

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 **Temporary Rules Effective 1/14/2016 – 7/12/2016**
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1 **407-007-0200 Purpose and Scope**

2 (1) The purpose of these rules, OAR 407-007-0200 to 407-007-0370, is to
3 supplement OAR 125-008-0200 to 125-007-0330 with guidelines and
4 requirements specific to background checks for Department of Human
5 Services (Department) and Oregon Health Authority (Authority) subject
6 individuals (SIs). These rules provide for the reasonable screening under
7 ORS 181A.195, 181A.200, and 409.027 of SIs to determine if they have a
8 history of criminal or abusive behavior such that they should not be
9 allowed to work, volunteer, be employed, reside, or otherwise perform in
10 positions covered by these rules.

11
12 (2) These rules apply to evaluating criminal records and potentially
13 disqualifying conditions of an SI when conducting fitness determinations
14 based upon such information. The fact that an SI is approved does not
15 guarantee employment or placement. These rules do not apply to
16 individuals subject to OAR 407-007-0000 to 407-007-0100 or 407-007-0400
17 to 407-007-0460.

18
19 (3) Providers for the Department and the Authority are subject to criminal
20 records and abuse checks. The Authority authorizes the Department to act
21 on its behalf in carrying out criminal and abuse checks associated with
22 programs or activities administered by the Authority. References in these
23 rules to the Department or Authority shall be construed to be references to
24 either or both agencies.

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26 *Stat. Auth.: ORS 181A.195, 181A.200, 183.459, 409.025, 409.027, 409.050, 410.020, 411.060, 411.122,*
27 *413.036, 418.016, 418.640, 441.055, 443.730, 443.735 & 678.153*

28 *Stats. Implemented: ORS 181A.195, 181A.200, 183.459, 409.010, 409.025, 409.027, 411.060, 411.122 &*
29 *443.004*

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32 **407-007-0210 Definitions**

33 In addition to the definitions in 125-007-0210, the following definitions apply, to
34 OAR 407-007-0200 to 407-007-0370:

35 (1) “Abuse” has the meaning given in the administrative rules promulgated by
36 the Department or Authority corresponding to the setting in which the
37 abuse was alleged or investigated.

- 1 (2) “Abuse check” means obtaining and reviewing abuse allegations, abuse
2 investigation reports, and associated exhibits and documents for the
3 purpose of determining whether an SI has a history as a perpetrator of
4 potentially disqualifying abuse (a potentially disqualifying condition) as
5 described in OAR 407-007-0290(11).
- 6 (3) “Abuse investigation report” means a written report completed after an
7 investigation into suspected abuse and retained by the Department or the
8 Authority pursuant to ORS 124.085, 419B.030, or 430.757, or a similar
9 report filed in another state agency or by another state.
- 10 (4) “Appointing authority” means an individual designated by the qualified
11 entity (QE) who is responsible for appointing QE designees (QEDs).
12 Examples include but are not limited to human resources staff with the
13 authority to offer and terminate employment, a business owner, a member
14 of the board of directors, a director, or a program administrator.
- 15 (5) “Authority” means the Oregon Health Authority.
- 16 (6) “Background check” means a criminal records check and an abuse check
17 under these rules.
- 18 (7) “Background Check Unit (BCU)” means the Background Check Unit
19 conducting background checks for the Department and the Authority.
- 20 (8) “Care” means the provision of care, treatment, education, training,
21 instruction, supervision, placement services, recreation, or support to
22 children, the elderly, or individuals with disabilities (see ORS 181A.200).
- 23 (9) “Client” means any individual who receives services, care, or funding for
24 care through the Department, Authority, or qualified entities.
- 25 (10) “Criminal Information Management System (CRIMS)” means the electronic
26 records system used to process and maintain background check records
27 under these rules. CRIMS may be accessed only through computers and an
28 online portal.
- 29 (11) “Department” means the Department of Human Services.
- 30 (12) “Fingerprint capture” means the taking of an SI’s fingerprints for a national
31 criminal records check in a manner that meets current Oregon statutes and
32 OSP’s capacity for receiving fingerprints.

- 1 (13) “Founded or substantiated” has the meaning given in the Department or
2 Authority’s administrative rules corresponding to the setting in which the
3 abuse was alleged or investigated.
- 4 (14) “Good cause” means a valid and sufficient reason for not complying with
5 established time frames during the background check process or contested
6 case hearing process that includes but is not limited to an explanation of
7 circumstances beyond a SI’s reasonable control.
- 8 (15) “Hearing representative” means a Department employee representing the
9 Department in a contested case hearing.
- 10 (16) “Ineligible due to ORS 443.004” means BCU has determined that an SI,
11 subject to ORS 443.004 and either OAR 407-007-0275 or 407-007-0277, has
12 one or more convictions that prohibits the SI from holding the position
13 listed in the background check request.
- 14 (17) “Office of Adult Abuse Prevention and Investigations (OAAPI)” means the
15 Office of Adult Abuse Prevention and Investigations, formerly the Office of
16 Investigation and Training, a shared service of the Department and
17 Authority.
- 18 (18) “Other criminal records information” means information obtained and used
19 in the criminal records check process that is not criminal offender
20 information from OSP. Other criminal records information includes but is
21 not limited to police investigations and records, information from local or
22 regional criminal records information systems, justice records, court
23 records, information from the Oregon Judicial Information Network, sexual
24 offender registration records, warrants, Oregon Department of Corrections
25 records, Oregon Department of Transportation’s Driver and Motor Vehicle
26 Services Division information, information provided on the background
27 check requests, disclosures by a SI, and any other information from any
28 jurisdiction obtained by or provided to the Department for the purpose of
29 conducting a fitness determination.
- 30 (19) “Position” means the position listed in the background check request which
31 determines whether the individual is a SI under these rules, Department
32 program rules, or Authority program rules.

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- 1 (20) “Qualified entity (QE)” means a community mental health or
2 developmental disability program, local health department, or an
3 individual, business, or organization, whether public, private, for-profit,
4 nonprofit, or voluntary, that provides care, including a business or
5 organization that licenses, certifies, or registers others to provide care (see
6 ORS 181A.200).
- 7 (21) “QE designee (QED)” means an individual appointed by the QE’s appointing
8 authority to handle background checks on behalf of the QE.
- 9 (22) “QE Initiator (QEI)” means an approved SI who BCU has granted access to
10 CRIMS for one QE for the purpose of entering background check request
11 data.
- 12 (23) “Subject individual (SI)” means an individual on whom BCU conducts a
13 criminal records check and an abuse check, and from whom BCU may
14 require fingerprints for the purpose of conducting a national criminal
15 records check.
- 16 (a) An SI includes any of the following:
- 17 (A) An individual who is licensed, certified, registered, or
18 otherwise regulated or authorized for payment by the
19 Department or Authority and who provides care.
- 20 (B) An employee, contractor, temporary worker, or volunteer who
21 provides care or has access to clients, client information, or
22 client funds within or on behalf of any entity or agency
23 licensed, certified, registered, or otherwise regulated by the
24 Department or Authority.
- 25 (C) Any individual who is paid directly or indirectly with public
26 funds who has or will have contact with recipients of:
27
- 28 (i) Services within an adult foster home (defined in ORS
29 443.705); or
- 30 (ii) Services within a residential facility (defined in ORS
31 443.400).
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- 1 (D) Any individual who works in a facility and provides care or has
2 access to clients, client information, or client funds secured by
3 any residential care or assisted living facility through the
4 services of a personnel services or staffing agency.
- 5 (E) Any individual who works in a facility and provides care, or has
6 access to clients, client information, or client funds secured by
7 any nursing facility through the services of a personnel services
8 or staffing agency.
- 9 (F) Except as excluded in section (31)(b)(C) and (D) of this rule, an
10 individual who lives in a facility that is licensed, certified,
11 registered, or otherwise regulated by the Department to
12 provide care. The position of this SI includes but is not limited
13 to resident manager, household member, or boarder.
- 14 (G) An individual working or volunteering for a private licensed
15 child caring agency; an In-Home Safety and Reunification
16 Services (ISRS) program, a Strengthening, Preserving and
17 Reunifying Families (SPRF) provider, or system of care
18 contractor providing child welfare services pursuant to ORS
19 chapter 418.
- 20 (H) A homecare worker as defined in ORS 410.600, a personal
21 support worker as defined in ORS 410.600, a personal care
22 services provider, or an independent provider employed by a
23 Department or Authority client who provides care to the client
24 if the Department or Authority helps pay for the services.
- 25 (I) A child care provider and their employees reimbursed through
26 the Department's child care program and other individuals in
27 child care facilities that are exempt from certification or
28 registration by the Office of Child Care of the Oregon
29 Department of Education. This includes all individuals listed in
30 OAR 461-165-0180(4).
- 31 (J) An appointing authority, QED, or QEI associated with any
32 entity or agency licensed, certified, registered, otherwise
33 regulated by the Department, or subject to these rules.
- 34 (K) An individual providing on the job certified nursing assistant
35 classes to staff within a long term care facility.

