

**CHAPTER 407
DEPARTMENT OF HUMAN SERVICES**

**DIVISION 7
CRIMINAL RECORDS AND ABUSE CHECK RULES**

Criminal Records Checks and Abuse Checks on Providers

DRAFT RULES FOR PERMING 2018

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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 supplement OAR 125-
3 007-0200 to 125-007-0330 with guidelines and requirements specific to *background checks* for
4 Department of Human Services (*Department*) and Oregon Health Authority (*Authority*) subject
5 individuals (*SIs*). These rules provide for the reasonable screening under ORS 181A.195,
6 181A.200, and 409.027 of *SIs* to determine if they have a history of criminal or abusive behavior
7 such that they should not be allowed to work, volunteer, be employed, reside, or otherwise
8 perform in positions covered by these rules.
- 9 (2) These rules apply to evaluating criminal records and potentially disqualifying conditions of an *SI*
10 when conducting *fitness determinations* based upon such information. The fact that an *SI* is
11 *approved* does not guarantee employment or placement. These rules do not apply to
12 individuals subject to OAR 407-007-0000 to 407-007-0060 (DHS Employees, Volunteers, and
13 Contractors) or 407-007-0400 to 407-007-0460 (Abuse Check Rules for Department Employees
14 and Volunteers).
- 15 (3) Providers for the *Department* and the *Authority* are subject to criminal records and *abuse*
16 *checks*. The *Authority* authorizes the *Department* to act on its behalf in carrying out criminal
17 and *abuse checks* associated with programs or activities administered by the *Authority*.
18 References in these rules to the *Department* or *Authority* shall be construed to be references to
19 either or both agencies.

20 *Stat. Auth.: ORS 181A.195, 181A.200, 183.459, 409.025, 409.027, 409.050, 410.020, 411.060, 411.122, 413.036,*
21 *418.016, 418.640, 441.055, 443.730, 443.735 & 678.153*

22 *Stats. Implemented: ORS 181A.195, 181A.200, 183.459, 409.010, 409.025, 409.027, 411.060, 411.122 & 443.004*
23

24 **407-007-0210 Definitions**

25 OAR 125-007-0210 and 407-007-0010 include definitions for words and terms used in OAR chapter 407
26 division 007. The following definitions apply specifically to OAR 407-007-0200 to 407-007-0370:

27 [Definitions from DAS rules, OAR 125-007-0210 added]

28 [Definitions from DHS rules, OAR 407-007-0010 added]

- 29 (1) “Abuse” has the meaning given in the administrative rules promulgated by the
30 *Department* or *Authority* corresponding to the setting in which the abuse was alleged
31 or investigated.
- 32 (2) “Abuse check” means obtaining and reviewing abuse allegations, *abuse*
33 *investigation reports*, and associated exhibits and documents for the purpose of
34 determining whether an *SI* has potentially disqualifying abuse.
- 35 (3) “Abuse investigation report” means a written report completed after an
36 investigation into suspected abuse and retained by the *Department* or the *Authority*
37 pursuant to ORS 124.085, 419B.030, or 430.757, or a similar report filed in another
38 state agency or by another state.
- 39 (1) “Appointing authority” means an individual designated by the *qualified entity (QE)* who is
40 responsible for appointing *QE designees (QEDs)*. Examples include but are not limited to human

