

1 **OREGON ADMINISTRATIVE RULES**

2 **Chapter 407**

3 **Administrative Services Division and Director's Office**

4 **Division 7**

5 **CRIMINAL HISTORY CHECKS**

6 **Rules 0400 to 0460**

7 **Abuse Checks for Department Employees and Volunteers**

8 **PERMANENT EFFECTIVE 2/10/2020**
9 **FOR ALL BACKGROUND CHECKS SUBMITTED ON OR AFTER 2/10/2020**

10

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1 **407-007-0400 Purpose** (*Permanent Effective 12/1/2017*)

- 2 (1) The purpose of these rules, OAR 407-007-0400 to 407-007-0460, is to provide for the
3 abuse check of Department of Human Services (Department) employees, volunteers,
4 certain contractors, or individuals offered employment or placement by the Department
5 to determine if they are fit to provide care.
- 6 (2) The abuse check process is separate from the criminal records checks that may be
7 performed under OAR 407-007-0000 to 407-007-0100 however criminal records checks
8 may occur concurrently with abuse checks performed under these rules and may share
9 similar processes.

10 **Statutory/Other Authority:** *ORS 409.027, 409.050, 413.036*

11 **Statutes/Other Implemented:** *ORS 409.027, 409.050, 413.036*

13 **407-007-0410 Definitions** (*Permanent Effective 02/10/2020*)

14 In addition to the definitions in OAR 125-007-0210 and 407-007-0010, the following definitions
15 apply to OAR 407-007-400 to 407-007-0460:

- 16 (1) "Closed case" means an abuse check that has been closed without a fitness
17 determination.
- 18 (2) "Director" means the Department's Director or designee.
- 19 (3) "Founded or substantiated" has the meanings given in the Department's administrative
20 rules corresponding to the setting in which the abuse was alleged or investigated.
- 21 (4) "Potentially disqualifying abuse" means abuse in which the finding of an abuse
22 investigation report is founded or substantiated; and the subject individual is
23 determined to have been responsible for the abuse. If formal review or appeal rights
24 are offered to the alleged perpetrator (the subject individual), BCU may consider the
25 abuse as potentially disqualifying after these rights are completed or timed out.
- 26 (5) "Subject individual (SI)" means an individual on whom the Department may conduct an
27 abuse check. An SI includes any of the following:
- 28 (a) A Department employee.
- 29 (b) An individual who has been offered employment by the Department.
- 30 (c) An individual secured by the Department through the services of a temporary
31 employment agency, staffing agency, or personnel services agency who is
32 providing any of the duties or having access as described in OAR 407-007-
33 0060(3).
- 34 (d) A Department client who is placed in the Work Experience or JOBS Plus program
35 at a Department site.

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- 1 (e) An individual who provides or seeks to provide services to the Department at
2 Department facilities, sites, or offices as a contractor, subcontractor, vendor,
3 volunteer under Department direction and control, or student under
4 Department direction and control who:
- 5 (A) May have contact with clients;
- 6 (B) Has access to personal information about employees of the Department,
7 clients, or members of the public, including but not limited to Social
8 Security numbers, dates of birth, driver license numbers, medical
9 information, personal financial information, or criminal background
10 information;
- 11 (C) Has access to information the disclosure of which is prohibited by state or
12 federal laws, rules, or regulations or information that is defined as
13 confidential under state or federal laws, rules, or regulations;
- 14 (D) Has access to property held in trust or to private property in the
15 temporary custody of the state;
- 16 (E) Has payroll or fiscal functions or responsibility for:
- 17 (i) Receiving, receipting or depositing money or negotiable
18 instruments;
- 19 (ii) Billing, collections, setting up financial accounts, or other financial
20 transactions; or
- 21 (iii) Purchasing or selling property;
- 22 (F) Provides security, design or construction services for government
23 buildings, grounds, or facilities;
- 24 (G) Has access to critical infrastructure or secure facilities information; or
- 25 (H) Is providing information technology services and has control over or
26 access to information technology systems.
- 27 (f) Any individual applying for employment or a volunteer placement or any
28 employee, volunteer, contractor, or employee of any contractor in any of the
29 following:
- 30 (A) A State-operated or Authority-contracted secure residential treatment
31 facility;
- 32 (B) A State-operated residential training home within the Department's
33 Stabilization and Crisis Unit (SACU);
- 34 (C) Oregon State Hospital.

