORS 163.118, Manslaughter I
 - 20 (D) ORS 163.125, Manslaughter II
 - 21 (E) ORS 163.145, Criminally negligent homicide
 - 22 (F) ORS 163.149, Aggravated vehicular homicide
 - 23 (G) ORS 163.165, Assault III
 - 24 (H) ORS 163.175, Assault II
 - 25 (I) ORS 163.185, Assault I
 - 26 (J) ORS 163.187, Strangulation
 - 27 (K) ORS 163.200, Criminal mistreatment II

- 1 (L) ORS 163.205, Criminal mistreatment I
- 2 (M) ORS 163.225, Kidnapping II
- 3 (N) ORS 163.235, Kidnapping I
- 4 (O) ORS 163.263, Subjecting another person to involuntary servitude II
- 5 (P) ORS 163.264, Subjecting another person to involuntary servitude I
- 6 (Q) ORS 163.266, Trafficking in persons
- 7 (R) ORS 163.275, Coercion
- 8 (S) ORS 163.355, Rape III
- 9 (T) ORS 163.365, Rape II
- 10 (U) ORS 163.375, Rape I
- 11 (V) ORS 163.385, Sodomy III
- 12 (W) ORS 163.395, Sodomy II
- 13 (X) ORS 163.405, Sodomy I
- 14 (Y) ORS 163.408, Unlawful sexual penetration II
- 15 (Z) ORS 163.411, Unlawful sexual penetration I
- 16 (AA) ORS 163.415, Sexual abuse III
- 17 (BB) ORS 163.425, Sexual abuse II
- 18 (CC) ORS 163.427, Sexual abuse I
- 19 (DD) ORS 163.432, Online sexual corruption of a child II, if the offender
20 reasonably believed the child to be more than five years younger than
21 the offender
- 22 (EE) ORS 163.433, Online sexual corruption of a child I, if the offender
23 reasonably believed the child to be more than five years younger than
24 the offender
- 25 (FF) ORS 163.435, Contributing to the sexual delinquency of a minor

- 1 (GG) ORS 163.445, Sexual misconduct, if the offender is at least 18 years of
2 age
- 3 (HH) ORS 163.465, Public indecency
- 4 (II) ORS 163.467, Private indecency
- 5 (JJ) ORS 163.525, Incest with a child victim
- 6 (KK) ORS 163.535, Abandonment of a child
- 7 (LL) ORS 163.537, Buying or selling a person under 18 years of age
- 8 (MM) ORS 163.670, Using a child in display of sexually explicit conduct
- 9 (NN) ORS 163.680, Paying for viewing a child's sexually explicit conduct
- 10 (OO) ORS 163.684, Encouraging child sexual abuse I
- 11 (PP) ORS 163.686, Encouraging child sexual abuse II
- 12 (QQ) ORS 163.687, Encouraging child sexual abuse III
- 13 (RR) ORS 163.688, Possession of materials depicting sexually explicit conduct
14 of a child I
- 15 (SS) ORS 163.689, Possession of materials depicting sexually explicit conduct
16 of a child II
- 17 (TT) ORS 163.700, Invasion of personal privacy
- 18 (UU) ORS 164.055, Theft I
- 19 (VV) ORS 164.057, Aggravated theft I
- 20 (WW) ORS 164.098, Organized retail theft
- 21 (XX) ORS 164.125, Theft of services, if charged as a felony
- 22 (YY) ORS 164.215, Burglary II
- 23 (ZZ) ORS 164.225, Burglary I
- 24 (AAA) ORS 164.325, Arson I
- 25 (BBB) ORS 164.377, Computer crime, if charged with a felony

- 1 (CCC) ORS 164.405, Robbery II
2 (DDD) ORS 164.415, Robbery I
3 (EEE) ORS 165.022, Criminal possession of a forged instrument I
4 (FFF) ORS 165.032, Criminal possession of a forgery device
5 (GGG) ORS 165.800, Identity theft
6 (HHH) ORS 165.803, Aggravated identity theft
7 (III) ORS 167.012, Promoting prostitution
8 (JJJ) ORS 167.017, Compelling prostitution
9 (KKK) ORS 167.054, Furnishing sexually explicit material to a child
10 (LLL) ORS 167.057, Luring a minor
11 (MMM) ORS 181.594, Sex crimes, including transporting child pornography into
12 the state
13 (c) Of an attempt, conspiracy, or solicitation to commit a crime described in section
14 (2)(b) of this rule; or
15 (d) Of a crime in another jurisdiction that is substantially equivalent to a crime
16 described in section (2)(b) of this rule.
17 (4) The Department may conduct a weighing test under ORS 181.534 on employees and
18 individuals convicted of any crime in section (3) of this rule. However, the preclusive
19 effect of ORS 443.004 shall outweigh all other factors described in OAR 407-007-0300.

20 *Stat. Auth.: ORS 181.534 & 409.050*
21 *Stats. Implemented: ORS 181.534 & ORS 443.004*
22

23 **407-007-0280 Potentially Disqualifying Convictions**

24 A conviction of any of the following crimes is potentially disqualifying. Offenses or convictions
25 that are classified as less than a misdemeanor, such as violations or infractions, are not
26 potentially disqualifying (see ORS 161.505 to 161.565).

- 27 (1) The crimes listed in this section are permanent review crimes which require that a
28 fitness determination be completed regardless of date of conviction.

- 1 (a) ORS 162.155, Escape II
- 2 (b) ORS 162.165, Escape I
- 3 (c) ORS 162.285, Tampering with a witness
- 4 (d) ORS 162.325, Hindering prosecution
- 5 (e) ORS 163.005, Criminal homicide
- 6 (f) ORS 163.095, Aggravated murder
- 7 (g) ORS 163.115, Murder
- 8 (h) ORS 163.118, Manslaughter I
- 9 (i) ORS 163.125, Manslaughter II
- 10 (j) ORS 163.145, Criminally negligent homicide
- 11 (k) ORS 163.149, Aggravated vehicular homicide
- 12 (L) ORS 163.160, Assault IV
- 13 (m) ORS 163.165, Assault III
- 14 (n) ORS 163.175, Assault II
- 15 (o) ORS 163.185, Assault I
- 16 (p) ORS 163.187, Strangulation
- 17 (q) ORS 163.190, Menacing
- 18 (r) ORS 163.200, Criminal mistreatment II
- 19 (s) ORS 163.205, Criminal mistreatment I
- 20 (t) ORS 163.207, Female genital mutilation
- 21 (u) ORS 163.208, Assault of public safety officer
- 22 (v) ORS 163.213, Unlawful use of an electrical stun gun, tear gas, or mace I
- 23 (w) ORS 163.225, Kidnapping II
- 24 (x) ORS 163.235, Kidnapping I

1	(y)	ORS 163.245, Custodial interference II
2	(z)	ORS 163.257, Custodial interference I
3	(aa)	ORS 163.263, Subjecting another person to involuntary servitude in the
4		second degree
5	(bb)	ORS 163.264, Subjecting another person to involuntary servitude in the
6		first degree
7	(cc)	ORS 163.266, Trafficking in persons
8	(dd)	ORS 163.275, Coercion
9	(ee)	ORS 163.355, Rape III
10	(ff)	ORS 163.365, Rape II
11	(gg)	ORS 163.375, Rape I
12	(hh)	ORS 163.385, Sodomy III
13	(ii)	ORS 163.395, Sodomy II
14	(jj)	ORS 163.405, Sodomy I
15	(kk)	ORS 163.408, Unlawful sexual penetration II
16	(LL)	ORS 163.411, Unlawful sexual penetration I
17	(mm)	ORS 163.415, Sexual abuse III
18	(nn)	ORS 163.425, Sexual abuse II
19	(oo)	ORS 163.427, Sexual abuse I
20	(pp)	ORS 163.432, Online sexual corruption of a child in the second degree
21	(qq)	ORS 163.433, Online sexual corruption of a child in the first degree
22	(rr)	ORS 163.435, Contributing to the sexual delinquency of a minor
23	(ss)	ORS 163.445, Sexual misconduct
24	(tt)	ORS 163.452, Custodial sexual misconduct I
25	(uu)	ORS 163.454, Custodial sexual misconduct II