- 1 (L) A student enrolled in a Board of Nursing approved nursing
2 assistant training program in which the instruction and training
3 occurs solely in a nursing facility.
- 4 (M) Except for those excluded under OAR 407-007-0210(31)(b)(B),
5 a student or intern who provides care or has access to clients,
6 client information, or client funds within or on behalf of a QE.
- 7 (N) Any individual serving as an owner, operator, or manager of a
8 room and board facility pursuant to OAR chapter 411, division
9 68.
- 10 (O) An employee providing care to clients of the Department's
11 Aging and People with Disabilities (APD) programs who works
12 for an in-home care agency as defined by ORS 443.305 which
13 has a contract with the Department's APD programs.
- 14 (P) Any individual who is required to complete a background
15 check pursuant to Department or Authority program rules or a
16 contract with the Department or Authority, if the requirement
17 is within the Department or Authority's statutory authority.
18 Specific statutory authority or reference to these rules and the
19 positions under the contract subject to a background check
20 must be specified in the contract. The exceptions in section
21 (31)(b) do not apply to these SIs.
- 22 (b) An SI does not include:
- 23 (A) Any individual under 16 years of age.
- 24 (B) A student or intern in a clinical placement at a clinical training
25 setting subject to administrative rules implemented under ORS
26 413.435.
- 27 (C) Department, Authority, or QE clients. The only circumstance in
28 which BCU shall allow a check to be performed on a client
29 pursuant to this paragraph is if the client falls within the
30 definition of "subject individual" as listed in sections (31)(a)(A)-
31 (E) and (31)(a)(G)-(P) of this rule, or if the facility is dually
32 licensed for different populations of vulnerable individuals.
- 33 (D) Individuals working in child care facilities certified or registered
34 by OED.

- 1 (E) Individuals employed by a private business that provides
2 services to clients and the general public and is not regulated
3 by the Department or Authority.
- 4 (F) Individuals employed by a business that provides appliance or
5 structural repair for clients and the general public and who are
6 temporarily providing these services in a licensed or certified
7 QE. The QE shall ensure active supervision of these individuals
8 while on QE property and the QE may not allow unsupervised
9 contact with QE clients or residents. This exclusion does not
10 apply to a business that receives funds from the Department
11 or Authority for care provided by an employee of the business.
- 12 (G) Individuals employed by a private business in which a client of
13 the Department or Authority is working as part of a
14 Department- or Authority-sponsored employment service
15 program. This exclusion does not apply to an employee of a
16 business that receives funds from the Department or Authority
17 for care provided by the employee.
- 18 (H) Employees, contractors, students, interns, and volunteers
19 working in hospitals, ambulatory surgical centers, outpatient
20 renal dialysis facilities, and freestanding birthing centers, as
21 defined in ORS 442.015, and special inpatient care facilities as
22 defined by the Authority in administrative rule.
- 23 (I) Volunteers, who are not under the direction and control of a
24 licensed, certified, registered, or otherwise regulated QE.
- 25 (J) Individuals employed or volunteering in a Medicare-certified
26 health care business which is not subject to licensure or
27 certification by the State of Oregon.
- 28 (K) Individuals working in restaurants or at public swimming pools.
- 29 (L) Hemodialysis technicians.
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- 1 (M) Employees, contractors, temporary workers, or volunteers
2 who provide care, or have access to clients, client information,
3 or client funds of an alcohol and drug program that is certified,
4 licensed, or approved by the Authority’s Addictions and Mental
5 Health Division to provide prevention, evaluation, or treatment
6 services. This exclusion does not apply to programs specifically
7 required by other Authority program rules to conduct criminal
8 records checks in accordance with these rules.
- 9 (N) Individuals working for a transit service provider which
10 conducts background checks pursuant to ORS 267.237.
- 11 (O) Individuals being certified by the Department as interpreters
12 pursuant to ORS 409.623. This exclusion does not apply to
13 Department-certified interpreters when being considered for a
14 specific position.
- 15 (P) Emergency medical technicians and first responders certified
16 by the Authority’s Emergency Medical Services and Trauma
17 Systems program.
- 18 (Q) Employees, contractors, temporary workers, or volunteers of
19 continuing care retirement communities registered under OAR
20 chapter 411, division 67.
- 21 (R) Individuals hired by or on behalf of a resident in a QE to
22 provide care privately to the resident.
- 23 (S) An employee, contractor, temporary worker, or volunteer who
24 provides care or has access to clients, client information, or
25 client funds within or on behalf of any entity or agency
26 licensed, certified, registered, or otherwise regulated by the
27 Department or Authority, where the clients served
28 permanently reside in another state.
- 29 (24) “Weighing test” means a process in which BCU considers available
30 information to make a fitness determination when an SI has potentially
31 disqualifying convictions or conditions.

32 *Stat. Auth.: ORS 181A.200, 409.027 & 409.050*

33 *Stats. Implemented: ORS 181A.195, 181A.200, 409.010, 409.027 & 443.004*

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1 **407-007-0220 Background Check Required**

- 2 (1) BCU shall conduct criminal records checks on all SIs through LEDS
3 maintained by OSP in accordance with ORS chapter 181 and the rules
4 adopted thereto (see OAR chapter 125, division 007; and chapter 257,
5 division 15).
- 6 (2) If a national criminal records check is necessary, OSP shall provide BCU
7 results of national criminal records checks conducted pursuant to ORS
8 181A.195, including fingerprint identification, through the FBI.
- 9 (3) BCU shall conduct abuse checks using available abuse investigation reports
10 and associated documents.
- 11 (4) Unless an SI meets a criterion under section (7) of this rule, an SI must have
12 a background check in the following circumstances:
- 13 (a) An individual who becomes an SI on or after the effective date of
14 these rules.
- 15 (b) The SI changes employers to a different QE.
- 16 (c) The individual, whether previously considered an SI or not, changes
17 positions under the same QE, and the new position requires a
18 background check.
- 19 (d) The individual, whether previously considered an SI or not, changes
20 Department or Authority-issued licenses, certifications, or
21 registrations, and the license, certification, or registration requires a
22 background check under these rules.
- 23 (e) For a student enrolled in a long term care facility nursing assistant
24 training program for employment at the facility, a new background
25 check is required when the student becomes an employee at the
26 facility. A new background check is not required by the Department
27 or the Authority at graduation from the training program or at the
28 granting of certification by the Board of Nursing unless the
29 Department, the Authority, or the QE have reason to believe that a
30 background check is justified.
- 31 (f) A background check is required by federal or state laws or
32 regulations, other Department or Authority administrative rules, or
33 by contract with the Department or Authority.

- 1 (g) When BCU or the QE has reason to believe that a background check
2 is justified. Examples include but are not limited to:
- 3 (A) Any indication of possible criminal or abusive behavior by an
4 SI.
- 5 (B) A lapse in working or volunteering in a position under the
6 direction and control of the QE but the SI is still considered in
7 the position. For example, an extended period of leave by an
8 SI. The QE determines the need for a background check.
- 9 (C) Quality assurance monitoring by the Department or Authority
10 of a previously conducted criminal records check or abuse
11 check.
- 12 (5) If the SI is subject to a background check due to involvement with the
13 foster or adoptive placement of a child and:
- 14 (a) Is subject to the Interstate Compact on Placement of Children (ORS
15 417.200 and OAR 413-040-0200 to 413-040-0330), the background
16 check must comply with Interstate Compact requirements.
- 17 (b) Is subject to the Inter-County Adoption Act of 2000 (42 USC 14901 et
18 seq.), the background check must comply with federal requirements
19 and ORS 417.262.
- 20 (6) If QEs, Department program rules, or Authority program rules require an SI
21 to report any new arrests, charges, or convictions, the QE may determine if
22 personnel action is required if the SI does not report. Personnel action may
23 include a new background check.
- 24 (7) A background check is not required under the following circumstances:
- 25 (a) A homecare worker or personal support worker, as defined in ORS
26 410.600, has a Department background check notice of final fitness
27 determination dated within the recheck period according to
28 Department program rules showing that the homecare worker or
29 personal support worker has been approved or approved with
30 restrictions, and listing a worksite of “various,” “various clients,”
31 “statewide,” or similar wording.
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1 (b) A personal care services provider, Lifespan Respite or other respite
2 care provider, or an independent provider paid with Department or
3 Authority funds who changes or adds clients within the same QE,
4 Department, or Authority district, and the prior, documented
5 criminal records check or abuse check conducted within the previous
6 24 months through the Department or Authority has been approved
7 without restrictions.

8 (c) The SI is a child care provider as described in OAR 461-165-0180 who
9 changes or adds clients and who has been approved without
10 restrictions within the required recheck period according to
11 Department program rules.

12 (d) The SI remains with a QE in the same position listed on the
13 background check request while the QE merges with another QE, is
14 sold to another QE, or changes names. The changes may be noted in
15 documentation attached to the notice of fitness determination but
16 do not warrant a background check.

17 (e) The SI is on the background check registry maintained under OAR
18 407-007-0600 to 407-007-0640.

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

22 *Stat. Auth.: ORS 181A.200, 409.027 & 409.050*

23 *Stats. Implemented: ORS 181A.195, 181A.200, 409.010, 409.027 & 443.004*

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26 **407-007-0230 Qualified Entities**

27 (1) A QE and its appointing authority must be approved in writing by the
28 Department or Authority pursuant to these rules in order to appoint a QED.
29 Documentation of a current and valid license, certification, contract, or
30 letter of approval from the Department or Authority are considered proof
31 of approval. Unless specifically indicated otherwise in these rules, all QEs
32 and appointing authorities discussed in these rules are considered
33 approved.