35 **Statutory/Other Authority:** ORS 409.027, 409.050, 413.036

36 **Statutes/Other Implemented:** ORS 409.025, 409.027, 409.050, 413.036

1 **407-007-0420 Reporting Abuse Allegations Required** (*Permanent Effective*
2 *6/29/2018*)

- 3 (1) This rule applies to any SI who is:
- 4 (a) A current Department employee;
 - 5 (b) A current Department volunteer; or
 - 6 (c) An individual seeking Department employment or volunteer placement, who has
7 been offered Department employment or volunteer placement, pending the
8 completion of the abuse check process.
 - 9 (d) An employee of any contractor in any of the following:
 - 10 (A) A State-operated or Authority-contracted secure residential treatment
11 facility;
 - 12 (B) A State-operated residential training home within SACU;
 - 13 (C) Oregon State Hospital.
- 14 (2) An SI shall notify the Office of Human Resources within five calendar days of being
15 notified that he or she has been identified as an alleged perpetrator, reported
16 perpetrator, or accused person in an abuse investigation.

17 **Statutory/Other Authority:** *ORS 409.027 , 409.050, 413.036*

18 **Statutes/Other Implemented:** *ORS 409.027 , 409.050, 413.036*

20 **407-007-0430 Applicants to the Department** (*Permanent Effective*
21 *02/10/2020*)

- 22 (1) Subject to any applicable collective bargaining agreements, this rule applies to any SI
23 who is:
- 24 (a) Offered employment or volunteer placement with the Department;
 - 25 (b) Offered a change in employment or volunteer placement within the Department.
 - 26 (c) An employee of any contractor in any of the following:
 - 27 (A) A State-operated or Authority-contracted secure residential treatment
28 facility;
 - 29 (B) A State-operated residential training home within SACU;
 - 30 (C) Oregon State Hospital.
- 31 (2) The Department requires an SI to have an abuse check in the following circumstances:
- 32 (a) An SI is offered employment, volunteer placement, or work under a contract
33 with the Department.

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- 1 (b) An SI is currently employed by or volunteering with the Department and is
2 offered a new position within the Department. A change in a position requiring
3 an abuse check may be due to but not limited to promotion, transfer, demotion,
4 re-employment, job rotation, developmental assignment, restoration, bumping,
5 or recall. For the abuse check to be required, there must be, as determined by
6 the Office of Human Resources:
- 7 (A) A significant change in position duties or responsibilities; or
8 (B) A change in position classification.
- 9 (3) Using identifying information submitted to the Department, the Department shall
10 conduct an abuse check to determine if the SI has potentially disqualifying abuse.
- 11 (a) In order to complete an abuse check and fitness determination, the Department
12 may require additional information from the SI including but not limited to
13 additional background information or documentation regarding circumstances
14 since the abuse occurred.
- 15 (b) If an SI is a represented Department employee, the process for obtaining
16 additional information through investigatory interviews shall adhere to collective
17 bargaining agreements on investigatory interviews.
- 18 (4) The Department shall determine whether a start date for an SI may be set based on the
19 SI's disclosures, a preliminary review of Oregon criminal history and an abuse check.
- 20 (5) If an SI has potentially disqualifying abuse, the Department shall conduct a weighing test
21 in order to make a fitness determination. Factors to consider in a weighing test include
22 but are not limited to:
- 23 (a) The details regarding the abuse including but not limited to:
- 24 (A) Circumstances leading to the incident of abuse;
25 (B) The nature or type of abuse; and
26 (C) Other information gathered during the scope of the abuse investigation.
- 27 (b) The date of abuse incident and abuse investigation, and the age of the SI at the
28 time of the abuse.
- 29 (c) The quality of the abuse investigation including, if applicable, any exhibits and
30 related documents with consideration to completeness, objectivity, and
31 sufficiency.
- 32 (d) Due process provided to the SI after the abuse investigation.
- 33 (e) Required conditions and actions resulting from the founded or substantiated
34 abuse that would allow for reinstatement of the SI in the position including but
35 not limited to training, counseling, corrective or disciplinary action, and the SI's
36 compliance.