1	(vv)	ORS 163.465, Public indecency
2	(ww)	ORS 163.467, Private indecency
3	(xx)	ORS 163.476, Unlawfully being in a location where children regularly
4		congregate
5	(yy)	ORS163.479, Unlawful contact with a child
6	(zz)	ORS 163.515, Bigamy
7	(aaa)	ORS 163.525, Incest
8	(bbb)	ORS 163.535, Abandonment of a child
9	(ccc)	ORS 163.537, Buying or selling a person under 18 years of age
10	(ddd)	ORS 163.545, Child neglect II
11	(eee)	ORS 163.547, Child neglect I
12	(fff)	ORS 163.555, Criminal nonsupport
13	(ggg)	ORS 163.575, Endangering the welfare of a minor
14	(hhh)	ORS 163.670, Using child in display of sexually explicit conduct
15	(iii)	ORS 163.680, Paying for viewing a child's sexually explicit conduct
16	(jjj)	ORS 163.684, Encouraging child sexual abuse I
17	(kkk)	ORS 163.686, Encouraging child sexual abuse II
18	(LLL)	ORS 163.687, Encouraging child sexual abuse III
19	(mmm)	ORS 163.688, Possession of materials depicting sexually explicit conduct
20		of a child I
21	(nnn)	ORS 163.689, Possession of materials depicting sexually explicit conduct
22		of a child II
23	(ooo)	ORS 163.693, Failure to report child pornography
24	(ppp)	ORS 163.700, Invasion of personal privacy
25	(qqq)	ORS 163.732, Stalking

1	(rrr)	ORS 163.750, Violating court's stalking protective order
2	(sss)	ORS 164.055, Theft I
3	(ttt)	ORS 164.057, Aggravated theft I
4	(uuu)	ORS 164.075, Theft by extortion
5	(vvv)	ORS 164.085, Theft by deception
6	(www)	ORS 164.098, Organized retail theft
7	(xxx)	ORS 164.125, Theft of services
8	(yyy)	ORS 164.135, Unauthorized use of a vehicle
9	(zzz)	ORS 164.170, Laundering a monetary instrument
10	(aaaa)	ORS 164.215, Burglary II
11	(bbbb)	ORS 164.225, Burglary I
12	(cccc)	ORS 164.315, Arson II
13	(dddd)	ORS 164.325, Arson I
14	(eeee)	ORS 164.365, Criminal mischief I
15	(ffff)	ORS 164.377, Computer crime
16	(gggg)	ORS 164.395, Robbery III
17	(hhhh)	ORS 164.405, Robbery II
18	(iiii)	ORS 164.415, Robbery I
19	(jjjj)	ORS 165.013, Forgery I
20	(kkkk)	ORS 165.022, Criminal possession of a forged instrument I
21	(LLLL)	ORS 165.032, Criminal possession of a forgery device
22	(mmmm)	ORS 165.055, Fraudulent use of a credit card
23	(nnnn)	ORS 165.065, Negotiating a bad check
24	(oooo)	ORS 165.581, Cellular counterfeiting I

1	(pppp)	ORS 165.800, Identity theft
2	(qqqq)	ORS 165.803, Aggravated identity theft
3	(rrrr)	ORS 165.810, Unlawful possession of a personal identification device
4	(ssss)	ORS 166.005, Treason
5	(tttt)	ORS 166.070 Aggravated harassment
6	(uuuu)	ORS 166.085, Abuse of corpse II
7	(vvvv)	ORS 166.087, Abuse of corpse I
8	(wwww)	ORS 166.155, Intimidation II
9	(xxxx)	ORS 166.165, Intimidation I
10	(yyyy)	ORS 166.220, Unlawful use of weapon
11	(zzzz)	ORS 166.270, Possession of weapons by certain felons
12	(aaaaa)	ORS 166.272, Unlawful possession of machine guns, certain short-
13		barreled firearms and firearm silencers
14	(bbbbb)	ORS 166.275, Possession of weapons by inmates of institutions
15	(ccccc)	ORS 166.370, Possession of firearm or dangerous weapon in public
16		building or court facility; exceptions; discharging firearm at school
17	(ddddd)	ORS 166.382, Possession of destructive device prohibited
18	(eeeee)	ORS 166.384, Unlawful manufacture of destructive device
19	(fffff)	ORS 166.429, Firearms used in felony
20	(ggggg)	ORS 166.450 Obliteration or change of identification number on
21		firearms
22	(hhhhh)	ORS 166.720, Racketeering activity unlawful
23	(iiiiii)	ORS 167.012, Promoting prostitution
24	(jjjjj)	ORS 167.017, Compelling prostitution
25	(kkkkk)	ORS 167.054, Furnishing sexually explicit material to a child

1	(LLLLL)	ORS 167.057, Luring a minor
2	(mmmmm)	ORS 167.062, Sadomasochistic abuse or sexual conduct in live show
3	(nnnnn)	ORS 167.075, Exhibiting an obscene performance to a minor
4	(ooooo)	ORS 167.080, Displaying obscene materials to minors
5	(ppppp)	ORS 167.212, Tampering with drug records
6	(qqqqq)	ORS 167.262, Adult using minor in commission of controlled substance
7		offense
8	(rrrrr)	ORS 167.315, Animal abuse II
9	(sssss)	ORS 167.320, Animal abuse I
10	(ttttt)	ORS 167.322, Aggravated animal abuse I
11	(uuuuu)	ORS 167.333, Sexual assault of animal
12	(vvvvv)	ORS 167.339, Assaulting law enforcement animal
13	(wwwww)	ORS 181.594, Sex crimes including transporting child pornography into
14		the state
15	(xxxxx)	ORS 181.599, Failure to report as sex offender
16	(yyyyy)	ORS 433.010, Spreading disease (willfully) prohibited
17	(zzzzz)	ORS 475.525, Sale of drug paraphernalia prohibited
18	(aaaaaa)	ORS 475.805, Providing hypodermic device to minor prohibited
19	(bbbbbb)	ORS 475.840, Prohibited acts generally (regarding drug crimes formerly
20		ORS 475.992)
21	(ccccc)	ORS 475.846, Unlawful manufacture of heroin
22	(dddddd)	ORS 475.848, Unlawful manufacture of heroin within 1,000 feet of
23		school
24	(eeeeee)	ORS 475.850, Unlawful delivery of heroin
25	(ffffff)	ORS 475.852, Unlawful delivery of heroin within 1,000 feet of school
26	(gggggg)	ORS 475.854, Unlawful possession of heroin

1	(hhhhh)	ORS 475.856, Unlawful manufacture of marijuana
2	(iiiiii)	ORS 475.858, Unlawful manufacture of marijuana within 1,000 feet of
3		school
4	(jjjjjj)	ORS 475.860, Unlawful delivery of marijuana
5	(kkkkkk)	ORS 475.862, Unlawful delivery of marijuana within 1,000 feet of school
6	(LLLLLL)	ORS 475.864, Unlawful possession of marijuana
7	(mmmmmm)	ORS 475.866, Unlawful manufacture of 3,4-
8		methylenedioxymethamphetamine
9	(nnnnnn)	ORS 475.868, Unlawful manufacture of 3,4-
10		methylenedioxymethamphetamine within 1,000 feet of school
11	(oooooo)	ORS 475.870, Unlawful delivery of 3,4-
12		methylenedioxymethamphetamine
13	(pppppp)	ORS 475.872, Unlawful delivery of 3,4-
14		methylenedioxymethamphetamine within 1,000 feet of school
15	(qqqqqq)	ORS 475.874, Unlawful possession of 3,4-
16		methylenedioxymethamphetamine
17	(rrrrrr)	ORS 475.876, Unlawful manufacture of cocaine
18	(ssssss)	ORS 475.878, Unlawful manufacture of cocaine within 1,000 feet of
19		school
20	(tttttt)	ORS 475.880, Unlawful delivery of cocaine
21	(uuuuuu)	ORS 475.882, Unlawful delivery of cocaine within 1,000 feet of school
22	(vvvvvv)	ORS 475.884, Unlawful possession of cocaine
23	(wwwwww)	ORS 475.886, Unlawful manufacture of methamphetamine
24	(xxxxxx)	ORS 475.888, Unlawful manufacture of methamphetamine within 1,000
25		feet of school
26	(yyyyyy)	ORS 475.890, Unlawful delivery of methamphetamine

1	(zzzzzz)	ORS 475.892, Unlawful delivery of methamphetamine within 1,000 feet
2		of school
3	(aaaaaaa)	ORS 475.894, Unlawful possession of methamphetamine
4	(bbbbbbb)	ORS 475.904, Unlawful delivery of controlled substance within 1,000
5		feet of school
6	(ccccccc)	ORS 475.906, Penalties for distribution to minors
7	(ddddddd)	ORS 475.908, Causing another person to ingest a controlled substance
8	(eeeeeee)	ORS 475.910, Application of controlled substance to the body of
9		another person
10	(fffffff)	ORS 475.914, Prohibited acts for registrants (with the Oregon State
11		Board of Pharmacy)
12	(ggggggg)	ORS 475.967, Possession of precursor substance with intent to
13		manufacture controlled substance
14	(hhhhhhh)	ORS 475.990, Commercial drug offense
15	(iiiiiii)	ORS 475.992 Prohibited acts generally (regarding drug crimes;
16		renumbered to ORS 475.840 in 2005)
17	(jjjjjjj)	ORS 677.080, Prohibited acts (regarding the practice of medicine)
18	(kkkkkkk)	ORS 685.990, Penalties (pertaining to naturopathic medicine)
19	(LLLLLLL)	ORS 689.527 Prohibited practices; rules (pertaining to pharmacy
20		technicians and practitioners)
21	(mmmmmmm)	Any federal crime
22	(nnnnnnn)	Any U.S. military crime
23	(oooooooo)	Any unclassified felony defined in Oregon Revised Statutes not listed in
24		this rule
25	(ppppppp)	Any other felony in Oregon Revised Statutes not listed in this rule that
26		is serious and indicates behavior that poses a threat or jeopardizes the
27		safety of vulnerable persons, as determined by the AD