- 1 resources staff with the authority to offer and terminate employment, a business owner, a
2 member of the board of directors, a director, or a program administrator.
- 3 (4) “Approved” means that a *subject individual*, following a final fitness determination, is
4 fit to work, volunteer, be employed, or otherwise perform in the *position* listed in the
5 criminal records check request.
- 6 (5) “Approved with restrictions” means an approval in which some restriction is made
7 to the *position* listed in the criminal records check request including but not limited
8 to the SI, the SI’s environment, the type or number of clients for whom the SI may
9 provide care, or the information to which the SI has access.
- 10 (6) “Authority” means the Oregon Health Authority.
- 11 (1) “Authorized Agency” as defined in ORS 181A.215 or described in these rules.
- 12 (8) “Background check” means a criminal records check and an abuse check.
- 13 (9) “Background Check Unit” means the Background Check Unit (BCU), a Shared
14 Services unit which conducts criminal records checks and abuse checks for the
15 *Department* and the *Authority*.
- 16 (10) “Care” means the provision of care, treatment, education, training, instruction,
17 supervision, placement services, recreation, or support to children, the elderly, or
18 individuals with disabilities (see ORS 181A.200).
- 19 (11) “Client” means any individual who receives services, care, or funding for care
20 through the *Department* or the *Authority*.
- 21 (2) "Conviction" means that a court of law has entered a final judgment on a verdict or finding of
22 guilty, a plea of guilty, a plea of nolo contendere (no contest) or any determination of guilt
23 entered by a court of law against a subject individual (SI) in a criminal case, unless that judgment
24 has been reversed or set aside by a subsequent court decision.
- 25 (4) "Criminal Offender Information" means records, including fingerprints and photographs,
26 received, compiled and disseminated by the Oregon Department of State Police (OSP) , or by
27 other states, for purposes of identifying criminal offenders and alleged offenders, and maintained
28 as part of an individual’s records of arrests, the nature and disposition of criminal charges,
29 sentencing, confinement, but does not include the retention by OSP or records of transfer of
30 inmates between penal institutions or other correctional facilities, and release. It also includes the
31 OSP Computerized Criminal History System (see OAR 257-010-0015).
- 32 (12) “Criminal records check” means obtaining and reviewing criminal records and
33 includes any or all of the following:
- 34 (a) An Oregon criminal records check where criminal offender information 1 is
35 obtained from Oregon State Police (OSP) using the Law Enforcement Data
36 System (LEDS). The Oregon criminal records check may also include a review
37 of other criminal information.
- 38 (b) A national criminal records check where criminal records are obtained from
39 the Federal Bureau of Investigation (FBI) through the use of fingerprint cards
40 sent to OSP and other identifying information.

- 1 (c) A state-specific criminal records check where criminal records are obtained
2 from law enforcement agencies, courts, or other criminal records information
3 resources located in, or regarding, a state or jurisdiction outside Oregon.
- 4 (13) “*Criminal Records Information Management System (CRIMS)*” means the electronic
5 records system used to process and maintain background checks OAR 407-007-0000
6 to 407-007-0640.
- 7 (14) “*Denied*” means that a *subject individual*, following a fitness determination including
8 a weighing test, is not fit to work, volunteer, be employed, or otherwise perform in
9 the *position* listed in the criminal records check request.
- 10 (15) “*Department*” means the *Department* of Human Services.
- 11 (17) “*Fingerprint capture*” means taking the SI’s fingerprints for a national criminal
12 records check in a manner that meets current Oregon statutes and the OSP’s
13 capacity for receiving fingerprints.
- 14 (18) “*Fitness determination*” means the decision regarding a criminal records check and
15 abuse check when either or both are considered and includes:
- 16 (a) The decision regarding SI disclosures, an Oregon criminal records check, and
17 preliminary review (a preliminary fitness determination); or
- 18 (b) The decision regarding SI disclosures, completed criminal and abuse records
19 check when either or both are considered including the gathering of other
20 information as necessary, and a final review by an AD (a final fitness
21 determination).
- 22 (19) “*Founded or substantiated*” has the meaning given these terms in the *Department* or
23 Authority’s administrative rules corresponding to the setting in which the abuse was
24 alleged or investigated.
- 25 (20) “*Good cause*” means a valid and sufficient reason for not complying with time
26 frames set during the criminal records check process or contested case hearing
27 process, including but not limited to an explanation of circumstances beyond an SI’s
28 reasonable control.
- 29 (21) “*Hearing representative*” means a *Department* employee representing the
30 *Department* in a contested case hearing.
- 31 (2) “*Ineligible due to ORS 443.004*” means BCU has determined that an *SI*, subject to ORS 443.004
32 and either OAR 407-007-0275 or 407-007-0277, has one or more *convictions* that prohibit the *SI*
33 from holding the *position* listed in the *background check* request.
- 34 (3) “*Mandatory exclusion*” means BCU has determined that an *SI*, subject to federal law or
35 regulation, has one or more *convictions* or conditions that prohibit the *SI* from holding the
36 *position* listed in the *background check* request.
- 37 (23) “*Office of Adult Abuse Prevention and Investigations (OAAPI)*” means the Office of
38 Adult Abuse Prevention and Investigations, formerly the Office of Investigation and
39 Training, a shared service of the *Department* and Authority.