34 (2) A QE shall ensure the completion of background checks for all SIs who are
35 the QE's employees, volunteers, or other SIs under the direction or control
36 of the QE.

- 1 (3) BCU may allow a QE's appointing authority or QED to appoint one or more
2 QEIs based on the needs of the QE and the volume of SIs under the QE.
- 3 (4) A QE's appointing authority shall appoint QEDs as needed to remain in
4 compliance with these rules and shall communicate any changes regarding
5 QEDs or QEIs to BCU. BCU strongly recommends that the QE have at least
6 one QED at any facility where clients are receiving care in order to handle
7 any immediate responsibilities of a QED, such as removing an SI from work
8 or placement when required.
- 9 (5) If for any reason a QE no longer has any QEDs, the QE or appointing
10 authority shall ensure that the confidentiality and security of background
11 check records by immediately providing all background check related
12 documents to BCU or to another QE as determined by BCU.
- 13 (6) BCU shall provide QEs with periodic training and on-going technical
14 assistance.
- 15 (7) Any decisions made by BCU in regard to these rules are final and may not
16 be overturned by any QE.

17 *Stat. Auth.: ORS 181A.200, 409.027 & 409.050*

18 *Stats. Implemented: ORS 181A.195, 181A.200, 409.010, 409.027 & 443.004*

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21 **407-007-0240 QE Designees and QE Initiators**

- 22 (1) All requirements in this section must be completed within 90 calendar days.
23 To receive BCU approval, a QED must meet the following requirements:
- 24 (a) A QED must be one of the following:
- 25 (A) Employed by the agency for which the QED will handle criminal
26 records check information.
- 27 (B) Contracted with the QE to perform as a QED.
- 28 (C) Employed by another similar QE or a parent QE. For example,
29 an assisted living facility QED may act as QED for another
30 assisted living facility.
- 31 (D) The licensee of the QE.
- 32 (b) A QED must be an approved SI with a record in CRIMS within the past
33 three years for at least one of the QEs for which the QED will manage
34 background checks.

- 1 (c) A QED must have:
- 2 (A) Competency in computer skills for accessing CRIMS online,
3 entering data, corresponding via e-mail, and managing
4 background check records in CRIMS;
- 5 (B) Work-related access to a desktop or laptop computer and the
6 internet; and
- 7 (C) A work-related e-mail account.
- 8 (d) A QED must complete a certification program and successfully pass
9 any BCU required testing.
- 10 (e) An appointing authority must appoint a QED. The applicant QED
11 must complete and submit required documents and information to
12 BCU for processing and registration.
- 13 (2) BCU shall deny the individual's status as a QED if the individual does not
14 meet QED requirements. Once denied, the individual may no longer
15 perform the duties of a QED. There are no exceptions for individuals who
16 fail to meet QED requirements.
- 17 (3) An approved QED shall have the following responsibilities:
- 18 (a) Demonstrate understanding of and adherence to these rules in all
19 actions pertaining to the background check process.
- 20 (b) Act as the Department's designee in any action pursuant to these
21 rules and the background check process. A QED may not advocate for
22 an SI during any part of the background check process, including
23 contesting a fitness determination.
- 24 (c) Ensure that adequate measures are taken to protect the
25 confidentiality of the records and documents required by these rules.
26 A QED may not view criminal offender information. A QED may not
27 view abuse investigation reports and associated abuse investigation
28 exhibits or documents as part of the background check process.
- 29 (d) A QED shall verify the SI's identity or ensure that the same
30 verification requirements are understood by each individual
31 responsible for verifying identity. The QE may verify identity at any
32 time during the hiring or placement process up to the submission of
33 the background check request.

- 1 (A) If conducting a background check on the SI for the first time or
2 at rehire of the SI, a QED shall verify identity or ensure identity
3 is verified by using methods which include but are not limited
4 to reviewing the SI's current and valid government-issued
5 photo identification and confirming the information on the
6 photo identification with the SI, the information included in
7 the background check request, and the information written on
8 the fingerprint card if a national criminal records check is
9 conducted.
- 10 (B) If an SI is being rechecked for the same QE without any break
11 in placement, service, or employment, review of government-
12 issued photo identification may not be necessary. The QED
13 shall verify the SI's name, current address, and any aliases or
14 previous names, or ensure this information is verified.
- 15 (e) Ensure that an SI is not permitted to work, volunteer, reside, or
16 otherwise hold any position covered by these rules before the
17 submission of the background check request to BCU.
- 18 (f) Review the SI's background check request to ensure completeness of
19 the information, verify identity, and to determine if the SI has any
20 disclosed criminal history. If the SI has adverse criminal history
21 within the five year period from the date the SI manually or
22 electronically signed the background check request, the QED may
23 request in writing that BCU make a preliminary fitness determination
24 requiring a weighing test.
- 25 (g) Ensure that the result of the preliminary fitness determination
26 granting the QE to hire the SI on a preliminary basis, or prohibiting
27 the QE from hiring the SI on a preliminary basis, is followed.
- 28 (h) Ensure that when an SI is hired on a preliminary basis, the need for
29 active supervision is understood by each individual responsible for
30 providing active supervision.
- 31 (i) Ensure that if an SI is removed from working on a preliminary basis,
32 the SI is immediately removed from the position and remains
33 removed until BCU reinstates hired on a preliminary basis or the
34 completion of a final fitness determination allowing the SI to resume
35 the position.

- 1 (j) Ensure that the SI has directions to complete a fingerprint capture
2 and monitor the SI's process in getting the fingerprints taken.
- 3 (k) Notify BCU of any changes regarding an SI who still has a background
4 check in process, including but not limited to address or employment
5 status changes.
- 6 (L) Monitor the status of background check applications and investigate
7 any delays in processing.
- 8 (m) Ensure that documentation required by these rules is processed and
9 maintained in accordance with these rules.
- 10 (n) Notify BCU immediately if arrested, charged, or convicted of any
11 crime, or if found responsible for abuse by the Department or
12 Authority.
- 13 (4) BCU may change QED status in the following circumstances which include
14 but are not limited to:
- 15 (a) When the position with the QE ends or when the QE terminates the
16 appointment. The QE shall notify BCU immediately upon the end of
17 the position or termination of the appointment and BCU shall
18 inactivate QED status.
- 19 (b) If a QED fails to comply with responsibilities or fails to continue to
20 meet the requirements for QED status, as applicable. After
21 suspending or revoking the appointment, the QE must immediately
22 notify the BCU in writing. If BCU takes the action to suspend or
23 revoke the appointment, it must immediately notify the QE in
24 writing.
- 25 (c) If a QED fails to recertify, BCU shall revoke QED status.
- 26 (5) Any changes to QED status are not subject to appeal rights unless the denial
27 or termination results in immediate loss of employment or position. A QED
28 losing employment or position has the same hearing rights as other SIs
29 under these rules.
- 30 (6) If a QED leaves employment or position with the QE for any reason, BCU
31 shall inactivate QED status. If the individual finds employment with another
32 QE, BCU shall determine the requirement for reactivation of QED status.

- 1 (7) BCU shall review and recertify appointments of QEDs, up to and including a
2 new application, background check, and additional training under the
3 following circumstances:
- 4 (a) Every three years; or
- 5 (b) At any time BCU has reason to believe the individual no longer meets
6 QED requirements including but not limited to indication of criminal
7 or abusive behavior or noncompliance with these rules.
- 8 (8) With BCU approval, QEs may appoint QEs to enter background check
9 request into CRIMS. QEs must:
- 10 (a) Be currently approved SIs for the QE;
- 11 (b) Possess competency in computer skills for accessing CRIMS online
12 and entering background check records into CRIMS;
- 13 (c) Maintain internet access and working email accounts to access
14 CRIMS; and
- 15 (d) Meet other criteria as determined by BCU and the QE.

16 *Stat. Auth.: ORS 181A.200, 409.027 & 409.050*

17 *Stats. Implemented: ORS 181A.195, 181A.200, 409.010, 409.027 & 443.004*

18
19

20 **407-007-0250 Background Check Process**

- 21 (1) A QE and SI shall use CRIMS to request a background check. In addition to
22 information required in OAR 125-007-0220 the background check request
23 shall include the following information regarding an SI:
- 24 (a) Worksite location or locations where the SI will be working;
- 25 (b) Disclosure of all criminal history;
- 26 (A) The SI must disclose all arrests, charges, and convictions
27 regardless of outcome or when the arrests, charges, or
28 convictions occurred. Disclosure includes any juvenile record.
- 29 (B) The disclosed crimes and the dates must reasonably match the
30 SI's criminal offender information and other criminal records
31 information, as determined by BCU.
- 32 (c) Disclosure of other information to be considered in the event of a
33 weighing test.