- 1 (qqqqqqq) Any felony in a jurisdiction outside Oregon that is not the substantial
2 equivalent of any of the Oregon crimes listed in this section but that is
3 serious and indicates behavior that poses a threat or jeopardizes the
4 safety of vulnerable persons, as determined by the AD
- 5 (rrrrrrr) Any crime of attempt, solicitation, or conspiracy to commit a crime
6 listed in this section pursuant to ORS 161.405, 161.435, or 161.450,
7 including any crime based on criminal liability for conduct of another
8 pursuant to ORS 161.155
- 9 (sssssss) Any crime in any other jurisdiction that is the substantial equivalent of
10 any of the Oregon crimes listed in section (1) of this rule, as determined
11 by the AD
- 12 (ttttttt) Any crime that is no longer codified in Oregon or other jurisdiction but
13 that is the substantial equivalent of any of the crimes listed in section
14 (1) of this rule, as determined by the AD
- 15 (2) The crimes listed in this section are ten-year review crimes which require that a fitness
16 determination be completed if the date of conviction is within ten years of the date the
17 Background Check Request form was signed or the date the Department conducted a
18 criminal records check due to imminent risk.
- 19 (a) ORS 033.045, Contempt of court
- 20 (b) ORS 109.311, Prohibited fees-adoption
- 21 (c) ORS 133.076, Failure to appear on criminal citation
- 22 (d) ORS 133.310(3), Violation of restraining order
- 23 (e) ORS 135.290, Punishment by contempt of court (violation of release
24 agreement)
- 25 (f) ORS 162.015, Bribe giving
- 26 (g) ORS 162.025, Bribe receiving
- 27 (h) ORS 162.065, Perjury
- 28 (i) ORS 162.075, False swearing
- 29 (j) ORS 162.117, Public investment fraud

- 1 (k) ORS 162.145, Escape III
- 2 (L) ORS 162.175, Unauthorized departure
- 3 (m) ORS 162.185, Supplying contraband
- 4 (n) ORS 162.195, Failure to appear II
- 5 (o) ORS 162.205, Failure to appear I
- 6 (p) ORS 162.247, Interfering with a peace officer
- 7 (q) ORS 162.257, Interfering with a firefighter or emergency medical
8 technician
- 9 (r) ORS 162.265, Bribing a witness
- 10 (s) ORS 162.275, Bribe receiving by a witness
- 11 (t) ORS 162.295, Tampering with physical evidence
- 12 (u) ORS 162.305, Tampering with public records
- 13 (v) ORS 162.315, Resisting arrest
- 14 (w) ORS 162.335, Compounding
- 15 (x) ORS 162.355, Simulating legal process
- 16 (y) ORS 162.365, Criminal impersonation
- 17 (z) ORS 162.367, Criminal impersonation of peace officer
- 18 (aa) ORS 162.369, Possession of false law enforcement identification card
- 19 (bb) ORS 162.375, Initiating a false report
- 20 (cc) ORS 162.385, Giving false information to police officer for a citation
- 21 (dd) ORS 162.405, Official misconduct II
- 22 (ee) ORS 162.415, Official misconduct I
- 23 (ff) ORS 162.425, Misuse of confidential information
- 24 (gg) ORS 163.195, Recklessly endangering another person

1	(hh)	ORS 163.196, Aggravated driving while suspended or revoked
2	(ii)	ORS 163.212, Unlawful use of an electrical stun gun, tear gas, or mace II
3	(jj)	ORS 164.043, Theft III
4	(kk)	ORS 164.045, Theft II
5	(LL)	ORS 164.095, Theft by receiving
6	(mm)	ORS 164.138, Criminal possession of a rented or leased motor vehicle
7	(nn)	ORS 164.140, Criminal possession of rented or leased personal property
8	(oo)	ORS 164.162, Mail theft or receipt of stolen mail
9	(pp)	ORS 164.235, Possession of a burglary tool or theft device
10	(qq)	ORS 164.255, Criminal trespass I
11	(rr)	ORS 164.265, Criminal trespass while in possession of firearm
12	(ss)	ORS 164.272, Unlawful entry into motor vehicle
13	(tt)	ORS 164.354, Criminal mischief II
14	(uu)	ORS 165.007, Forgery II
15	(vv)	ORS 165.017, Criminal possession of a forged instrument II
16	(ww)	ORS 165.037, Criminal simulation
17	(xx)	ORS 165.042, Fraudulently obtaining a signature
18	(yy)	ORS 165.070, Possessing fraudulent communications device
19	(zz)	ORS 165.074, Unlawful factoring of credit card transaction
20	(aaa)	ORS 165.080, Falsifying business records
21	(bbb)	ORS 165.085, Sports bribery
22	(ccc)	ORS 165.090, Sports bribe receiving
23	(ddd)	ORS 165.095, Misapplication of entrusted property
24	(eee)	ORS 165.100, Issuing a false financial statement

1	(fff)	ORS 165.102, Obtaining execution of documents by deception
2	(ggg)	ORS 165.540, Obtaining contents of communication
3	(hhh)	ORS 165.543, Interception of communications
4	(iii)	ORS 165.570, Improper use of 9-1-1 emergency reporting system
5	(jjj)	ORS 165.572, Interference with making a report
6	(kkk)	ORS 165.577, Cellular counterfeiting III
7	(LLL)	ORS 165.579, Cellular counterfeiting II
8	(mmm)	ORS 165.692, Making false claim for health care payment
9	(nnn)	ORS 166.015, Riot
10	(ooo)	ORS 166.023, Disorderly conduct I
11	(ppp)	ORS 166.025, Disorderly conduct II
12	(qqq)	ORS 166.065, Harassment
13	(rrr)	ORS 166.076, Abuse of a memorial to the dead
14	(sss)	ORS 166.090, Telephonic harassment
15	(ttt)	ORS 166.116, Interfering with public transportation
16	(uuu)	ORS 166.180, Negligently wounding another
17	(vvv)	ORS 166.190, Pointing firearm at another
18	(www)	ORS 166.240, Carrying of concealed weapon
19	(xxx)	ORS 166.250, Unlawful possession of firearms
20	(yyy)	ORS 166.470, Limitations and conditions for sales of firearms
21	(zzz)	ORS 166.480, Sale or gift of explosives to children
22	(aaaa)	ORS 166.649, Throwing an object off an overpass II
23	(bbbb)	ORS 166.651, Throwing an object off an overpass I
24	(cccc)	ORS 166.660, Unlawful paramilitary activity

1	(dddd)	ORS 167.007, Prostitution
2	(eeee)	ORS 167.090, Publicly displaying nudity or sex for advertising purposes
3	(ffff)	ORS 167.122, Unlawful gambling in the second degree
4	(gggg)	ORS 167.127, Unlawful gambling in the first degree
5	(hhhh)	ORS 167.167, Cheating
6	(iiii)	ORS 167.222, Frequenting a place where controlled substances are
7		used
8	(jjjj)	ORS 167.325, Animal neglect II
9	(kkkk)	ORS 167.330, Animal neglect I
10	(LLLL)	ORS 167.337, Interfering with law enforcement animal
11	(mmmm)	ORS 167.340, Animal abandonment
12	(nnnn)	ORS 167.352, Interfering with assistance, search and rescue or therapy
13		animal
14	(oooo)	ORS 167.355, Involvement in animal fighting
15	(pppp)	ORS 167.365, Dogfighting
16	(qqqq)	ORS 167.370, Participation in dogfighting
17	(rrrr)	ORS 167.428, Cockfighting
18	(ssss)	ORS 167.431, Participation in cockfighting
19	(tttt)	ORS 167.820, Concealing the birth of an infant
20	(uuuu)	ORS 192.865, Criminal penalty (pertaining to Address Confidentiality
21		Program)
22	(vvvv)	ORS 314.075, Evading requirements of law prohibited (tax evasion)
23	(wwww)	ORS 411.630, Unlawfully obtaining public assistance
24	(xxxx)	ORS 411.640, Unlawfully receiving public assistance
25	(yyyy)	ORS 411.675, Submitting wrongful claim or payment (e.g., public
26		assistance)