- 1 (24) “Other criminal records information” means information obtained and used in the
2 criminal records check that is not criminal offender information from OSP. Other
3 criminal records information includes but is not limited to police investigations and
4 records, information from local or regional criminal records information systems,
5 justice records, court records, information from the Oregon Judicial Information
6 Network, sexual offender registration records, warrants, Oregon *Department of*
7 *Corrections* records, Oregon *Department of Transportation’s* Driver and Motor
8 *Vehicle Services Division* information, information provided in the criminal records
9 check requests, disclosures by an SI, and any other information from any jurisdiction
10 obtained by or provided to the *Department* for the purpose of conducting a fitness
11 determination.
- 12 (25) “*Position*” means the *position* listed on the criminal records check request for the SI
13 which determines whether the individual is an SI under these rules. Covered
14 *positions* include any type of employment, volunteer placement, or contract
15 placement.
- 16 (4) “*Proctor foster parent*” means an individual who is an applicant for certification or
17 recertification of a proctor foster home by a child-caring agency pursuant to OAR 413-215-0301
18 to 413-215-0396.
- 19 (5) “*Qualified entity (QE)*” means a community mental health or developmental disability program,
20 local health department, or an individual, business, or organization, whether public, private,
21 for-profit, nonprofit, or voluntary, that provides *care*, including a business or organization that
22 licenses, certifies, or registers others to provide *care* (see ORS 181A.200).
- 23 (6) “*QE designee (QED)*” means an *approved SI* appointed by the *QE’s appointing authority* to
24 handle *background checks* on behalf of the *QE*.
- 25 (7) “*QE Initiator (QEI)*” means an *approved SI* to whom *BCU* has granted access to the *Criminal*
26 *Information Management System (CRIMS)* for one *QE* for the purpose of entering *background*
27 *check* request data.
- 28 (8) “*Subject individual (SI)*” means an individual on whom *BCU* conducts a *criminal records check*
29 and an *abuse* check, and from whom *BCU* may require fingerprints for the purpose of
30 conducting a national *criminal records check*.
- 31 (a) An *SI* includes any of the following:
- 32 (A) An individual who is licensed, certified, registered, or otherwise regulated or
33 authorized for payment by the *Department* or *Authority* and who provides *care*.
- 34 (B) An employee, contractor, temporary worker, or volunteer who provides *care* or
35 has access to *clients*, *client* information, or *client* funds within or on behalf of any
36 entity or agency licensed, certified, registered, or otherwise regulated by the
37 *Department* or *Authority*.
- 38 (C) Any individual who is paid directly or indirectly with public funds who has or will
39 have contact with recipients of:
- 40 (i) Services within an adult foster home (defined in ORS 443.705); or