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- 1 (f) Circumstances related to the SI including but not limited to work history,
2 education history, and other personal information provided by the SI.
- 3 (g) Changes in circumstances subsequent to the potentially disqualifying abuse.
- 4 (h) The relevancy of the abuse to the position the SI is seeking.
- 5 (6) Following an abuse check, the Department shall complete the fitness determination.
- 6 (a) The Department may approve an SI if:
- 7 (A) The SI has no potentially disqualifying abuse; or
- 8 (B) The SI has potentially disqualifying abuse but, after a weighing test, the
9 Department determines that more likely than not the SI poses no risk to
10 the Department, its clients, or vulnerable persons.
- 11 (b) The Department shall deny an SI who has potentially disqualifying abuse and,
12 after a weighing test, the Department determines that more likely than not the
13 SI poses a risk to the Department, its clients, or vulnerable individuals.
- 14 (7) When the application is closed without a final fitness determination, the SI does not
15 have a right to contest the closed case. The Department shall close the case if an SI:
- 16 (a) Discontinues the abuse check application;
- 17 (b) Fails to cooperate with the abuse check process; or
- 18 (c) Is subject to OAR 407-007-0445 and is found ineligible.
- 19 (8) Upon completion of a fitness determination, the Department shall provide written
20 notice to the SI. The notice shall:
- 21 (a) Be in a Department approved format; and
- 22 (b) Include an effective date of action.
- 23 (c) For an outcome of denied:
- 24 (A) Include the reasons for the denial;
- 25 (B) Include information regarding appeal rights; and
- 26 (C) Include a statement that the notice becomes a final order in the event of
27 a withdrawal during the contested case hearing process or a failure to
28 appear at the contested case hearing.
- 29 (9) When an SI is denied or a case is closed, the individual may not work, volunteer, be
30 employed, or otherwise perform in the position that the SI is seeking. If a current
31 Department employee or volunteer is denied, the Office of Human Resources shall
32 determine if the SI may continue in the current position that the SI is seeking to change.
- 33 (a) For Department employees, if disciplinary action up to and including dismissal is
34 appropriate, the action shall be taken in accordance with:
- 35 (A) Relevant collective bargaining contractual provisions;

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 (14) An SI in volunteer or Work Experience placements must have a new abuse check every
7 three years from the date of placement.

8 **Statutory/Other Authority:** ORS 409.027, 409.050, 413.036

9 **Statutes/Other Implemented:** ORS 409.010 & 409.027, 413.036

10

11 **407-007-0440 Current Employees of the Department (Permanent**
12 **12/1/2017)**

13 (1) This rule applies to any SI who is a current Department employee.

14 (2) If an SI is identified as an alleged perpetrator, reported perpetrator, or accused person
15 in an abuse investigation, all relevant abuse investigation and licensing rules shall apply.

16 (3) The Department shall apply relevant program administrative due process policies if the
17 SI is identified as responsible in a founded or substantiated abuse investigation.

18 (4) If a current SI is identified as an alleged perpetrator, reported perpetrator, or accused
19 person in an abuse investigation, the Office of Human Resources may initiate an
20 investigation during or following the investigation of the alleged abuse to determine
21 whether to take any action, up to and including dismissal from employment.