1	(zzzz)	ORS 411.840, Unlawfully obtaining or disposing of food stamp benefits
2	(aaaaa)	ORS 412.074, Unauthorized use and custody of records of temporary
3		assistance for needy families program
4	(bbbbb)	ORS 412.099, Sharing assistance prohibited
5	(ccccc)	ORS 417.990, Penalty for placement of children in violation of compact
6	(ddddd)	ORS 471.410, Providing liquor to persons under 21 or to intoxicated
7		persons; allowing consumption by minor on property
8	(eeeee)	ORS 475.912, Unlawful delivery of imitation controlled substance
9	(fffff)	ORS 475.916, Prohibited acts involving records and fraud
10	(ggggg)	ORS 475.918, Falsifying drug test results
11	(hhhhh)	ORS 475.950, Failure to report precursor substances transaction
12	(iiiiii)	ORS 475.955, Failure to report missing precursor substances
13	(jjjjj)	ORS 475.960, Illegally selling drug equipment
14	(kkkkk)	ORS 475.965, Providing false information on precursor substances
15		report
16	(LLLLL)	ORS 803.230, Forging, altering or unlawfully producing or using title or
17		registration
18	(mmmmm)	ORS 807.620, Giving false information to police officer
19	(nnnnn)	ORS 811.060, Vehicular assault of bicyclist or pedestrian
20	(ooooo)	ORS 811.140, Reckless driving
21	(ppppp)	ORS 811.540, Fleeing or attempting to elude police officer
22	(qqqqq)	ORS 811.700, Failure to perform duties of driver when property is
23		damaged
24	(rrrrr)	ORS 811.705, Failure to perform duties of driver to injured persons
25	(sssss)	ORS 819.300, Possession of a stolen vehicle
26	(ttttt)	ORS 830.475, Failure to perform the duties of an operator (boat)

- 1 (uuuuu) Any unclassified misdemeanor defined in Oregon Revised Statutes not
2 listed elsewhere in this rule
- 3 (vvvvv) Any other misdemeanor in Oregon Revised Statutes not listed in this
4 rule that is serious and indicates behavior that poses a threat or
5 jeopardizes the safety of vulnerable persons, as determined by the AD
- 6 (wwwww) Any misdemeanor in a jurisdiction outside Oregon that is not the
7 substantial equivalent of any of the Oregon crimes listed in section (2)
8 of this rule but that is serious and indicates behavior that poses a threat
9 or jeopardizes the safety of vulnerable persons, as determined by the
10 AD. If a misdemeanor in a jurisdiction outside Oregon is similar to a
11 violation in Oregon, then it may not be considered potentially
12 disqualifying under this section.
- 13 (xxxxx) Any crime of attempt, solicitation or conspiracy to commit a crime
14 listed in this section pursuant to ORS 161.405 or 161.435, including any
15 conviction based on criminal liability for conduct of another pursuant to
16 ORS 161.155
- 17 (yyyyy) Any crime in any other jurisdiction which is the substantial equivalent
18 of any of the Oregon crimes listed in section (2) of this rule, as
19 determined by the AD
- 20 (zzzzz) Any crime which is no longer codified in Oregon, but which is the
21 substantial equivalent of any of the crimes listed in section (2) of this
22 rule, as determined by the AD
- 23 (3) The crimes listed in this section are five-year review crimes which require that a fitness
24 determination be completed if the date of conviction is within five years of the date the
25 Background Check Request form was signed or the date the Department conducted a
26 criminal records check due to imminent risk.
- 27 (a) ORS 162.085, Unsworn falsification
- 28 (b) ORS 162.235, Obstructing governmental or judicial administration
- 29 (c) ORS 164.245, Criminal trespass II
- 30 (d) ORS 164.335, Reckless burning
- 31 (e) ORS 164.345, Criminal mischief III

- 1 (f) ORS 165.555, Unlawful telephone solicitation of contributions for
2 charitable purposes
- 3 (g) ORS 165.813, Unlawful possession of fictitious identification
- 4 (h) ORS 166.075, Abuse of venerated objects
- 5 (i) ORS 166.095, Misconduct with emergency telephone calls
- 6 (j) ORS 811.182, Criminal driving while suspended or revoked
- 7 (k) ORS 813.010, Driving under the influence of intoxicants (DUII)
- 8 (L) ORS 830.315, Reckless operation of a boat
- 9 (m) ORS 830.325, Operating boat while under influence of intoxicating
10 liquor or controlled substance
- 11 (n) ORS 830.730, False information to peace officer or Oregon State Marine
12 Board
- 13 (o) Any conviction for attempt, solicitation or conspiracy to commit a crime
14 listed in this section pursuant to ORS 161.405 or 161.435, including any
15 conviction based on criminal liability for conduct of another pursuant to
16 ORS 161.155
- 17 (p) Any crime in any other jurisdiction which is the substantial equivalent
18 of any of the Oregon crimes listed in section (3) of this rule, as
19 determined by the AD
- 20 (q) Any crime which is no longer codified in Oregon, but which is the
21 substantial equivalent of any of the crimes listed in section (3) of this
22 rule, as determined by the AD
- 23 (4) Evaluations of crimes may be based on Oregon laws and laws in other jurisdictions in
24 effect at the time of the fitness determination, regardless of the jurisdiction in which the
25 conviction occurred.
- 26 (5) An SI may not be denied under these rules due to the existence or contents of a juvenile
27 record that has been expunged pursuant to ORS 419A.260 to 419A.262.
- 28 (6) An SI may not be denied under these rules due to the existence or contents of an adult
29 record that has been set aside pursuant to ORS 137.225.

1 *Stat. Auth.: ORS 181.537 & 409.050*
2 *Stats. Implemented: ORS 181.534, 181.537 & 409.010*
3

4 **407-007-0290** **Other Potentially Disqualifying Conditions**

5 The following are potentially disqualifying conditions:

- 6 (1) The SI makes a false statement to the QE, AD, or Department, including the provision of
7 materially false information, false information regarding criminal records, or failure to
8 disclose information regarding criminal records. Nondisclosure of violation or infraction
9 charges may not be considered a false statement.

- 10 (2) The SI is a registered sex offender in any jurisdiction. There is a rebuttable presumption
11 that an SI is likely to engage in conduct that would pose a significant risk to vulnerable
12 individuals if the SI has been designated a predatory sex offender in any jurisdiction
13 under ORS 181.585 or found to be a sexually violent dangerous offender under ORS
14 144.635 (or similar statutes in other jurisdictions).

- 15 (3) The SI has an outstanding warrant for any crime in any jurisdiction.

- 16 (4) The SI has a deferred sentence, conditional discharge, or is participating in a diversion
17 program for any crime in any jurisdiction.

- 18 (5) The SI is currently on probation, parole, or post-prison supervision for any crime in any
19 jurisdiction, regardless of the original conviction date (or date of guilty or no contest
20 plea if there is no conviction date).

- 21 (6) The SI has been found in violation of post-prison supervision, parole, or probation for
22 any crime in any jurisdiction, regardless of the original conviction date (or date of guilty
23 or no contest plea if there is no conviction date), within five years from the date the
24 background check request was signed or the date the Department conducted a criminal
25 records check due to imminent danger.

- 26 (7) The SI has an unresolved arrest, charge, or a pending indictment for any crime in any
27 jurisdiction.

- 28 (8) The SI has been arrested in any jurisdiction as a fugitive from another state or a fugitive
29 from justice, regardless of the date of arrest.

- 30 (9) The SI has an adjudication in a juvenile court in any jurisdiction, finding that the SI was
31 responsible for a potentially disqualifying crime that would result in a conviction if
32 committed by an adult. Subsequent adverse rulings from a juvenile court, such as
33 probation violations, shall also be considered potentially disqualifying if within five years
34 from the date the background check request was signed or the date the Department
35 conducted a criminal records check due to imminent danger.

- 1 (10) The SI has a finding of “guilty except for insanity,” “guilty except by reason of insanity,”
 2 “not guilty by reason of insanity,” “responsible except for insanity,” “not responsible by
 3 reason of mental disease or defect,” or similarly worded disposition in any jurisdiction
 4 regarding a potentially disqualifying crime, unless the local statutes indicate that such
 5 an outcome is considered an acquittal.
- 6 (11) Potentially disqualifying abuse as determined from abuse investigation reports which
 7 have an outcome of founded, substantiated, or valid and in which the SI is determined
 8 to have been responsible for the abuse.
- 9 (a) For SIs associated with child foster homes licensed through the Department’s
 10 Seniors and People with Disabilities Division, child foster homes licensed through
 11 a private licensed child caring agency, or adoptive families through a private
 12 licensed child caring agency, potentially disqualifying abuse includes:
- 13 (A) Child protective services history held by the Department regardless of the
 14 date of initial report or outcome;
- 15 (B) Child protective services history reviewed pursuant to the federal Adam
 16 Walsh Act requirements, determined by BCU ADs to be potentially
 17 disqualifying; and
- 18 (C) Adult protective services investigations of physical abuse, sexual abuse,
 19 or financial exploitation initiated on or after January 1, 2010, as provided
 20 to BCU by the Office of Investigation and Training and the Seniors and
 21 People with Disabilities Division based on severity.
- 22 (b) For staff and volunteers of a private licensed child caring agency:
- 23 (A) Child protective services history held by the Department regardless of the
 24 date of initial report or outcome; and
- 25 (B) Adult protective services investigations of physical abuse, sexual abuse,
 26 or financial exploitation initiated on or after January 1, 2010, as provided
 27 to BCU by the Office of Investigation and Training and the Seniors and
 28 People with Disabilities Division based on severity.
- 29 (c) For child care providers and associated subject individuals defined in OAR 407-
 30 007-0210(30)(a)(H);
- 31 (A) Child protective services history held by the Department regardless of the
 32 date of initial report, date of outcome, and considered potentially
 33 disqualifying pursuant to OAR 461-165-0420; and
- 34 (B) Adult protective services investigations of physical abuse, sexual abuse,
 35 or financial exploitation initiated on or after January 1, 2010, as provided

1 to BCU by the Office of Investigation and Training and the Seniors and
2 People with Disabilities Division based on severity.