- 1 (ii) Services within a residential facility (defined in ORS 443.400).
- 2 (D) Any individual who works in a facility and provides *care* or has access to *clients*,
3 *client* information, or *client* funds secured by any residential care or assisted
4 living facility through the services of a personnel services or staffing agency.
- 5 (E) Any individual who works in a facility and provides *care*, or has access to *clients*,
6 *client* information, or *client* funds secured by any nursing facility through the
7 services of a personnel services or staffing agency.
- 8 (F) A referral agent or an employee of a long term care referral entity as required in
9 OAR 411-058-0000 to 411-058-0100.
- 10 (F) Except as excluded in section (8)(b)(C) and (D) of this rule, an individual who lives
11 in a facility that is licensed, certified, registered, or otherwise regulated by the
12 *Department* to provide *care*. The position of this *SI* includes but is not limited to
13 resident manager, household member, or boarder.
- 14 (G) For child foster homes licensed by the *Department's* DD programs, or child foster
15 or adoptive homes governed by OAR chapter 413 division 215:
- 16 (i) A foster parent or *proctor foster parent*;
- 17 (ii) An adoptive parent applicant or an *approved* adoptive parent;
- 18 (iii) A household member in an adoptive or foster home 18 years of age and
19 over;
- 20 (iv) A household member in an adoptive or foster home under 18 years of
21 age if there is reason to believe that the household member may pose a
22 risk to children placed in the home; and
- 23 (v) A respite care provider.
- 24 (H) An individual with contact with *clients*, *client* information, or *client* funds, who is
25 an employee, contractor, or volunteer for a child-caring agency governed by OAR
26 chapter 413 division 215; an In-Home Safety and Reunification Services (ISRS)
27 program; a Strengthening, Preserving and Reunifying Families (SPRF) provider; or
28 a system of *care* contractor providing child welfare services pursuant to ORS
29 chapter 418.
- 30 (I) A homecare worker as defined in ORS 410.600, a personal support worker as
31 defined in ORS 410.600, a personal care services provider, or an independent
32 provider employed by a *Department* or *Authority client* who provides *care* to the
33 *client* if the *Department* or *Authority* helps pay for the services.
- 34 (J) Pursuant to OAR 461-165-0180, a child care provider reimbursed through the
35 *Department's* child *care* program, associated individuals, and other individuals in
36 child care facilities that are exempt from certification or registration by the
37 Office of Child Care of the Oregon *Department* of Education. Childcare provider
38 *SIs* include:

- 1 (i) The childcare provider;
- 2 (ii) Employees of the childcare provider;
- 3 (iii) Any individual the childcare provider uses to supervise a child in the absence
4 of the childcare provider;
- 5 (iv) Each individual 16 years of age or older who lives in the provider's home if
6 child care is provided in the home;
- 7 (v) Each individual who visits the provider's home during the hours care is
8 provided and may have unsupervised access to a child in care.
- 9 (K) An *appointing authority*, *QED*, or *QEI* associated with any entity or agency
10 licensed, certified, registered, otherwise regulated by the *Department*, or subject
11 to these rules.
- 12 (L) An individual providing on the job certified nursing assistant classes to staff
13 within a long term care facility.
- 14 (M) A student enrolled in a Board of Nursing approved nursing assistant training
15 program in which the instruction and training occurs solely in a nursing facility.
- 16 (N) Except for those excluded under section (8)(b)(B), a student or intern who
17 provides *care* or has access to *clients*, *client* information, or *client* funds within or
18 on behalf of a *QE*.
- 19 (O) Any individual serving as an owner, operator, or manager of a room and board
20 facility pursuant to OAR chapter 411, division 68.
- 21 (P) An employee providing *care* to *clients* of the *Department's* Aging and People
22 with Disabilities (APD) programs who works for an in-home care agency as
23 defined by ORS 443.305 which has a contract with the *Department's* APD
24 programs.
- 25 (Q) Any individual who is required to complete a *background check* pursuant to
26 *Department* or *Authority* program rules or a contract with the *Department* or
27 *Authority*, if the requirement is within the *Department* or *Authority's* statutory
28 authority. Specific statutory authority or reference to these rules and the
29 positions under the contract subject to a *background check* must be specified in
30 the contract. The exceptions in section (8)(b) do not apply to these *SIs*.
- 31 (b) An *SI* does not include:
- 32 (A) Any individual under 16 years of age.
- 33 (B) A student or intern in a clinical placement at a clinical training setting subject to
34 administrative rules implemented under ORS 413.435 and OAR 409-030-0100 to
35 409-030-0250.