- 1 (2) The background check request shall include the following notices to the SI:
2 (a) A notice regarding disclosure of Social Security number indicating
3 that:
4 (A) The SI's disclosure is voluntary; and
5 (B) The Department requests the Social Security number solely for
6 the purpose of positively identifying the SI during the criminal
7 records check process.
8 (b) A notice that the SI may be subject to fingerprinting as part of a
9 criminal records check.
10 (c) A notice that BCU shall conduct an abuse check on the SI. Unless
11 required by program rule, an SI is not required to disclose any history
12 of potentially disqualifying abuse, but may provide BCU with
13 mitigating or other information.
14 (3) Using identifying information submitted in a background check request,
15 BCU shall conduct an abuse check to determine if the subject individual has
16 potentially disqualifying abuse.
17 (4) BCU shall conduct an Oregon criminal records check. Using information
18 submitted on the background check request, BCU may obtain criminal
19 offender information from LEDS and may request other criminal records
20 information as needed.
21 (5) BCU shall handle criminal offender information in accordance with
22 applicable OSP requirements in ORS chapter 181 and the rules adopted
23 pursuant thereto (see OAR chapter 125, division 007 and chapter 257,
24 division 15).
25 (6) BCU may conduct a fingerprint-based national criminal records check.
26 (a) A fingerprint-based national criminal records check may be
27 completed under any of the following circumstances:
28 (A) The SI has been outside Oregon:
29 (i) For 60 or more consecutive days during the previous 18
30 months and the SI is a child care provider or other
31 individual included in OAR 461-165-0180(4).
32 (ii) For 60 or more consecutive days during the previous five
33 years for all other SIs.

- 1 (B) The LEDS check, SI disclosures, or any other criminal records
2 information obtained by BCU indicate there may be criminal
3 records outside of Oregon.
- 4 (C) The SI has an out-of-state driver license or out-of-state
5 identification card.
- 6 (D) BCU or the QE has reason to question the identity of the SI or
7 the information on the criminal record found in LEDS.
- 8 (E) A fingerprint-based criminal records check is required by
9 federal or state laws or regulations, other Department or
10 Authority rules, or by contract with the Department or
11 Authority.
- 12 (F) The SI is an employee of an agency the Centers of Medicare
13 and Medicaid Services has designated high risk pursuant to 42
14 CFR 424.518.
- 15 (G) Any SI applying to be or renewing the position with regard to
16 child adoption or children in foster care licensed by the
17 Department or private licensed child caring agencies.
18 Renewing SIs do not need a fingerprint-based criminal records
19 check if BCU has a record of a previous fingerprint-based
20 criminal records checks that is within BCU's retention
21 schedule. Applicable SI positions include:
- 22 (i) A relative caregiver, foster parent, or adoptive parent in
23 Oregon;
- 24 (ii) An adult household member in an adoptive or child
25 foster home 18 years of age and over;
- 26 (iii) A household member in an adoptive or child foster
27 home under 18 years of age if there is reason to believe
28 that the household member may pose a risk to children
29 placed in the home; or
- 30 (iv) A respite care provider in an adoptive or child foster
31 home.
- 32 (H) BCU has reason to believe that fingerprints are needed to
33 make a final fitness determination.

- 1 (b) BCU shall request a fingerprint capture for an SI under the age of 18
2 in accordance with OAR 125-007-0220(3).
- 3 (c) The SI shall complete and submit a fingerprint capture when
4 requested by BCU within the time frame indicated in a written
5 notice. BCU shall send the request to the QE and the QED shall notify
6 the SI.
- 7 (A) BCU shall give the SI notice regarding the Social Security
8 number as set forth in section (2)(a) of this rule.
- 9 (B) BCU may require new fingerprint capture and its submission if
10 previous fingerprint captures results in a rejection by OSP or
11 the FBI.
- 12 (7) BCU may also conduct a state-specific criminal records check instead of or
13 in addition to a national criminal records check. Reasons for a state-specific
14 criminal records check include but are not limited to:
- 15 (a) When BCU has reason to believe that out-of-state criminal records
16 may exist and a national criminal records check cannot be
17 accomplished.
- 18 (b) When BCU has been unable to complete a national criminal records
19 check due to illegible fingerprints.
- 20 (c) When the national criminal records check results show incomplete
21 information about charges or criminal records without final
22 disposition.
- 23 (d) When there is indication of residency or criminal records in a state
24 that does not submit all criminal records to the FBI.
- 25 (e) When, based on available information, BCU has reason to believe
26 that a state-specific criminal records check is necessary.
- 27 (8) In order to complete a background check and fitness determination, BCU
28 may require additional information from the SI including but not limited to
29 additional criminal, judicial, other background information, or proof of
30 identity.
- 31 (9) BCU may conduct a background check in situations of imminent danger.
32

1 (a) If the Department or Authority determines there is indication of
2 criminal or abusive behavior that could more likely than not pose an
3 immediate risk to vulnerable individuals, BCU shall conduct a new
4 criminal records check on an SI without the completion of a new
5 background check request.

6 (b) If BCU determines that a fitness determination based on the new
7 background check would be adverse to the SI, BCU shall provide the
8 SI, if available, the opportunity to disclose criminal records,
9 potentially disqualifying conditions, and other information as
10 indicated in OAR 407-007-0300 before completion of the fitness
11 determination.

12 (10) All criminal records checks conducted under this rule shall be documented.

13 *Stat. Auth.: ORS 181A.200, 409.027 & 409.050*

14 *Stats. Implemented: ORS 181A.195, 181A.200, 409.010*

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16
17 **407-007-0275 Convictions Under ORS 443.004 Resulting in Ineligibility for**
18 **Aging and People with Disabilities Program and Developmental Disabilities**
19 **Program SIs**

20 (1) Section (2) of this rule applies to an SI who:

21 (a) Works with clients of the Department's Office of Developmental
22 Disabilities (DD) program.

23 (b) Works with clients of the Department's Aging & People with
24 Disabilities programs and who is:

25 (A) An individual who is paid directly or indirectly with public funds
26 who has or will have contact with recipients of services within:

27 (i) An adult foster home (defined in ORS 443.705); or

28 (ii) A residential facility (defined in ORS 443.400).

29 (B) Any direct care staff secured by any residential care or assisted
30 living facility through the services of a personnel services or
31 staffing agency and the direct care staff works in the facility.

32 (C) A homecare worker as defined in ORS 410.600, a personal
33 support worker as defined in ORS 410.600, a personal care
34 services provider, or an independent provider employed by a

- 1 Department client who provides care to the client if the
2 Department helps pay for the services.
- 3 (D) An employee providing care to Department APD program
4 clients who works for an in-home care agency as defined by
5 ORS 443.305 which has a contract with the Department APD
6 programs.
- 7 (E) An individual in a position specified as being subject in relevant
8 Oregon statutes or Oregon Administrative Rules.
- 9 (2) If BCU determines that an individual subject to this rule has a conviction
10 listed in ORS 443.004, BCU shall make the determination of “ineligible due
11 to ORS 443.004.” Under OAR 125-007-0260(2)(d), this determination is
12 considered an incomplete fitness determination. A fitness determination
13 with a weighing test is not required regardless of any other potentially
14 disqualifying convictions and conditions the SI has. BCU shall provide
15 notice of ineligibility due to ORS 443.004 to the individual.
- 16 (3) An individual subject to this rule who is an employee and hired prior to July
17 28, 2009 is exempt from section (2) of this rule provided that the employee
18 remains in the same position working for the same employer after July 28,
19 2009. This exemption is not applicable to licensees.
- 20 (4) If an individual subject to this rule is grandfathered or not found ineligible
21 due to ORS 443.004, the individual is subject to a fitness determination
22 under OAR 125-007-0260 and 407-007-0320.
- 23 (5) A determination of “ineligible due to ORS 443.004” is not subject to appeal
24 rights under OAR 125-007-0300, 407-007-0330, 407-007-0335, 943-007-
25 0335, or 943-007-0501.

26 *Stat. Auth.: ORS 181A.195 & 409.050*

27 *Stats. Implemented: ORS 181A.195 & ORS 443.004*

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29

30 **407-007-0277 Convictions Under ORS 443.004 Resulting in Ineligibility for**
31 **Mental Health or Alcohol and Drug Program SIs**

- 32 (1) This rule applies to subject individuals who are mental health or substance
33 abuse treatment providers defined under ORS 443.004(8).

34

- 1 (2) If BCU determines that an individual is subject to this rule and has a
2 conviction listed in ORS 443.004(5), BCU shall make the determination of
3 “ineligible due to ORS 443.004.” Under OAR 125-007-0260(2)(d), this
4 determination is considered an incomplete fitness determination. A fitness
5 determination with a weighing test is not required regardless of any other
6 potentially disqualifying convictions and conditions the SI has. BCU shall
7 provide notice of ineligibility due to ORS 443.004 to the individual.
- 8 (3) If an individual subject to this rule is not found ineligible due to ORS
9 443.004, the individual is subject to a fitness determination under OAR 125-
10 007-0260 and 407-007-0320. (4) A determination of “ineligible due to ORS
11 443.004” is not subject to appeal rights under OAR 125-007-0300, 943-007-
12 0335 or 943-007-0501.