3 (d) For all other SIs, potentially disqualifying abuse includes founded or
4 substantiated adult protective services investigations of physical abuse, sexual
5 abuse, or financial exploitation initiated on or after January 1, 2010, as provided
6 to the BCU by the Office of Investigation and Training and the Seniors and People
7 with Disabilities Division based on severity.

8
9 *Stat. Auth.: ORS 181.537, 409.027 & 409.050*

10 *Stats. Implemented: ORS 181.534, 181.537, 409.010, 409.027 & 443.004*

11

12 **407-007-0300 Weighing Test**

13 When making a fitness determination, the AD shall consider any of the following factors if an SI
14 has potentially disqualifying convictions or conditions as disclosed by the SI or which is
15 otherwise known:

16 (1) Circumstances regarding the nature of potentially disqualifying convictions and
17 conditions including but not limited to:

18 (a) The details of incidents leading to the charges of potentially disqualifying
19 convictions or resulting in potentially disqualifying conditions.

20 (b) Age of the SI at time of the potentially disqualifying convictions or conditions.

21 (c) Facts that support the convictions or potentially disqualifying conditions.

22 (d) Passage of time since commission of the potentially disqualifying convictions or
23 conditions.

24 (e) Consideration of state or federal laws, regulations, or rules covering the position,
25 facility, employer, or QE regarding the potentially disqualifying convictions or
26 conditions.

27 (2) If applicable, circumstances regarding the nature of potentially disqualifying abuse
28 including but not limited to:

29 (a) Circumstances leading to the incident of abuse;

30 (b) The nature and type of abuse; and

31 (c) Other information gathered during the scope of the abuse investigation.

32 (d) The date of the abuse incident and abuse investigation, and the age of the SI at
33 the time of the abuse.

- 1 (e) The quality of the abuse investigation including, if applicable, any exhibits and
2 related documents with consideration taken into account regarding
3 completeness, objectivity, and sufficiency.
- 4 (f) Due process provided to the SI after the abuse investigation.
- 5 (g) Required action resulting from the founded or substantiated abuse including but
6 not limited to training, counseling, corrective or disciplinary action, and the SI's
7 compliance.
- 8 (3) Other factors when available including but not limited to:
- 9 (a) Other information related to criminal activity including charges, arrests, pending
10 indictments, and convictions. Other behavior involving contact with law
11 enforcement may also be reviewed if information is relevant to other criminal
12 records or shows a pattern relevant to criminal history.
- 13 (b) Periods of incarceration.
- 14 (c) Status of and compliance with parole, post-prison supervision, or probation.
- 15 (d) Evidence of alcohol or drug issues directly related to criminal activity or
16 potentially disqualifying conditions.
- 17 (e) Evidence of other treatment or rehabilitation related to criminal activity or
18 potentially disqualifying conditions.
- 19 (f) Likelihood of repetition of criminal behavior or behaviors leading to potentially
20 disqualifying conditions including but not limited to patterns of criminal activity
21 or behavior.
- 22 (g) Information from the Department's protective services, abuse, or other
23 investigations in which the investigator documented behavior or conduct by the
24 SI that would pose a risk to or jeopardize the safety of vulnerable individuals.
- 25 (h) Changes in circumstances subsequent to the criminal activity or disqualifying
26 conditions including but not limited to:
- 27 (A) History of high school, college, or other education related
28 accomplishments.
- 29 (B) Work history (employee or volunteer).
- 30 (C) History regarding licensure, certification, or training for licensure or
31 certification.

1 (D) Written recommendations from current or past employers, including
2 Department client employers.

3 (i) Indication of the SI's cooperation, honesty, or the making of a false statement
4 during the criminal records check process, including acknowledgment and
5 acceptance of responsibility of criminal activity and potentially disqualifying
6 conditions.

7 (4) The AD shall consider the relevancy of the SI's criminal activity or potentially
8 disqualifying conditions to the paid or volunteer position, or to the environment in
9 which the SI will reside, work, or visit.

10

11 *Stat. Auth.: ORS 181.537, 409.027 & 409.050*

12 *Stats. Implemented: ORS 181.534, 181.537, 409.010, 409.027 & 443.004*

13

14 **407-007-0315 Hired on a Preliminary Basis**

15 A preliminary fitness determination is required to determine if an SI may work, volunteer, be
16 employed, or otherwise perform in the position listed on the background check request prior to
17 a final fitness determination. The SI may not be hired on a preliminary basis prior to the
18 completion of a preliminary fitness determination.

19 (1) The SI must complete required information on a background check request and the AD
20 or CP must review the form.

21 (2) The AD or CP shall review the background check request, complete a preliminary fitness
22 determination, and shall then make one of the following determinations:

23 (a) An SI may be hired on a preliminary basis, only during the period of time prior to
24 a final fitness determination, into the position listed on the background check
25 request and be allowed to participate in training, orientation, and position
26 activities under the one of the following circumstances:

27 (A) If there is no indication of a potentially disqualifying conviction or
28 condition on the background check request and the AD or CP have no
29 reason to believe the SI has potentially disqualifying history. This is the
30 only situation in which a CP may hire an SI on a preliminary basis.

31 (B) If the SI discloses any potentially disqualifying convictions or conditions,
32 the SI may be hired on a preliminary basis only after the completion of a
33 weighing test by an AD. The SI may be hired on a preliminary basis only if,
34 based on information available at the time, the AD determines that more
35 likely than not, the SI poses no potential threat to vulnerable individuals.

- 1 (b) The QE may not hire a SI on a preliminary basis under any of the following
2 circumstances:
- 3 (A) Being hired on a preliminary basis or probationary status is not allowed
4 by program rules.
- 5 (B) The SI has disclosed potentially disqualifying convictions or conditions
6 and the QE does not have an AD to make a preliminary fitness
7 determination.
- 8 (C) The AD or Department determine that:
- 9 (i) More likely than not, the SI poses a potential threat to vulnerable
10 individuals, based on a preliminary fitness determination and
11 weighing test;
- 12 (ii) The SI's most recent background check under these rules or other
13 Department criminal records check rules or abuse check rules
14 resulted in a denial; or
- 15 (iii) The SI is currently involved in contesting a background check
16 under these or other Department criminal records check rules or
17 abuse check rules.
- 18 (D) An outcome of no hiring on a preliminary basis may only be overturned
19 by the Department.
- 20 (3) The QE shall forward the background check request to the Department immediately
21 upon completion of the preliminary fitness determination or, if the QE cannot make a
22 preliminary fitness determination, immediately after the SI's completion of the form and
23 verification of the SI's identity.
- 24 (4) The Department shall review the preliminary fitness determination made by the QE.
- 25 (a) The Department may change the outcome of the preliminary fitness
26 determination based on available information.
- 27 (b) A QE without access to an AD may request the Department make a preliminary
28 fitness determination if the SI discloses potentially disqualifying convictions or
29 conditions.
- 30 (5) An SI hired on a preliminary basis shall be actively supervised at all times.
- 31 (a) The individual providing active supervision at all times shall do the following:

- 1 (A) Be in the same building as the SI or, if outdoors of QE buildings or any
2 location off the QE property, be within line-of-sight and hearing, except
3 as provided in section (5)(b)(B) of this rule;
- 4 (B) Know where the SI is and what the SI is doing; and
- 5 (C) Periodically observe the actions of the SI.
- 6 (b) The individual providing the active supervision may be either:
- 7 (A) An SI who has been approved without restrictions pursuant to these rules
8 or previous Department criminal records check rules; or
- 9 (B) The adult client, an adult client's adult relation, the client's legal
10 representative, or a child's parent or guardian. Active supervision by
11 these individuals is appropriate in situations where care is given directly
12 to clients usually in a home such as but not limited to in-home care,
13 home health, or care by home care workers, personal care assistants, or
14 child care providers.
- 15 (i) The adult client may actively supervise a homecare worker,
16 personal care services provider, independent provider, or a
17 employee of an in-home care agency or home health agency if the
18 client makes an informed decision to employ the provider.
19 Someone related to the client may also provide active supervision
20 if the relative has been approved by the Department, the AD, or
21 the private-pay client receiving services through an in-home care
22 or home health agency.
- 23 (ii) A child client's parent or guardian shall be responsible for
24 providing active supervision in the case of child care providers.
25 The supervision is not required to be performed by someone in
26 the same building as the child.
- 27 (6) An SI approved without restrictions within the previous 24 months through a
28 documented criminal records check or abuse check pursuant to these rules or prior
29 Department criminal records check rules or abuse check rules may be hired on a
30 preliminary basis without active supervision. Twenty-four months is calculated from
31 date of previous approval to the date of hire in the new position. This exemption from
32 active supervision is not allowed in any of the following situations:
- 33 (a) If the SI cannot provide documented proof that he or she worked continuously
34 under the previous approval for at least one year.
- 35 (b) If there is evidence of criminal activity or potentially disqualifying abuse within
36 the previous 24 months.