- 1 (C) *Department, Authority, or QE clients.* The only circumstance in which *BCU* shall
2 allow a check to be performed on a *client* pursuant to this paragraph is if the
3 *client* falls within the definition of “*subject individual*” as listed in sections
4 (8)(a)(A)-(E) and (8)(a)(G)-(Q) of this rule, or if the facility is dually licensed for
5 different populations of vulnerable individuals.
- 6 (D) Individuals working in child care facilities certified or registered by OED.
- 7 (E) Volunteers providing any *care* or services for a *QE*'s special event lasting no more
8 than 2 weeks whose access to *clients* is no more than three days within the two-
9 week period. These volunteers must always be actively supervised in accordance
10 with OAR 407-007-0315 and have no unsupervised contact with *clients*.
- 11 (F) Individuals employed by a private business that *provides services* to *clients* and
12 the general public and is not regulated by the *Department* or *Authority*.
- 13 (G) Individuals employed by a business that provides appliance or structural repair
14 for *clients* and the general public and who are temporarily providing these
15 services in a licensed or certified *QE*. The *QE* shall ensure active supervision of
16 these individuals while on *QE* property and the *QE* may not allow unsupervised
17 contact with *QE clients* or residents. This exclusion does not apply to a business
18 that receives funds from the *Department* or *Authority* for *care* provided by an
19 employee of the business.
- 20 (H) Individuals employed by a private business in which a *client* of the *Department* or
21 *Authority* is working as part of a *Department-* or *Authority-*sponsored
22 employment service program. This exclusion does not apply to an employee of a
23 business that receives funds from the *Department* or *Authority* for *care* provided
24 by the employee.
- 25 (I) Employees, contractors, students, interns, and volunteers working in hospitals,
26 ambulatory surgical centers, outpatient renal dialysis facilities, and freestanding
27 birthing centers, as defined in ORS 442.015, and special inpatient care facilities
28 as defined by the *Authority* in administrative rule.
- 29 (J) Employees, contractors, students, interns, and volunteers working in home
30 health agencies, in-home care agencies, or hospice programs as defined by the
31 *Authority* in administrative rule.
- 32 (K) Volunteers, who are not under the direction and control of a licensed, certified,
33 registered, or otherwise regulated *QE*.
- 34 (L) Individuals employed or volunteering in a Medicare-certified health *care*
35 business which is not subject to licensure or certification by the State of Oregon.
- 36 (M) Individuals working in restaurants or at public swimming pools.
- 37 (N) Hemodialysis technicians.
- 38 (O) Employees, contractors, temporary workers, or volunteers who provide *care*, or
39 have access to *clients*, *client* information, or *client* funds of an alcohol and drug

1 program that is certified, licensed, or approved by the *Authority's* Health
2 Systems Division to provide prevention, evaluation, or treatment services. This
3 exclusion does not apply to programs specifically required by other *Authority*
4 program rules to conduct *criminal records checks* in accordance with these rules.

5 (P) Individuals working for a transit service provider which conducts *background*
6 *checks* pursuant to ORS 267.237.

7 (Q) Emergency medical technicians and first responders certified by the *Authority's*
8 Emergency Medical Services and Trauma Systems program.

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

11 (S) Individuals hired by or on behalf of a resident in a *QE* to provide *care* privately to
12 the resident.

13 (T) An employee, contractor, temporary worker, or volunteer who provides *care* or
14 has access to specific *clients*, *client* information, or *client* funds within or on
15 behalf of any entity or agency licensed, certified, registered, or otherwise
16 regulated by the *Department* or *Authority*, where the *clients* served permanently
17 reside in another state.

18 (27) “Weighing test” means a process carried out by the *Department* in which available
19 information is considered to make a fitness determination.