13 *Stat. Auth.: ORS 181A.195 & 409.050*

14 *Stats. Implemented: ORS 181A.195 & ORS 443.004*

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16
17 **407-007-0280 Potentially Disqualifying Convictions (Suspended 1/14/2016)**

18 *See OAR 125-007-0270 for crimes list*

19
20 **407-007-0290 Other Potentially Disqualifying Conditions**

21 Pursuant to OAR 125-007-0270(5), the following are potentially disqualifying
22 conditions, if they exist on the date the Department receives the background
23 check request:

- 24 (1) The SI makes a false statement to the QE or Department, including the
25 provision of materially false information, false information regarding
26 criminal records, or failure to disclose information regarding criminal
27 records. Nondisclosure of violation or infraction charges may not be
28 considered a false statement.
- 29 (2) The SI is a registered sex offender in any jurisdiction. There is a rebuttable
30 presumption that an SI is likely to engage in conduct that would pose a
31 significant risk to vulnerable individuals if the SI has been designated a
32 predatory sex offender in any jurisdiction under ORS 181.585 or found to
33 be a sexually violent dangerous offender under ORS 144.635 (or similar
34 statutes in other jurisdictions).

- 1 (3) The SI has an outstanding warrant for any crime in any jurisdiction.
- 2 (4) The SI has a deferred sentence, conditional discharge, or is participating in
3 a diversion program for any crime in any jurisdiction.
- 4 (5) The SI is currently on probation, parole, or post-prison supervision for any
5 crime in any jurisdiction, regardless of the original conviction date (or date
6 of guilty or no contest plea if there is no conviction date).
- 7 (6) The SI has been found in violation of post-prison supervision, parole, or
8 probation for any crime in any jurisdiction, regardless of the original
9 conviction date (or date of guilty or no contest plea if there is no conviction
10 date) within five years from the date the background check request was
11 electronically submitted to BCU through CRIMS or the date BCU conducted
12 a criminal records check due to imminent danger.
- 13 (7) The SI has an unresolved arrest, charge, or a pending indictment for any
14 crime in any jurisdiction.
- 15 (8) The SI has been arrested in any jurisdiction as a fugitive from another state
16 or a fugitive from justice, regardless of the date of arrest.
- 17 (9) The SI has an adjudication in a juvenile court in any jurisdiction, finding that
18 the SI was responsible for a potentially disqualifying crime that would result
19 in a conviction if committed by an adult. Subsequent adverse rulings from a
20 juvenile court, such as probation violations, shall also be considered
21 potentially disqualifying if within five years from the date the background
22 check request was signed or the date BCU conducted a criminal records
23 check due to imminent danger.
- 24 (10) The SI has a finding of “guilty except for insanity,” “guilty except by reason
25 of insanity,” “not guilty by reason of insanity,” “responsible except for
26 insanity,” “not responsible by reason of mental disease or defect,” or
27 similarly worded disposition in any jurisdiction regarding a potentially
28 disqualifying crime, unless the local statutes indicate that such an outcome
29 is considered an acquittal.
- 30 (11) Potentially disqualifying abuse as determined from abuse investigation
31 reports which have an outcome of founded, substantiated, or valid and in
32 which the SI is determined to have been responsible for the abuse.

33

- 1 (a) For SIs associated with child foster homes licensed by the
2 Department's DD programs, child foster homes licensed through the
3 Department's Child Welfare Division, child foster homes licensed
4 through a private licensed child caring agency, adoptive families
5 through a private licensed child caring agency, or adoptive families
6 through the Department's Child Welfare Division, potentially
7 disqualifying abuse includes:
- 8 (A) Child protective services history held by the Department or
9 OAAPI regardless of the date of initial report;
- 10 (B) Child protective services history reviewed pursuant to the
11 federal Adam Walsh Act requirements, determined by BCU
12 ADs to be potentially disqualifying; and
- 13 (C) Adult protective services investigations of physical abuse,
14 sexual abuse, or financial exploitation initiated on or after
15 January 1, 2010, as provided to BCU by OAAPI and APD
16 programs based on severity.
- 17 (b) For staff, volunteers, or contractors of a private licensed child caring
18 agency, an ISRS program, a SPRF provider, or a System of Care
19 contractor providing child welfare services pursuant to ORS chapter
20 418 potentially disqualifying abuse includes:
- 21 (A) Child protective services history held by the Department or
22 OAAPI regardless of the date of initial report; and
- 23 (B) Adult protective services investigations of physical abuse,
24 sexual abuse, or financial exploitation initiated on or after
25 January 1, 2010, as provided to BCU by OAPPI and APD based
26 on severity.
- 27 (c) For child care providers and associated subject individuals defined in
28 OAR 407-007-0210(30)(a)(I):
- 29 (A) Child protective services history held by the Department or
30 OAAPI regardless of the date of initial report, date of outcome,
31 and considered potentially disqualifying pursuant to OAR 461-
32 165-0420; and
- 33

- 1 (B) Adult protective services investigations of physical abuse,
2 sexual abuse, or financial exploitation initiated on or after
3 January 1, 2010, as provided to BCU by the OAAPI and APD
4 programs based on severity.
- 5 (d) For all other SIs, potentially disqualifying abuse includes founded or
6 substantiated adult protective services investigations of physical
7 abuse, sexual abuse, or financial exploitation initiated on or after
8 January 1, 2010, as provided to the BCU by OAAPI and APD programs
9 based on severity.
- 10 (12) Child protective services investigations open or pending through the
11 Department or OAAPI as of the date the background check request was
12 electronically submitted to BCU through CRIMS or the date BCU conducted
13 a criminal records check due to imminent danger. This potentially
14 disqualifying condition only applies to:
- 15 (a) SIs associated with child foster homes licensed by the Department's
16 DD programs, child foster homes licensed through the Department's
17 Child Welfare Division, child foster homes licensed through a private
18 licensed child caring agency, adoptive families through a private
19 licensed child caring agency, or adoptive families through the
20 Department's Child Welfare Division;
- 21 (b) Staff, volunteers or contractors of a private licensed child caring
22 agency, an ISRS program, a SPRF provider, or a System of Care
23 contractor, providing child welfare services pursuant to ORS chapter
24 418; or
- 25 (c) Child care providers and associated subject individuals defined in
26 OAR 407-007-0210(30)(a)(I).

27 *Stat. Auth.: ORS 181A.200, 409.027 & 409.050*

28 *Stats. Implemented: ORS 181A.195, 181A.200, 409.010, 409.027 & 443.004*

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30

31 **407-007-0300 Weighing Test**

32 If an SI has potentially disqualifying convictions under OAR 125-007-0270 or
33 potentially disqualifying conditions under OAR 407-007-0290, BCU shall conduct a
34 weighing test. The weighing test shall include consideration of factors pursuant
35 to ORS 181A.195(10)(d) and the following if available to the BCU at the time of
36 the weighing test.

- 1 (1) Circumstances regarding the nature of potentially disqualifying convictions
2 and conditions including but not limited to:
 - 3 (a) The details of incidents leading to the charges of potentially
4 disqualifying convictions or resulting in potentially disqualifying
5 conditions.
 - 6 (b) Age of the SI at time of the potentially disqualifying convictions or
7 conditions.
 - 8 (c) Facts that support the convictions or potentially disqualifying
9 conditions.
 - 10 (d) Passage of time since commission of the potentially disqualifying
11 convictions or conditions.
 - 12 (e) Consideration of state or federal laws, regulations, or rules covering
13 the position, facility, employer, or QE regarding the potentially
14 disqualifying convictions or conditions.
- 15 (2) If applicable, circumstances regarding the nature of potentially disqualifying
16 abuse including but not limited to:
 - 17 (a) The nature and type of abuse; and
 - 18 (b) Other information gathered during the scope of the abuse
19 investigation.
 - 20 (c) The date of the abuse incident and abuse investigation.
 - 21 (d) The quality of the abuse investigation including, if applicable, any
22 exhibits and related documents with consideration taken into
23 account regarding completeness, objectivity, and sufficiency.
 - 24 (e) Due process provided to the SI after the abuse investigation.
 - 25 (f) Required action resulting from the founded or substantiated abuse
26 including but not limited to training, counseling, corrective or
27 disciplinary action, and the SI's compliance.
- 28 (3) Other factors when available including but not limited to:
 - 29 (a) Other information related to criminal activity including charges,
30 arrests, pending indictments, and convictions. Other behavior
31 involving contact with law enforcement may also be reviewed if
32 information is relevant to other criminal records or shows a pattern
33 relevant to criminal history.

- 1 (b) Periods of incarceration.
- 2 (c) Status of and compliance with parole, post-prison supervision, or
3 probation.
- 4 (d) Evidence of alcohol or drug issues directly related to criminal activity
5 or potentially disqualifying conditions.
- 6 (e) Evidence of other treatment or rehabilitation related to criminal
7 activity or potentially disqualifying conditions.
- 8 (f) Likelihood of repetition of criminal behavior or behaviors leading to
9 potentially disqualifying conditions including but not limited to
10 patterns of criminal activity or behavior.
- 11 (g) Information from the Department's or Authority's protective
12 services, abuse, or other investigations in which the investigator
13 documented behavior or conduct by the SI that would pose a risk to
14 or jeopardize the safety of vulnerable individuals.
- 15 (h) Changes in circumstances subsequent to the criminal activity or
16 disqualifying conditions including but not limited to:
- 17 (A) History of high school, college, or other education related
18 accomplishments
- 19 (B) Work history (employee or volunteer).
- 20 (C) History regarding licensure, certification, or training for
21 licensure or certification.
- 22 (D) Written recommendations from current or past employers,
23 including Department client employers.
- 24 (i) Indication of the SI's cooperation, honesty, or the making of a false
25 statement during the criminal records check process, including
26 acknowledgment and acceptance of responsibility of criminal activity
27 and potentially disqualifying conditions.
- 28 (4) BCU shall consider the relevancy of the SI's criminal activity or potentially
29 disqualifying conditions to the paid or volunteer position, or to the
30 environment in which the SI will reside, work, or visit.