22 (a) If the abuse investigation results in potentially disqualifying abuse, the Office of
23 Human Resources shall initiate an investigation which may include initiating a
24 new abuse check and conducting a weighing test as described in OAR 407-007-
25 0430. The purpose of the investigation is to determine whether any action, up to
26 and including dismissal, is justified.

27 (b) If the Office of Human Resources learns of potentially disqualifying abuse from
28 previous investigations, the Office of Human Resources may initiate an
29 investigation, to determine fitness for the position, which may include initiating
30 a new abuse check and conducting a weighing test as described in OAR 407-007-
31 0430. The purpose of the investigation is to determine whether any action, up to
32 and including dismissal is justified.

33 (c) For Department employees, if disciplinary action up to and including dismissal, is
34 appropriate, the action shall be taken in accordance with:

35 (A) Relevant collective bargaining agreements;

36 (B) Statutory provisions for unrepresented or management services
37 employees; or

1 (C) Relevant Department or statewide policies or procedures.

- 2 (5) A pending related action, such as a civil, criminal, juvenile, or administrative proceeding
3 in which the allegations of abuse are at issue shall not automatically be grounds for the
4 SI to seek to detain or stay either the review of the founded or substantiated disposition
5 or any resulting disciplinary action. The Department may detain or stay either the
6 review of the founded or substantiated abuse disposition or any resulting disciplinary
7 action based on the pending related action such as a civil, criminal, juvenile, or
8 administrative proceeding in which the allegations of abuse are at issue.

9 *Statutory/Other Authority: ORS 409.027 & , 409.050, 413.036*

10 *Statutes/Other Implemented: ORS 409.027 , 409.050, 413.036*

11

12 **407-007-0445 Employees Who Apply or Are Hired At SACU After 1/1/2018**
13 **(Permanent 6/29/2018)**

14 (1) This rule applies to an SI who is:

- 15 (a) Hired after 1/1/2018 at SACU; or
16 (b) Seeking Department employment to work at SACU after 1/1/2018.

17 (2) If the Department determines that an SI has abuse that meets all the following criteria,
18 the Department may not hire or retain the SI to work in SACU:

- 19 (a) The abuse investigation resulted in an outcome of substantiated on or after
20 1/1/2018.
- 21 (b) The abuse meets definitions in ORS 430.735 and is one of the following types:
- 22 (A) Any physical injury caused by other than natural or accidental means, or
23 that appears to be at variance with the explanation given of the injury.
- 24 (B) Willful infliction of physical pain or injury.
- 25 (C) Sexual abuse.
- 26 (D) Neglect, specifically the withholding of services necessary to maintain the
27 health and well-being of an adult which leads to physical harm of an
28 adult.
- 29 (E) Financial exploitation, specifically:
- 30 (i) Wrongfully taking the assets, funds or property belonging to or
31 intended for the use of a person with a developmental disability;
32 or
- 33 (ii) Misappropriating, misusing or transferring without authorization
34 any money from any account held jointly or singly by a person
35 with a developmental disability;
- 36 (F) Any death caused by other than natural or accidental means.

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- 1 (c) During the investigation, the investigator provided notice of the allegation to the
2 SI (as the alleged perpetrator, reported perpetrator, respondent, or accused
3 person) and offered the SI the opportunity to participate in the investigation.
- 4 (d) The investigation results in an outcome of substantiated, finding the SI to be
5 responsible for the abuse.
- 6 (e) The Department provided written notice of the outcome of the investigation to
7 the SI, including an explanation of any due process rights.
- 8 (f) The period of time for the Department's due process has been completed
9 resulting in a final order of substantiated abuse.
- 10 (3) The SI is not eligible for a fitness determination with a weighing test under ORS
11 181A.195 or OAR 407-007-0430 regardless of any other potentially disqualifying abuse
12 the SI has. The Department must find the SI ineligible due to OAR 407-007-0445. The SI
13 has no hearing rights regarding employment if found ineligible due to OAR 407-007-
14 0445. The Department shall provide written notice to the SI at the address provided by
15 the SI.
- 16 (4) If the abuse does not meet all the requirements in section (2), then OAR 407-007-0430
17 or OAR 407-007-0440 apply.