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

21 *Stats. Implemented: ORS 181A.195, 181A.200, 409.010, 409.027, 443.004, & OL 2016, chapter 106, section 6.*

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

- 25 (1) *BCU* shall conduct *criminal records checks* on all *SIs* through LEADS maintained by the Oregon
26 State Police (OSP) in accordance with ORS chapter 181 and the rules adopted thereto (see OAR
27 chapter 125, division 007; and chapter 257, division 15).
- 28 (2) If a national *criminal records check* is necessary, OSP shall provide *BCU* results of national
29 *criminal records checks* conducted pursuant to ORS 181A.195, including fingerprint
30 identification, through the FBI.
- 31 (3) *BCU* shall conduct *abuse checks* using available *abuse investigation reports* and associated
32 documents.
- 33 (4) Unless an *SI* meets a criterion under section (7) of this rule, an *SI* must have a *background check*
34 in the following circumstances:
- 35 (a) An individual who becomes an *SI* on or after the effective date of these rules.
- 36 (b) The *SI* changes employers to a different *QE*.
- 37 (c) The individual, whether previously considered an *SI* or not, changes *positions* under the
38 same *QE*, and the new *position* requires a *background check*.

- 1 (d) The individual, whether previously considered an *SI* or not, changes *Department* or
2 *Authority*-issued licenses, certifications, or registrations, and the license, certification, or
3 registration requires a *background check* under these rules.
- 4 (e) For a student enrolled in a long term care facility nursing assistant training program for
5 employment at the facility, a new *background check* is required when the student
6 becomes an employee at the facility. A new *background check* is not required by the
7 *Department* or the *Authority* at graduation from the training program or at the granting
8 of certification by the Board of Nursing unless the *Department*, the *Authority*, or the *QE*
9 have reason to believe that a *background check* is justified.
- 10 (f) A *background check* is required by federal or state laws or regulations, other
11 *Department* or *Authority* administrative rules, or by contract with the *Department* or
12 *Authority*.
- 13 (g) When *BCU* or the *QE* has reason to believe that a *background check* is justified.
14 Examples include but are not limited to:
- 15 (A) Any indication of possible criminal or abusive behavior by an *SI*.
- 16 (B) A lapse in working or volunteering in a *position* under the direction and control
17 of the *QE* but the *SI* is still considered in the *position*. For example, an extended
18 period of leave by an *SI*. The *QE* determines the need for a *background check*.
- 19 (C) Quality assurance monitoring by the *Department* or *Authority* of a previously
20 conducted *criminal records check* or *abuse check*.
- 21 (5) If the *SI* is subject to a *background check* due to involvement with the foster or adoptive
22 placement of a child and:
- 23 (a) Is subject to the Interstate Compact on Placement of Children (ORS 417.200 and OAR
24 413-040-0200 to 413-040-0330), the *background check* must comply with Interstate
25 Compact requirements.
- 26 (b) Is subject to the Inter-County Adoption Act of 2000 (42 USC 14901 et seq.), the
27 *background check* must comply with federal requirements and ORS 417.262.
- 28 (6) If *QEs*, *Department* program rules, or *Authority* program rules require an *SI* to report any new
29 arrests, charges, or *convictions*, the *QE* may determine if personnel action is required if the *SI*
30 does not report. Personnel action may include a new *background check*.
- 31 (7) A *background check* is not required under the following circumstances:
- 32 (a) A homecare worker or personal support worker, as defined in ORS 410.600, has a
33 *Department background check* notice of *final fitness determination* dated within the
34 recheck period according to *Department* program rules showing that the homecare
35 worker or personal support worker has been *approved* or *approved with restrictions*,
36 and listing a worksite of "various," "various *clients*," "statewide," or similar wording.
- 37 (b) A personal care services provider, lifespan respite or other respite care provider, or an
38 independent provider paid with *Department* or *Authority* funds who changes or adds

- 1 *clients* within the same *QE*, *Department*, or *Authority district*, and the prior, documented
2 *criminal records check* or *abuse check* conducted within the previous 24 months through
3 the *Department* or *Authority* has been *approved* without restrictions.
- 4 (c) The *SI* is a child care provider as described in OAR 461-165-0180 who changes or adds
5 *clients* and who has been *approved* without restrictions within the required recheck
6 period according to *Department* program rules.
- 7 (d) The *SI* remains with a *QE* in the same *position* listed on the *background check* request
8 while the *QE* merges with another *QE*, is sold to another *QE*, or changes names. The
9 changes may be noted in documentation attached to the notice of *fitness determination*
10 but do not warrant a *background check*.
- 11 (e) The *SI* is on the *background check* registry maintained under OAR 407-007-0600 to 407-
12 007-0640.
- 13 (8) *Background checks* are completed on *SIs* who otherwise meet the qualifications of the *position*
14 listed on the *background check* request. A *background check* may not be used to screen
15 applicants for a *position*.