31 *Stat. Auth.: ORS 181A.200, 409.027 & 409.050*

32 *Stats. Implemented: ORS 181A.195, 181A.200, 409.010, 409.027 & 443.004*

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1 **407-007-0315 Hired on a Preliminary Basis**

2 (1) A preliminary fitness determination is required to determine if an SI may
3 work, volunteer, or otherwise perform in the position listed on the
4 background check request prior to a final fitness determination. An SI may
5 not be hired on a preliminary basis prior to the completion of a preliminary
6 fitness determination.

7 (2) An SI may be hired on a preliminary basis only during the period of time
8 prior to a final fitness determination and into the position listed on the
9 background check request.

10 (3) The SI must provide information required for a background check request
11 and the QED must review the information.

12 (4) The QED shall make one of the following determinations:

13 (a) If the SI makes no disclosures of criminal history, the QED may hire
14 the SI on a preliminary basis in accordance with relevant program
15 rules or QE policies.

16 (b) If the SI discloses any criminal history and all of the history occurred
17 outside the five year period from the date the SI manually or
18 electronically signed the background check request, the QED may
19 hire the SI on a preliminary basis in accordance with relevant
20 program rules or QE policies.

21 (c) If the SI indicates any criminal history occurring within the five year
22 period from the date the SI manually or electronically signed the
23 background check request:

24 (A) The QED may allow the SI to be hired on a preliminary basis if
25 the disclosed criminal history has the outcome of “dismissed,”
26 “no complaint filed,” “expunged,” or other outcome that BCU
27 determines is not adverse.

28 (B) The QED may not allow the SI to be hired on a preliminary
29 basis if the disclosed criminal history has an outcome of
30 “pending outcome,” “diversion or conditional discharge,”
31 “convicted,” “on probation,” “juvenile adjudication,”
32 “unknown,” or other outcome that BCU determines is adverse.

33

- 1 (5) The QED shall submit the background check request to BCU immediately
2 upon verification of the SI's identity, the SI's completion of the background
3 check request, and the QED's completion of the preliminary fitness
4 determination.
- 5 (6) If requested by the QED, BCU may conduct a preliminary fitness
6 determination with a weighing test pursuant to OAR 125-007-0250.
- 7 (7) The QE may not hire a SI on a preliminary basis under any of the following
8 circumstances:
 - 9 (a) Being hired on a preliminary basis or probationary status is not
10 allowed under program rules.
 - 11 (b) The SI has disclosed criminal history occurring within the past five
12 years that has an outcome of "pending outcome," "diversion or
13 conditional discharge," "convicted," "on probation," "juvenile
14 adjudication," "unknown" or other outcome BCU determines to be
15 adverse and BCU has not completed a preliminary fitness
16 determination resulting in the QE being allowed to hire the SI on a
17 preliminary basis.
 - 18 (c) The QE or BCU determines that:
 - 19 (A) More likely than not, the SI poses a potential threat to
20 vulnerable individuals, based on a preliminary fitness
21 determination and weighing test;
 - 22 (B) The SI's most recent background check under these rules or
23 other Department or Authority criminal records check rules or
24 abuse check rules resulted in a denial; or
 - 25 (C) The SI is currently involved in contesting a background check
26 under these or other Department or Authority criminal records
27 check rules or abuse check rules.
 - 28 (D) BCU has reason to believe hiring on a preliminary basis is not
29 appropriate based on circumstances or compliance with the
30 background check process of the SI, QED, or QE.
 - 31 (d) An outcome of no hiring on a preliminary basis may only be
32 overturned by the BCU.
- 33 (8) An SI hired on a preliminary basis shall be actively supervised at all times.

1 (a) The individual providing active supervision at all times shall do the
2 following:

3 (A) Be in the same building as the SI or, if outdoors of QE buildings
4 or any location off the QE property, be within line-of-sight and
5 hearing, except as provided in section (8)(b)(B) of this rule;

6 (B) Know where the SI is and what the SI is doing; and

7 (C) Periodically observe the actions of the SI.

8 (b) The individual providing the active supervision may be either:

9 (A) An SI who has been approved without restrictions pursuant to
10 these rules or previous Department or Authority criminal
11 records check rules; or

12 (B) The adult client, an adult client's adult relation, the client's
13 legal representative, or a child's parent or guardian. Active
14 supervision by these individuals is appropriate in situations
15 where care is given directly to clients usually in a home such as
16 but not limited to in-home care, home health, or care by home
17 care workers, personal care assistants, or child care providers.

18 (i) The adult client may actively supervise a homecare
19 worker, personal care services provider, independent
20 provider, or an employee of an in-home care agency or
21 home health agency if the client makes an informed
22 decision to employ the provider. Someone related to the
23 client may also provide active supervision if the relative
24 has been approved by the Department, the Authority,
25 the QED, or the private-pay client receiving services
26 through an in-home care or home health agency.

27 (ii) A child client's parent or guardian shall be responsible
28 for providing active supervision in the case of child care
29 providers. The supervision is not required to be
30 performed by someone in the same building as the child.

31

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33

- 1 (9) An SI approved without restrictions within the previous 24 months through
2 a documented criminal records check or abuse check pursuant to these
3 rules or prior Department or Authority criminal records check rules or
4 abuse check rules may be hired on a preliminary basis without active
5 supervision. Twenty-four months is calculated from date of previous
6 approval to the date of hire in the new position. This exemption from active
7 supervision is not allowed in any of the following situations:
- 8 (a) If the SI cannot provide documented proof that he or she worked
9 continuously under the previous approval for at least one year.
- 10 (b) If there is evidence of criminal activity or potentially disqualifying
11 abuse within the previous 24 months.
- 12 (c) If, as determined by the QE or BCU, the job duties in the new position
13 are so substantially different from the previous position that the
14 previous fitness determination is inadequate for the current position.
- 15 (10) Revocation of hired on a preliminary basis is not subject to hearing or
16 appeal. The QE or BCU may immediately revoke hired on a preliminary
17 basis for any of the following reasons:
- 18 (a) There is any indication of falsification of application.
- 19 (b) The SI fails to disclose convictions for any potentially disqualifying
20 crimes, any arrests that did not result in convictions or any out of
21 state arrests or convictions.
- 22 (c) The QE or BCU determines that allowing the SI to be hired on a
23 preliminary basis is not appropriate, based on the application,
24 criminal record, position duties, or Department program rules.
- 25 (11) Nothing in this rule is intended to require that an SI who is eligible to be
26 hired on a preliminary basis be allowed to work, volunteer, be employed, or
27 otherwise perform in the position listed on the background check request
28 prior to a final fitness determination.
- 29 (12) Preliminary fitness determinations must be documented in writing,
30 including any details regarding a weighing test, if required.

31 *Stat. Auth.: ORS 181A.200, 409.027 & 409.050*

32 *Stats. Implemented: ORS 181A.195, 181A.200, 409.010, 409.027 & 443.004*

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34

1 **407-007-0320 Final Fitness Determinations**

2 BCU shall make a final fitness determination pursuant to OAR 125-007-0260 after
3 all necessary background checks have been received and a weighing test, if
4 necessary, has been completed.

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

6 (a) BCU may approve an SI if:

7 (A) The SI has no potentially disqualifying convictions or
8 potentially disqualifying conditions; or

9 (B) The SI has potentially disqualifying convictions or potentially
10 disqualifying conditions and, after a weighing test, BCU
11 determines that more likely than not, the SI poses no risk to
12 the physical, emotional, or financial well-being of vulnerable
13 individuals.

14 (b) BCU may approve an SI with restrictions if BCU determines that more
15 likely than not, the SI poses no risk to the physical, emotional, or
16 financial well-being of vulnerable individuals if certain restrictions are
17 placed on the SI. Restrictions may include but are not limited to
18 restrictions to one or more specific clients, job duties, or
19 environments. A new background check and fitness determination
20 shall be completed on the SI before removing a restriction.

21 (c) BCU shall deny an SI who the BCU determines, after a weighing test,
22 more likely than not poses a risk to the physical, emotional, or
23 financial well-being of vulnerable individuals.

24 (d) BCU shall consider a background check to have an outcome of
25 incomplete fitness determination in the following circumstances:

26 (A) The QE or SI discontinues the application or the SI fails to
27 cooperate with the criminal records check or fitness
28 determination process, including but not limited to refusal to
29 be fingerprinted or failing to respond in a timely manner to
30 written correspondence from BCU. The background check
31 request is considered closed and there are no hearing rights
32 for the SI.