18 **Statutory/Other Authority:** ORS 409.027 , 409.050, 413.036; 443.007

19 **Statutes/Other Implemented:** ORS 409.027, 409.050, 413.036, & 443.007

20

21 **407-007-0450 Current Volunteers of the Department (Permanent**
22 **12/1/2017)**

- 23 (1) This rule applies to any SI who is a current Department volunteer.
- 24 (2) If an SI is identified as an alleged perpetrator, reported perpetrator, or accused person
25 in an abuse investigation, the Office of Human Resources may remove the SI from
26 placement and duties at any time during the investigation or any subsequent review.
- 27 (3) If removed from the placement, the SI may reapply for a placement and be subject to a
28 new background check in accordance with OAR 407-007-0000 to 407-007-0100 and OAR
29 407-007-0430.

30 **Statutory/Other Authority:** ORS 409.027 , , 409.050, 413.036

31 **Statutes/Other Implemented:** ORS 409.027 , 409.050, 413.036

32

33 **407-007-0455 Current Contract SIs of the Department (Permanent**
34 **12/1/2017)**

- 35 (1) This rule applies to any SI who is an employee of any contractor in any of the following:

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- 1 (a) A State-operated or Authority-contracted secure residential treatment facility;
- 2 (b) A State-operated residential training home within the Department’s Stabilization
- 3 and Crisis Unit;
- 4 (c) Oregon State Hospital.
- 5 (2) If an SI is identified as an alleged perpetrator, reported perpetrator, respondent, or
- 6 accused person in an abuse investigation, all relevant abuse investigation and licensing
- 7 rules shall apply.
- 8 (3) The Department shall apply relevant program administrative rule due process if the SI is
- 9 identified as responsible in a founded or substantiated abuse investigation.
- 10 (4) If an SI is identified as an alleged perpetrator, reported perpetrator, respondent, or
- 11 accused person in an abuse investigation, the Office of Human Resources may remove
- 12 the SI from contracted work at any time during the investigation.
- 13 (5) The Office of Human Resources shall require a new background check in accordance
- 14 with OAR 407-007-0000 to 407-007-0100 and OAR 407-007-0430 under the following
- 15 circumstances:
- 16 (a) The abuse investigation results in potentially disqualifying abuse; and
- 17 (b) The SI remains an employee of the contractor; and
- 18 (c) The contractor or the Department intends to allow the SI to work under the
- 19 contract with the Department.

20 **Statutory/Other Authority:** ORS 409.027, , 409.050, 413.036

21 **Statutes/Other Implemented:** ORS 409.027 , 409.050, 413.036

22

23 **407-007-0460 Confidentiality (Permanent 2/10/2020)**

- 24 (1) The Department shall maintain abuse investigation reports as confidential pursuant to
- 25 ORS 409.027, 413.036 and other applicable state and federal laws and rules.
- 26 (2) All abuse information and other records collected or developed during the abuse check
- 27 process shall be kept confidential and disseminated only on a need-to-know basis as
- 28 permitted by applicable Oregon statutes and administrative rules.
- 29 (3) Abuse investigation reports may be used among the organizational units of the
- 30 Department for the purpose of screening SIs necessary to protect the Department’s
- 31 vulnerable clients from abuse.
- 32 (4) The Department may use abuse and neglect reports for decisions directly affecting
- 33 vulnerable individuals if the vulnerable individual is also an SI.

34 **Statutory/Other Authority:** ORS 409.027 , 409.050, 413.036

35 **Statutes/Other Implemented:** ORS 409.027 , 409.050, 413.036