- 1 (c) If, as determined by the AD or the Department, the job duties in the new
- 2 position are so substantially different from the previous position that the
- 3 previous fitness determination is inadequate for the current position.

- 4 (7) Revocation of hired on a preliminary basis is not subject to hearing or appeal. The QE or
- 5 the Department may immediately revoke hired on a preliminary basis for any of the
- 6 following reasons:

- 7 (a) There is any indication of falsification of application.

- 8 (b) The SI fails to disclose convictions for any potentially disqualifying crimes, any
- 9 arrests that did not result in convictions or any out of state arrests or
- 10 convictions.

- 11 (c) The QE or Department determines that allowing the SI to be hired on a
- 12 preliminary basis is not appropriate, based on the application, criminal record,
- 13 position duties, or Department program rules.

- 14 (8) Nothing in this rule is intended to require that an SI who is eligible to be hired on a
- 15 preliminary basis be allowed to work, volunteer, be employed, or otherwise perform in
- 16 the position listed on the background check request prior to a final fitness
- 17 determination.

- 18 (9) Preliminary fitness determinations must be documented in writing, including any details
- 19 regarding a weighing test, if required.

20

21 *Stat. Auth.: ORS 181.537, 409.027 & 409.050*

22 *Stats. Implemented: ORS 181.534, 181.537, 409.010, 409.027 & 443.004*

23

24 **407-007-0320 Final Fitness Determinations**

25 The AD shall make a final fitness determination after all necessary background checks have

26 been received and a weighing test, if necessary, has been completed. The AD may obtain and

27 consider additional information as necessary to complete the final fitness determination.

- 28 (1) The final fitness determination results in one of the following outcomes:

- 29 (a) The AD may approve an SI if:

- 30 (A) The SI has no potentially disqualifying convictions or potentially
- 31 disqualifying conditions; or

- 32 (B) The SI has potentially disqualifying convictions or potentially disqualifying
- 33 conditions and, after a weighing test, the AD determines that more likely

1 than not, the SI poses no risk to the physical, emotional, or financial well-
2 being of vulnerable individuals.

3 (b) The AD may approve an SI with restrictions if the AD determines that more likely
4 than not, the SI poses no risk to the physical, emotional, or financial well-being
5 of vulnerable individuals, if certain restrictions are placed on the SI. Restrictions
6 may include but are not limited to restrictions to one or more specific clients, job
7 duties, or environments. A new background check and fitness determination
8 shall be completed on the SI before removing a restriction.

9 (c) The AD shall deny an SI whom the AD determines, after a weighing test, more
10 likely than not poses a risk to the physical, emotional, or financial well-being of
11 vulnerable individuals.

12 (2) The Department shall make a final fitness determination in the following situations:

13 (a) A national or state-specific criminal records check has been completed on the SI;

14 (b) The Department determines that the SI has potentially disqualifying abuse as
15 described in OAR 407-007-0290(11). Only ADs employed by the Department or
16 Authority are authorized to receive abuse investigation reports, associated
17 exhibits, or documents from the Department or Authority for the purposes of
18 determining potentially disqualifying abuse, or conducting fitness
19 determinations or weighing tests in accordance with these rules.

20 (c) If Oregon laws or program administrative rules governing the QE or the position
21 require that the Department makes the final fitness determination;

22 (d) The SI has the following history regarding criminal records checks or abuse
23 checks:

24 (A) The SI's most recent criminal records check or abuse check under these
25 rules or other Department rules resulted in a denial; or

26 (B) The SI's most recent criminal records check or abuse check under these
27 or other Department rules required a weighing test which was completed
28 by the Department.

29 (e) If, after conducting a criminal records check or abuse check, the Department
30 determines that, based on the presence of a potentially disqualifying crime or
31 condition, there is a potential for imminent danger to vulnerable individuals;

32 (f) If the QE requests the Department to make the final fitness determination
33 because the QE is temporarily unable to provide an AD to conduct a fitness
34 determination;

- 1 (g) Upon request of an AD, the Department may provide technical assistance or
2 make the final fitness determination;
- 3 (h) If the Department has reason to believe a final fitness determination has not
4 been conducted in compliance with these rules, the Department may repeat the
5 background check and make a final fitness determination; or
- 6 (i) If the QE or AD is under investigation regarding compliance with these rules and
7 the status of all ADs have been suspended during the investigation.
- 8 (3) The Department may review final fitness determinations made by local ADs and make a
9 new final fitness determination at its discretion.
- 10 (4) Upon completion of a final fitness determination, the Department or AD making the
11 decision shall provide written notice to the SI.
- 12 (a) The notice shall be in a Department-approved format.
- 13 (b) If approved, the background check request shall indicate the final fitness
14 determination and the completed background check request shall be the notice
15 of fitness determination.
- 16 (A) If the final fitness determination is completed by the Department, the QE
17 shall ensure the SI receives a copy of the background check request after
18 the Department returns the background check request to the QE.
- 19 (B) If the final fitness determination is completed by the local AD, the local
20 AD shall ensure that the SI receives a copy of the background check
21 request after the AD completes the background check request.
- 22 (c) If the final fitness determination is a denial based on potentially disqualifying
23 abuse under OAR 407-007-290(11)(d) and there are no other potentially
24 disqualifying convictions or conditions, the Department shall issue a Notice of
25 Intent to Deny and provide hearing rights under OAR 407-007-0335.
- 26 (d) Except as required by section (4)(c) of this rule, if denied or approved with
27 restrictions, the notice of fitness determination shall include the potentially
28 disqualifying convictions or conditions that the outcome was based upon,
29 information regarding appeal rights and the notice becoming a final order in the
30 event of a withdrawal or failure to appear at the hearing.
- 31 (A) If the final fitness determination is completed by the Department, the
32 Department shall issue the SI the notice of fitness determination and a
33 copy of the background check request. The Department shall provide the
34 QE with a copy of the background check request to the QE with indication

1 of the final fitness determination being either denied or approved with
2 restrictions.

3 (B) If the final fitness determination is completed by the local AD, the local
4 AD shall issue the SI the notice of fitness determination and a copy of the
5 background check request after the AD completes the background check
6 request.

7 (e) The notice of fitness determination shall be mailed or hand-delivered to the SI
8 within 14 calendar days after the final fitness determination has been
9 completed. The effective date of action shall be recorded on the notice.

10 (5) When an SI is denied, the SI shall not be allowed to work, volunteer, be employed, or
11 otherwise perform in the position listed on the background check request. A denial
12 applies only to the position and application in question. A denial shall result in
13 immediate termination, dismissal, or removal of the SI.

14 (6) When an SI is approved with restrictions, the SI shall only be allowed to work, volunteer,
15 be employed, or otherwise perform in the position listed on the background check
16 request and only under the stated restrictions. A restricted approval applies only to the
17 position and application in question. A restricted approval shall result in immediate
18 implementation of the restrictions.

19 (7) Final fitness determinations must be documented in writing, including any details
20 including but not limited to the potentially disqualifying convictions or conditions, the
21 factors considered during weighing test, and restrictions in a restricted approval. The
22 authorized designee shall also maintain any documents obtained during the fitness
23 determination, such as written statements and certificates from the subject individual,
24 police reports, or court records.

25 (8) The Department or AD shall make new fitness determinations for each application. The
26 outcome of previous fitness determinations does not set a precedent for subsequent
27 fitness determinations.

28

29 *Stat. Auth.: ORS 181.537, 409.027 & 409.050*

30 *Stats. Implemented: ORS 181.534, 181.537, 409.010, 409.027 & 443.004*

31

32 **407-007-0325 Closed Case**

33 If the SI discontinues the application or fails to cooperate with the criminal records check or
34 fitness determination process, the application is considered incomplete and may be closed.