33 (B) BCU determines that the SI is ineligible due to ORS 443.004 in
34 accordance with OAR 407-007-0275 or 407-007-0277. The

- 1 background check request is considered completed and there
2 are no hearing rights for the SI.
- 3 (C) The SI withdraws the application, leaves the position prior to
4 completion of the background check, or the Department
5 cannot locate or contact the subject individual.
- 6 (D) The SI is determined to be ineligible for the position by the QE
7 for reasons other than the background check.
- 8 (E) BCU makes a determination under OAR 407-007-0335, in
9 which an SI has potentially disqualifying abuse under OAR 407-
10 007-0290(11)(d) with no other potentially disqualifying
11 convictions or conditions. The SI has expedited hearings rights
12 under OAR 407-007-0335.
- 13 (2) Upon completion of a final fitness determination, BCU or the QE shall
14 provide notice to the SI.
- 15 (a) If approved, BCU shall provide notice to the QE through CRIMS. The
16 QE shall provide the SI a copy of the notice or CRIMS documentation.
- 17 (b) If the final fitness determination is a denial based on potentially
18 disqualifying abuse under OAR 407-007-0290(11)(d) and there are no
19 other potentially disqualifying convictions or conditions, BCU shall
20 issue a Notice of Intent to Deny and provide the SI hearing rights
21 under OAR 407-007-0335.
- 22 (c) Except as required by section (4)(c) of this rule, if denied or approved
23 with restrictions, BCU shall issue a notice of fitness determination to
24 the SI which includes the potentially disqualifying convictions or
25 conditions that the outcome was based upon, information regarding
26 appeal rights, and the notice becoming a final order in the event of a
27 withdrawal or failure to appear at the hearing.
- 28 (d) The effective date of action shall be recorded on the notice or CRIMS
29 documentation.
- 30 (3) BCU shall provide the QE notification of the final fitness determination
31 when the SI is being denied or approved with restrictions.
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- 1 (4) When an SI is denied, the SI shall not be allowed to work, volunteer, be
2 employed, or otherwise perform in the position listed on the background
3 check request. A denial applies only to the position and application in
4 question. A denial shall result in immediate termination, dismissal, or
5 removal of the SI.
- 6 (5) When an SI is approved with restrictions, the SI shall only be allowed to
7 work, volunteer, be employed, or otherwise perform in the position listed
8 on the background check request and only under the stated restrictions. A
9 restricted approval applies only to the position and application in question.
10 A restricted approval shall result in immediate implementation of the
11 restrictions.
- 12 (6) BCU shall maintain any documents obtained or created during the
13 background check process.
- 14 (7) BCU shall make new fitness determinations for each background check
15 request. The outcome of previous fitness determinations does not set a
16 precedent for subsequent fitness determinations.

17 *Stat. Auth.: ORS 181A.200, 409.027 & 409.050*

18 *Stats. Implemented: ORS 181A.195, 181A.200, 409.010, 409.027 & 443.004*

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21 **407-007-0330 Contesting a Fitness Determination**

- 22 (1) An SI may contest a final fitness determination of denied or restricted
23 approval pursuant to OAR 125-007-0300 unless already granted contested
24 case hearing rights under OAR 407-007-0335.
- 25 (2) If an SI is denied, the SI may not hold the position, provide services or be
26 employed, licensed, certified, or registered, or otherwise perform in
27 positions covered by these rules. An SI appealing a restricted approval may
28 only work under the terms of the restriction during the appeal.
- 29 (3) If an adverse outcome is changed at any time during the appeal process,
30 the change does not guarantee employment or placement.
- 31 (4) An SI may represent himself or herself or have legal representation during
32 the appeal process. For the purpose of this rule, the term "SI" shall be
33 considered to include the SI's legal representative.

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- 1 (a) An SI who is appealing an adverse outcome regarding the position of
2 homecare worker as defined in ORS 410.600 or personal support
3 worker as defined in ORS 410.600 may be represented by a labor
4 union representative pursuant to ORS 183.459.
- 5 (b) For all other SIs, the SI may not be represented by a lay person.
- 6 (5) An SI may contest an adverse fitness determination by requesting a
7 contested case hearing. The contested case hearing process is conducted in
8 accordance with OAR 125-007-0300, ORS 183.411 to 183.497 and the
9 Attorney General's Uniform and Model Rules of Procedure for the Office of
10 Administrative Hearings (OAH), OAR 137-003-0501 to 137-003-0700.
- 11 (a) To request a contested case hearing, the SI shall complete and sign
12 the Hearing Request form.
- 13 (b) The completed and signed form must be received by the Department
14 within 45 calendar days after the effective date of action.
- 15 (c) BCU shall accept a properly addressed hearing request that was not
16 timely filed if it was postmarked within the time specified for timely
17 filing.
- 18 (d) In the event an appeal is not timely by the date of receipt or by the
19 date of postmark, BCU shall determine, based on a written statement
20 from the SI and available information, if there is good cause to
21 proceed with the appeal.
- 22 (e) BCU may refer an untimely request to the OAH for a hearing on the
23 issue of timeliness.
- 24 (6) BCU may conduct an administrative review before referring the appeal to
25 OAH.
- 26 (a) The SI must participate in the administrative review. Participation
27 may include but is not limited to providing additional information or
28 additional documents requested by the BCU within a specified
29 amount of time.
- 30 (b) The administrative review is not open to the public.

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- 1 (7) BCU may conduct additional criminal records checks or abuse checks during
2 the contested case hearing process to update or verify the SI's potentially
3 disqualifying convictions or conditions and factors to consider in the
4 weighing test. If needed, BCU shall amend the notice of fitness
5 determination while still maintaining the original hearing rights and
6 deadlines.
- 7 (8) The Department shall be represented by a hearing representative in
8 contested case hearings. The Department may also be represented by the
9 Office of the Attorney General.
- 10 (a) The administrative law judge shall make a new fitness determination
11 based on evidence and the contested case hearing record.
- 12 (b) The only remedy an administrative law judge may grant is a fitness
13 determination that the subject individual is approved, approved with
14 restrictions, or denied. Under no circumstances shall the Department
15 or the QE be required to place an SI in any position, nor shall the
16 Department or the QE be required to accept services or enter into a
17 contractual agreement with an SI.
- 18 (c) A hearing pursuant to these rules may be conducted in conjunction
19 with a licensure or certification hearing for the SI.
- 20 (9) The notice of fitness determination issued is final as if the SI never
21 requested a hearing in the following situations:
- 22 (a) The SI failed to request a hearing in the time allotted in this rule. No
23 other document will be issued after the notice of fitness
24 determination.
- 25 (b) The SI withdraws the request for hearing at any time during the
26 appeal process.
- 27 (10) BCU may make an informal disposition based on the administrative review.
28 The Department shall issue a final order and new notice of fitness
29 determination. If the resulting fitness determination is an adverse outcome,
30 the appeal shall proceed to a contested case hearing.
- 31 (11) BCU shall issue a dismissal order in the following situations:
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1 (a) The SI may withdraw a hearing request verbally or in writing at any
2 time before the issuance of a final order. A dismissal order due to the
3 withdrawal is effective the date the withdrawal is received by BCU or
4 the OAH. The SI may cancel the withdrawal in writing within 14
5 calendar days after the date of withdrawal.

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

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

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

19 (a) If no written exceptions are received by BCU within 14 calendar days after
20 the service of the proposed and final order, the proposed and final order
21 becomes the final order.

22 (b) If timely written exceptions to the proposed and final order are received by
23 BCU, the Department's Director or designee shall consider the exceptions
24 and serve a final order, or request a written response or a revised proposed
25 and final order from the administrative law judge.

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

29 (14) BCU may provide the QED with the results of the appeal.

30 *Stat. Auth.: ORS 181A.200, 183.459, 409.027 & 409.050*

31 *Stats. Implemented: ORS 181A.195, 181A.200, 183.459, 409.010, 409.027 & 443.004*

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1 **407-007-0335 Decision and Hearing Rights for Potentially Disqualifying**
2 **Abuse**

3 (1) This rule applies only to:

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

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

10 (2) BCU shall provide the SI a Notice of Intent to Deny in writing.

11 (a) BCU shall indicate on the Notice of Intent to Deny the date the final
12 fitness determination was made and the date of the intended action
13 if the SI fails to request an expedited hearing.

14 (b) BCU shall mail the Notice of Intent to Deny to the SI using the mailing
15 address provided by the SI by the next business day after the date of
16 the final fitness determination.

17 (c) BCU shall include an Expedited Hearing Request form with the Notice
18 of Intent to Deny.

19 (3) An SI may contest a Notice of Intent to Deny by requesting an expedited
20 hearing. The expedited hearing process is conducted in accordance with
21 ORS 183.411 to 183.497 and the Attorney General’s Uniform and Model
22 Rules of Procedure for the Office of Administrative Hearings (OAH), OAR
23 137-003-0501 to 137-003-0700.

24 (4) To request an expedited hearing, the SI must submit a completed and
25 signed Expedited Hearing Request form. The request for an expedited
26 hearing must be received by the Department within 10 calendar days after
27 the date of the Notice of Intent to Deny.

28 (a) BCU shall accept a properly addressed hearing request that was not
29 timely filed if it was postmarked within the time specified for timely
30 filing.

31 (b) In the event an appeal is not timely by the date of receipt or by the
32 date of postmark, BCU shall determine, based on a written statement
33 from the SI and available information, if there is good cause to
34 proceed with the appeal.