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 **407-007-0230 Qualified Entities**

- 20 (1) A *QE* and its appointing *authority* must be *approved* in writing by the *Department* or *Authority*
21 pursuant to these rules in order to appoint a *QED*. Documentation of a current and valid
22 license, certification, contract, or letter of approval from the *Department* or *Authority* are
23 considered proof of approval. Unless specifically indicated otherwise in these rules, all *QEs* and
24 appointing authorities discussed in these rules are considered approved.
- 25 (2) A *QE* shall ensure the completion of *background checks* for all *SIs* who are the *QE's* employees,
26 volunteers, or other *SIs* under the direction or control of the *QE*.
- 27 (3) *BCU* may allow a *QE's* *appointing authority* or the *QED* to appoint one or more *QEI s* based on
28 the needs of the *QE* and the volume of *SIs* under the *QE*.
- 29 (4) A *QE's* *appointing authority* shall appoint *QEDs* as needed to remain in compliance with these
30 rules and shall communicate any changes regarding *QEDs* or *QEI s* to *BCU*. *BCU* strongly
31 recommends that the *QE* have at least one *QED* at any facility where *clients* are receiving *care*
32 in order to handle any immediate *QED* responsibilities, such as removing an *SI* from work or
33 placement when required.
- 34 (5) If for any reason a *QE* no longer has any *QEDs*, the *QE* or *appointing authority* shall ensure that
35 the confidentiality and security of *background check* records by immediately providing all
36 *background check* related documents to *BCU* or to another *QE* as determined by *BCU*.
- 37 (6) *BCU* shall provide *QEs* with periodic training and on-going technical assistance.
- 38 (7) Any decisions made by *BCU* in regard to these rules are final and may not be overturned by any
39 *QE*.

1 Stat. Auth.: ORS 181A.200, 409.027 & 409.050
2 Stats. Implemented: ORS 181A.200, 409.010, 409.027 & 443.004
3

4 **407-007-0240 QE Designees and QE Initiators**

5 (1) All requirements in this section must be completed within 90 calendar days. To receive BCU
6 approval, a QED must meet the following requirements:

7 (a) A QED must be one of the following:

8 (A) Employed by the agency for which the QED will handle *criminal records check*
9 information.

10 (B) Contracted with the QE to perform as a QED.

11 (C) Employed by another similar QE or a parent QE. For example, an assisted living
12 facility QED may act as QED for another assisted living facility.

13 (D) The licensee of the QE.

14 (b) A QED must be an *approved SI* with a record in *CRIMS* within the past three years for at
15 least one of the QEs for which the QED will manage *background checks*.

16 (c) A QED must have:

17 (A) Competency in computer skills for accessing *CRIMS* online, entering data,
18 corresponding via email, and managing *background check* records in *CRIMS*;

19 (B) Work-related access to a desktop or laptop computer and the internet; and

20 (C) A work-related email account.

21 (d) A QED must complete a certification program and successfully pass any BCU required
22 testing.

23 (e) An *appointing authority* must appoint a QED. The applicant QED must complete and
24 submit required documents and information to BCU for processing and registration.

25 (2) BCU shall deny the individual's status as a QED if the individual does not meet QED
26 requirements. Once denied, the individual may no longer perform the duties of a QED. There
27 are no exceptions for individuals who fail to meet QED requirements.

28 (3) An approved QED shall have the following responsibilities:

29 (a) Demonstrate understanding of and adherence to these rules in all actions pertaining to
30 the *background check* process.