35 (1) Discontinuance or failure to cooperate includes but is not limited to the following
36 circumstances:

- 1 (a) The SI fails to disclose all criminal history on the background check request.
- 2 (b) The SI refuses to be fingerprinted when required by these rules.
- 3 (c) The SI fails to respond within a stated time period to a request for corrections to
4 the application, fingerprints, or any other information necessary to conduct a
5 criminal records check or an abuse check and there is not enough information
6 available to make a fitness determination.
- 7 (d) The SI withdraws the application, leaves the position prior to completion of the
8 background check, or the Department cannot locate or contact the subject
9 individual.
- 10 (e) The SI is determined to be ineligible for the position for reasons other than the
11 background check.
- 12 (2) When the application is closed without a final fitness determination, the SI does not
13 have a right to contest the closure.
- 14 (3) When a case is closed, the SI shall not be allowed to work, volunteer, be employed, or
15 otherwise perform in the position listed on the background check request. A closed case
16 applies only to the position in question. A closed case shall result in immediate
17 termination, dismissal, or removal of the SI.
- 18 (4) The AD or CP shall document in writing the reasons for a closed case, and shall provide
19 that information to the SI.
20

21 *Stat. Auth.: ORS 181.537, 409.027 & 409.050*

22 *Stats. Implemented: ORS 181.534, 181.537, 409.010, 409.027 & 443.004*
23

24 **407-007-0330 Contesting a Fitness Determination**

- 25 (1) A final fitness determination of denied or restricted approval is considered an adverse
26 outcome. An SI with an adverse outcome may contest that fitness determination unless
27 already granted contested case hearing rights under OAR 407-007-0335.
- 28 (2) If an SI is denied, the SI may not hold the position, provide services or be employed,
29 licensed, certified, or registered, or otherwise perform in positions covered by these
30 rules. An SI appealing a restricted approval may only work under the terms of the
31 restriction during the appeal.
- 32 (3) If an adverse outcome is changed at any time during the appeal process, the change
33 does not guarantee employment or placement.

- 1 (4) An SI may challenge the accuracy or completeness of information provided by the OSP,
2 the FBI, or other agencies reporting information to the Department, by appealing to the
3 entity providing the information. These challenges are not subject to the Department's
4 appeal process.
- 5 (5) An SI has the right to represent him or herself or have legal representation during the
6 appeal process. For the purpose of this rule, the term "SI" shall be considered to include
7 the SI's legal representative.
- 8 (a) An SI who is appealing an adverse outcome regarding the position of homecare
9 worker as defined in ORS 410.600 or personal support worker as defined in ORS
10 410.600 may be represented by a labor union representative pursuant to ORS
11 183.459.
- 12 (b) For all other SIs, the SI may not be represented by a lay person.
- 13 (6) An SI may contest an adverse fitness determination by requesting a contested case
14 hearing. The contested case hearing process is conducted in accordance with ORS
15 183.411 to 183.497 and the Attorney General's Uniform and Model Rules of Procedure
16 for the Office of Administrative Hearings (OAH), OAR 137-003-0501 to 137-003-0700.
- 17 (a) To request a contested case hearing, the SI shall complete and sign the Hearing
18 Request form.
- 19 (b) The completed and signed form must be received by the Department within 45
20 calendar days after the effective date of action listed on the notice of the fitness
21 determination.
- 22 (c) In the event an appeal is not timely, the Department shall determine, based on a
23 written statement from the SI and available information, if there is good cause to
24 proceed with the appeal.
- 25 (d) The Department may refer an untimely request to the OAH for a hearing on the
26 issue of timeliness.
- 27 (7) The Department may conduct an administrative review before referring the appeal to
28 OAH.
- 29 (a) The SI must participate in the administrative review. Participation may include
30 but is not limited to providing additional information or additional documents
31 requested by the BCU within a specified amount of time.
- 32 (b) The administrative review is not open to the public.
- 33 (8) The Department may conduct additional criminal records checks or abuse checks during
34 the contested case hearing process to update or verify the SI's potentially disqualifying

1 convictions or conditions and factors to consider in the weighing test. If needed, the
2 Department shall amend the notice of fitness determination while still maintaining the
3 original hearing rights and deadlines.

4 (9) The Department shall be represented by a hearing representative in contested case
5 hearings. The Department may also be represented by the Office of the Attorney
6 General.

7 (a) The Department shall provide the administrative law judge and the SI a complete
8 copy of available information used during the background checks and fitness
9 determinations. The notice of contested case and prehearing summary and
10 other documents may be mailed by regular first class mail or provided
11 electronically.

12 (b) An SI may not have access to confidential information contained in abuse
13 investigation reports or other records collected or developed during the abuse
14 check process without a protective order limiting further disclosure of the
15 information.

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

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

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

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

27 (e) The only remedy an administrative law judge may grant is a fitness
28 determination that the subject individual is approved, approved with
29 restrictions, or denied. Under no circumstances shall the Department or the QE
30 be required to place an SI in any position, nor shall the Department or the QE be
31 required to accept services or enter into a contractual agreement with an SI.

32 (f) A hearing pursuant to these rules may be conducted in conjunction with a
33 licensure or certification hearing for the SI.

34 (10) The notice of fitness determination issued is final as if the SI never requested a hearing
35 in the following situations:

- 1 (a) The SI failed to request a hearing in the time allotted in this rule. No other
2 document will be issued after the notice of fitness determination.
- 3 (b) The SI withdraws the request for hearing at any time during the appeal process.
- 4 (11) The Department may make an informal disposition based on the administrative review.
5 The Department shall issue a final order and new notice of fitness determination. If the
6 resulting fitness determination is an adverse outcome, the appeal shall proceed to
7 contested case hearing.
- 8 (12) The Department shall issue a dismissal order in the following situations:
- 9 (a) The SI may withdraw a hearing request verbally or in writing at any time before
10 the issuance of a final order. A dismissal order due to the withdrawal is effective
11 the date the withdrawal is received by the Department or the OAH. The SI may
12 cancel the withdrawal in writing within 14 calendar days after the date of
13 withdrawal.
- 14 (b) The Department shall dismiss a hearing request when the SI fails to participate in
15 the administrative review. Failure to participate in the administrative review
16 shall result in termination of hearing rights. The order is effective on the due
17 date for participation in the administrative review. The Department shall review
18 a good cause request to reinstate hearing rights if received in writing by the
19 Department within 14 calendar days.
- 20 (c) The Department shall dismiss a hearing request when the SI fails to appear at the
21 time and place specified for the contested case hearing. The order is effective on
22 the date scheduled for the hearing. The Department shall review a good cause
23 request to reinstate hearing rights if received in writing by the Department
24 within 14 calendar days of the order.
- 25 (13) After a hearing, the administrative law judge shall issue a proposed and final order.
- 26 (a) If no written exceptions are received by the Department within 14 calendar days
27 after the service of the proposed and final order, the proposed and final order
28 becomes the final order.
- 29 (b) If timely written exceptions to the proposed and final order are received by the
30 Department, the Department's Director or designee shall consider the
31 exceptions and serve a final order, or request a written response or a revised
32 proposed and final order from the administrative law judge.
- 33 (14) Final orders, including dismissal and default orders, are subject to reconsideration or
34 rehearing petitions within 60 calendar days after the order is served, pursuant to OAR
35 137-003-0675.

1 (15) The Department may provide the QE's AD with the results of the appeal.

2

3 *Stat. Auth.: ORS 181.537, 183.459, 409.027 & 409.050*

4 *Stats. Implemented: ORS 181.534, 181.537, 183.459, 409.010, 409.027 & 443.004*

5

6 **407-007-0335 Decision and Hearing Rights for Potentially**
7 **Disqualifying Abuse**

8 (1) This rule applies only to:

9 (a) Background checks in which an SI has potentially disqualifying abuse under OAR
10 407-007-0290(11)(d) with no other potentially disqualifying convictions or
11 conditions; and

12 (b) After a weighing test under OAR 407-007-0300, the Department determines that
13 more likely than not, SI poses a risk to the physical, emotional, or financial well-
14 being of vulnerable individuals.

15 (2) The Department shall provide the SI a Notice of Intent to Deny in writing.

16 (a) The Department shall indicate on the Notice of Intent to Deny the date the final
17 fitness determination was made and the date of the intended action if the SI fails to
18 request an expedited hearing.

19 (b) The Department shall mail the Notice of Intent to Deny to the SI using the
20 mailing address provided by the SI by the next business day after the date of the
21 final fitness determination.

22 (c) The Department shall include a copy of the background check request and an
23 Expedited Hearing Request form with the Notice of Intent to Deny.

24 (3) An SI may contest a Notice of Intent to Deny by requesting an expedited hearing. The
25 expedited hearing process is conducted in accordance with ORS 183.411 to 183.497 and
26 the Attorney General's Uniform and Model Rules of Procedure for the Office of
27 Administrative Hearings (OAH), OAR 137-003-0501 to 137-003-0700.