- 1 (5) An SI has the right to represent him or herself or have legal representation
2 during the expedited hearing process. For the purpose of this rule, the term
3 "SI" shall be considered to include the SI's legal representative if the SI has
4 provided BCU with such information.
- 5 (a) An SI who is appealing a Notice of Intent to Deny regarding the
6 position of homecare worker as defined in ORS 410.600 or personal
7 support worker as defined in ORS 410.600 may be represented by a
8 labor union representative pursuant to ORS 183.459.
- 9 (b) For all other SIs, the SI may not be represented by a lay person.
- 10 (6) If the SI fails to request an expedited hearing under this rule within the
11 allowed time, BCU shall issue a Notice of Denial to the SI and to the QE. The
12 SI shall have no further hearing rights under OAR 407-007-0330.
- 13 (7) If the SI requests an expedited hearing in a timely manner, the SI shall
14 remain in the same status made in a preliminary fitness determination
15 under OAR 407-007-0315 until the date of a final order or the Notice of
16 Denial.
- 17 (8) BCU may conduct an administrative review before referring the appeal to
18 OAH.
- 19 (a) The SI must participate in the administrative review. Participation
20 may include but is not limited to providing additional information or
21 additional documents requested by BCU within a specified amount of
22 time.
- 23 (b) The administrative review is not open to the public.
- 24 (c) BCU may make an informal disposition based on the administrative
25 review. BCU shall issue a final order and a notice of fitness
26 determination.
- 27 (9) The Department shall be represented by a hearing representative in
28 expedited hearings. The Department may also be represented by the Office
29 of the Attorney General.
- 30 (a) BCU shall provide the administrative law judge and the SI a complete
31 copy of available information used during the background checks and
32 fitness determinations. The claimant is entitled to reasonable notice
33 of all hearing documents either through personal service,
34 electronically, regular mail, or certified mail.

- 1 (b) An SI may not have access to confidential information contained in
2 abuse investigation reports or other records collected or developed
3 during the abuse check process without a protective order limiting
4 further disclosure of the information.
- 5 (10) The expedited hearing shall be conducted by the OAH by telephone within
6 10 business days from the receipt of the completed and signed Expedited
7 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
10 based on 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
14 or the QE be required to place an SI in any position, nor shall the
15 Department or the QE be required to accept services or enter into a
16 contractual agreement with an SI.
- 17 (11) BCU shall issue a dismissal order in the following situations:
- 18 (a) The SI may withdraw an expedited hearing request verbally or in
19 writing at any time before the issuance of a final order. A dismissal
20 order due to the withdrawal is effective the date the withdrawal is
21 received by BCU or the OAH. The SI may cancel the withdrawal in
22 writing within four calendar days after the date of withdrawal.
- 23 (b) BCU shall dismiss a hearing request when the SI fails to participate in
24 the administrative review. Failure to participate in the administrative
25 review shall result in termination of hearing rights. The order is
26 effective on the due date for participation in the administrative
27 review.
- 28 (c) If the QE terminates employment or position of the SI for reasons
29 unrelated to the potentially disqualifying abuse, BCU may close the
30 application.
- 31 (d) BCU shall dismiss a hearing request when the SI fails to appear at the
32 time specified for the expedited hearing. The order is effective on the
33 date scheduled for the hearing.

- 1 (12) After an expedited hearing, the administrative law judge shall issue a final
2 order within three business days.
- 3 (a) If the final order maintains BCU's intent to deny, BCU shall issue a
4 Notice of Denial by the next business day after the date of the final
5 order. The SI shall have no further hearing rights under OAR 407-007-
6 0330.
- 7 (b) If the final order reverses BCU's intent to deny to an approval or a
8 restricted approval, BCU shall issue a Notice of Fitness Determination
9 by the next business day after the date of the final order unless BCU
10 formally stays the final order. The SI shall have no further hearing
11 rights under OAR 407-007-0330.
- 12 (13) Final orders, including dismissal and default orders, are subject to
13 reconsideration or rehearing petitions within 60 calendar days after the
14 order is served, pursuant to OAR 137-003-0675.

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

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

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19 **407-007-0340 Record Keeping, Confidentiality**

- 20 (1) All LEDS reports are confidential and the Department and Authority shall
21 maintain the reports in accordance with applicable OSP requirements in
22 ORS chapter 181 and the rules adopted pursuant thereto (see OAR chapter
23 257, division 15).
- 24 (a) LEDS reports are confidential and may only be shared within BCU if
25 there is a need to know consistent with these rules.
- 26 (b) The LEDS report and any photocopies may not be shown or given to
27 the SI.
- 28 (2) The results of a national criminal records check provided by the FBI or the
29 OSP are confidential and may not be disseminated by BCU unless:
- 30 (a) If an SI requests the results of a fingerprint-based criminal records
31 check received by BCU, the SI shall be provided a copy of the results.
- 32 (b) The state and national criminal offender information shall be
33 provided as exhibits during the contested case hearing.

- 1 (3) The results of an abuse check are confidential and may not be disseminated
2 by the Department or the Authority except in compliance with
3 confidentiality statutes and guidelines of the Department or the Authority.
4 An SI may not have access to confidential information contained in abuse
5 investigation reports or other records collected or developed during the
6 abuse check process without an order of discovery limiting further
7 disclosure of the information during the contested case hearing process.
- 8 (4) All completed background check requests, other criminal records
9 information, and other records collected or developed during the
10 background check or contested case process shall be kept confidential and
11 disseminated only on a need-to-know basis.
- 12 (5) The Department and Authority shall retain and destroy all criminal records
13 check documents pursuant to federal law and records retention schedules
14 published by Oregon State Archives.
- 15 (6) Documents retained by a QE may only be viewed by an approved QED or
16 licensing staff authorized by the Department or Authority as part of
17 monitoring compliance with licensing and program administrative rules.
- 18 (7) Documents retained by a QE may be requested and reviewed by the
19 Department and the OSP for the purposes of determining and ensuring
20 compliance with these rules.
- 21 (8) If an error is discovered on a notice of fitness determination, BCU may
22 correct it by issuing an amended notice of fitness determination.

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

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

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26 **407-007-0350 Immunity from Liability**

- 27 (1) The Department, the Authority and the QE, acting within the course and
28 scope of employment, have immunity from any civil liability that might
29 otherwise be incurred or imposed for determining, in accordance with ORS
30 181A.200, that an SI is fit or not fit to hold a position, provide services, or
31 be employed, licensed, certified, or registered.

- 1 (2) The Department, and Authority, and the QE, acting within the course and
2 scope of employment, and an employer or employer’s agent are not liable
3 for the failure to hire a prospective employee or the decision to discharge
4 an employee on the basis of a fitness determination or closed case if they in
5 good faith comply with:
- 6 (a) ORS 181A.200 and ORS 409.027; and
7 (b) The decision of the QE or employee of the QE acting within the
8 course and scope of employment.
- 9 (3) No employee of the state, a business, or an organization, acting within the
10 course or scope of employment, is liable for defamation, invasion of
11 privacy, negligence, or any other civil claim in connection with the lawful
12 dissemination of information lawfully obtained under ORS 181A.200.

13 *Stat. Auth.: ORS 181A.200, 409.027 & 409.050*

14 *Stats. Implemented: ORS 181A.195, 181A.200, 409.010, 409.027 & 443.004*

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17 **407-007-0370 Variances**

- 18 (1) The Department and Authority may consider variance requests regarding
19 these rules.
- 20 (a) The outcomes of a fitness determination made pursuant to these
21 rules is not subject to variance. Challenges to fitness determinations
22 may only be made by SIs through contested case hearing rights set
23 forth in these rules.
- 24 (b) Neither the Department nor the Authority may grant variances to
25 ORS 181A.195 and 181A.200.
- 26 (2) The Department or Authority may grant a variance to any section of these
27 rules based upon a demonstration by the QE that the variance would not
28 pose a significant risk to physical, emotional, or financial well-being of
29 vulnerable individuals.
- 30 (3) The QE requesting a variance must submit, in writing, an application to the
31 BCU that contains:
- 32 (a) The section of the rule from which the variance is sought;
33 (b) The reason for the proposed variance;

- 1 (c) The alternative practice, service, method, concept, or procedure
2 proposed;
- 3 (d) A plan and timetable for compliance with the section of the rule from
4 which the variance is sought; and
- 5 (e) An explanation on how the welfare, health, or safety of individuals
6 receiving care will be ensured during the time the variance is in
7 effect.
- 8 (4) The Assistant Director or designee for the Department and Authority's
9 Shared Services, Office of Human Resources shall approve or deny the
10 request for a variance.
- 11 (5) BCU shall notify the QE of the decision within 60 calendar days of the
12 receipt of the request and shall provide a copy to other relevant
13 Department or Authority program offices.
- 14 (6) Appeal of the denial of a variance request must be made in writing to the
15 Department or Authority's Director, whose decision is final.
- 16 (7) The Department or Authority shall determine the duration of the variance.
- 17 (8) The QE may implement a variance only after receipt of written approval
18 from BCU.
- 19 (9) Granting a variance does not set a precedent that must be followed by the
20 Department or Authority when evaluating subsequent variance requests.

21 *Stat. Auth.: ORS 181A.200 & 409.050*

22 *Stats. Implemented: ORS 181A.195, 181A.200 & 409.010*