28 (4) To request an expedited hearing, the SI must submit a completed and signed Expedited
29 Hearing Request form. The request for an expedited hearing must be received by the
30 Department within 10 calendar days after the date of the final fitness determination.

31 (5) An SI has the right to represent him or herself or have legal representation during the
32 expedited hearing process. For the purpose of this rule, the term "SI" shall be
33 considered to include the SI's legal representative if the SI has provided the Department
34 with the such information.

- 1 (a) An SI who is appealing a Notice of Intent to Deny regarding the position of
2 homecare worker as defined in ORS 410.600 or personal support worker as
3 defined in ORS 410.600 may be represented by a labor union representative
4 pursuant to ORS 183.459.
- 5 (b) For all other SIs, the SI may not be represented by a lay person.
- 6 (6) If the SI fails to request an expedited hearing under this rule within the allowed time,
7 the Department shall issue a Notice of Denial to the SI and to the QE. The SI shall have
8 no further hearing rights under OAR 407-007-0330.
- 9 (7) If the SI requests an expedited hearing in a timely manner, the SI shall remain in the
10 same status made in a preliminary fitness determination under OAR 407-007-0315 until
11 the date of a final order or the Notice of Denial.
- 12 (8) The Department may conduct an administrative review before referring the appeal to
13 OAH.
- 14 (a) The SI must participate in the administrative review. Participation may include
15 but is not limited to providing additional information or additional documents
16 requested by the BCU within a specified amount of time.
- 17 (b) The administrative review is not open to the public.
- 18 (c) The Department may make an informal disposition based on the administrative
19 review. The Department shall issue a final order and a notice of fitness
20 determination.
- 21 (9) The Department shall be represented by a hearing representative in expedited hearings.
22 The Department may also be represented by the Office of the Attorney General.
- 23 (a) The Department shall provide the administrative law judge and the SI a complete
24 copy of available information used during the background checks and fitness
25 determinations. The claimant is entitled to reasonable notice of all hearing
26 documents either through personal service, electronically, regular mail, or
27 certified mail.
- 28 (b) An SI may not have access to confidential information contained in abuse
29 investigation reports or other records collected or developed during the abuse
30 check process without a protective order limiting further disclosure of the
31 information.
- 32 (A) A protective order issued pursuant to this section must be issued by an
33 administrative law judge as provided for in OAR 137-003-0570(8) or by a
34 court of law.

- 1 (B) In conjunction with a protective order issued pursuant to this section,
2 individually identifying information relating to clients, witnesses, and
3 other persons identified in abuse investigation reports or other records
4 collected or developed during the abuse check process shall be redacted
5 prior to disclosure, except for the information identifying the SI.
- 6 (10) The expedited hearing shall be conducted by the OAH by telephone within 10 business
7 days from the receipt of the completed and signed Expedited Hearing Request form.
- 8 (a) The expedited hearing is not open to the public.
- 9 (b) The administrative law judge shall make a new fitness determination based on
10 evidence and the record.
- 11 (c) The only remedy an administrative law judge may grant is a fitness
12 determination that the subject individual is approved, approved with
13 restrictions, or denied. Under no circumstances shall the Department or the QE
14 be required to place an SI in any position, nor shall the Department or the QE be
15 required to accept services or enter into a contractual agreement with an SI.
- 16 (12) The Department shall issue a dismissal order in the following situations:
- 17 (a) The SI may withdraw an expedited hearing request verbally or in writing at any
18 time before the issuance of a final order. A dismissal order due to the withdrawal
19 is effective the date the withdrawal is received by the Department or the OAH.
20 The SI may cancel the withdrawal in writing within four calendar days after the
21 date of withdrawal.
- 22 (b) The Department shall dismiss a hearing request when the SI fails to participate in
23 the administrative review. Failure to participate in the administrative review
24 shall result in termination of hearing rights. The order is effective on the due
25 date for participation in the administrative review.
- 26 (c) The Department shall dismiss a hearing request when the SI fails to appear at the
27 time specified for the expedited hearing. The order is effective on the date
28 scheduled for the hearing.
- 29 (13) After an expedited hearing, the administrative law judge shall issue a final order within
30 three business days.
- 31 (a) If the final order maintains the Department's intent to deny, the Department
32 shall issue a Notice of Denial by the next business day after the date of the final
33 order. The SI shall have no further hearing rights under OAR 407-007-0330.
- 34 (b) If the final order reverses the Department's intent to deny to an approval or a
35 restricted approval, the Department shall issue a Notice of Fitness Determination

1 by the next business day after the date of the final order unless the Department
2 formally stays the final order.

3 (14) Final orders, including dismissal and default orders, are subject to reconsideration or
4 rehearing petitions within 60 calendar days after the order is served, pursuant to OAR
5 137-003-0675.

6
7 *Stat. Auth.: ORS 181.537, 183.459, 409.027 & 409.050*

8 *Stats. Implemented: ORS 181.534, 181.537, 183.459, 409.010, 409.027 & 443.004*

9

10 **407-007-0340 Record Keeping, Confidentiality**

11 (1) All LEDS reports are confidential and the AD shall maintain the reports in accordance
12 with applicable OSP requirements in ORS chapter 181 and the rules adopted pursuant
13 thereto (see OAR chapter 257, division 15).

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

16 (b) The LEDS report and any photocopies may not be shown or given to the SI.

17 (2) The results of a national criminal records check provided by the FBI or the OSP are
18 confidential and may not be disseminated by the Department unless:

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

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

23 (3) The results of an abuse check are confidential and may not be disseminated by the
24 Department except in compliance with confidentiality statutes and guidelines of the
25 Department. An SI may not have access to confidential information contained in abuse
26 investigation reports or other records collected or developed during the abuse check
27 process without a protective order limiting further disclosure of the information during
28 the contested case hearing process.

29 (4) All completed background check requests, other criminal records information, and other
30 records collected or developed during the background check or contested case process
31 shall be kept confidential and disseminated only on a need-to-know basis.

32 (5) The Department shall retain and destroy all criminal records check documents pursuant
33 to federal law and records retention schedules published by Oregon State Archives.

1 (6) Documents may be requested and reviewed by the Department and the OSP for the
2 purposes of determining and ensuring compliance with these rules.

3 (7) Neither local ADs nor the Department may re-create past notices of fitness
4 determinations. If an error is discovered on a notice of fitness determination, the local
5 AD or the Department may correct it by issuing an amended notice of fitness
6 determination.
7

8 *Stat. Auth.: ORS 181.537, 409.027 & 409.050*

9 *Stats. Implemented: ORS 181.534, 181.537, 409.010, 409.027 & 443.004*
10

11 **407-007-0350 Immunity from Liability**

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

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

20 (a) ORS 181.537 and ORS 409.027; and

21 (b) The decision of the QE or employee of the QE acting within the course and scope
22 of employment.

23 (3) No employee of the state, a business, or an organization, acting within the course or
24 scope of employment, is liable for defamation, invasion of privacy, negligence, or any
25 other civil claim in connection with the lawful dissemination of information lawfully
26 obtained under ORS 181.537.
27

28 *Stat. Auth.: ORS 181.537, 409.027 & 409.050*

29 *Stats. Implemented: ORS 181.534, 181.537, 409.010, 409.027 & 443.004*
30

31 **407-007-0370 Variances**

32 (1) The Department may consider variance requests regarding these rules.

33 (a) The outcomes of a fitness determination made pursuant to these rules is not
34 subject to variance. Challenges to fitness determinations may only be made by
35 SIs through contested case hearing rights set forth in these rules.

- 1 (b) The Department may not grant variances to ORS 181.534 and 181.537.
- 2 (2) The Department may grant a variance to any section of these rules based upon a
3 demonstration by the QE that the variance would not pose a significant risk to physical,
4 emotional, or financial well-being of vulnerable individuals.
- 5 (3) The QE requesting a variance must submit, in writing, an application to the BCU that
6 contains:
- 7 (a) The section of the rule from which the variance is sought;
- 8 (b) The reason for the proposed variance;
- 9 (c) The alternative practice, service, method, concept, or procedure proposed;
- 10 (d) A plan and timetable for compliance with the section of the rule from which the
11 variance is sought; and
- 12 (e) An explanation on how the welfare, health, or safety of individuals receiving care
13 will be ensured during the time the variance is in effect.
- 14 (4) The Assistant Director or designee for the Department's Shared Services, Office of
15 Human Resources shall approve or deny the request for a variance.
- 16 (5) The Department shall notify the QE of the decision within 60 calendar days of the
17 receipt of the request and shall provide a copy to other relevant Department program
18 offices.
- 19 (6) Appeal of the denial of a variance request must be made in writing to the Department's
20 Director, whose decision is final.
- 21 (7) The Department shall determine the duration of the variance.
- 22 (8) The QE may implement a variance only after receipt of written approval from the
23 Department.
- 24 (9) Granting a variance does not set a precedent that must be followed by the Department
25 when evaluating subsequent variance requests.

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

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