31 (b) Act as the Department's designee in any action pursuant to these rules and the
32 *background check* process. A QED may not advocate for an SI during any part of the
33 *background check* process, including contesting a *fitness determination*.

34 (c) Ensure that adequate measures are taken to protect the confidentiality of the records
35 and documents required by these rules. A QED may not view *criminal offender*

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

- 1 (L) Monitor the status of *background check* applications and investigate any delays in
2 processing.
- 3 (m) Ensure that documentation required by these rules is processed and maintained in
4 accordance with these rules.
- 5 (n) Notify *BCU* immediately if arrested, charged, or *convicted* of any crime, or if found
6 responsible for *abuse* by the *Department* or *Authority*.
- 7 (4) *BCU* may change *QED* status in the following circumstances which include but are not limited
8 to:
- 9 (a) When the *position* with the *QE* ends or when the *QE* terminates the appointment. The
10 *QE* shall notify *BCU* immediately upon the end of the *position* or termination of the
11 appointment and *BCU* shall inactivate *QED* status.
- 12 (b) If a *QED* fails to comply with responsibilities or fails to continue to meet the
13 requirements for *QED* status, as applicable. After suspending or revoking the
14 appointment, the *QE* must immediately notify the *BCU* in writing. If *BCU* takes the action
15 to suspend or revoke the appointment, it must immediately notify the *QE* in writing.
- 16 (c) If a *QED* fails to recertify, *BCU* shall revoke *QED* status.
- 17 (5) Any changes to *QED* status are not subject to appeal rights unless the denial or termination
18 results in immediate loss of employment or *position*. A *QED* losing employment or *position* has
19 the same hearing rights as other *SIs* under these rules.
- 20 (6) If a *QED* leaves employment or *position* with the *QE* for any reason, *BCU* shall inactivate *QED*
21 status. If the individual finds employment with another *QE*, *BCU* shall determine the
22 requirement for reactivation of *QED* status.
- 23 (7) *BCU* shall review and recertify appointments of *QEDs*, up to and including a new application,
24 *background check*, and additional training under the following circumstances:
- 25 (a) Every three years; or
- 26 (b) At any time *BCU* has reason to believe the individual no longer meets *QED* requirements
27 including but not limited to indication of criminal or abusive behavior or noncompliance
28 with these rules.
- 29 (8) With *BCU* approval, *QEs* may appoint *QEI s* to enter *background check* request into *CRIMS*. *QEI s*
30 must:
- 31 (a) Be currently *approved SIs* for the *QE*;
- 32 (b) Possess competency in computer skills for accessing *CRIMS* online and entering
33 *background check* records into *CRIMS*;
- 34 (c) Maintain internet access and working email accounts to access *CRIMS*; and
- 35 (d) Meet other criteria as determined by *BCU* and the *QE*.

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

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

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407-007-0250 Background Check Process

- (1) A *QE* and *SI* shall use *CRIMS* to request a *background check*. In addition to information required in OAR 125-007-0220, the *background check* request shall include the following information regarding an *SI*:
- (a) *Position* title and description of duties to be considered;
 - (b) Indication of the *SI*'s direct contact with any of the following:
 - (A) Children (for a child-caring agency governed by OAR chapter 413 division 215, children includes an individual who is under 21 years of age who is residing in or receiving *care* or services);
 - (B) Adults;
 - (C) Seniors (65 years and older);
 - (D) Confidential information;
 - (E) Secure Facilities;
 - (F) Finances or financial records; or
 - (G) Information Technology Systems.
 - (c) Worksite location or locations where the *SI* will be working;
 - (d) Disclosure of all criminal history;
 - (A) The *SI* must disclose all arrests, charges, and *convictions* regardless of outcome or when the arrests, charges, or *convictions* occurred. Disclosure includes any juvenile record of arrests, charges, or the outcome of arrests or charges against a juvenile.
 - (B) The disclosed crimes and the dates must reasonably match the *SI*'s *criminal offender information* and other criminal records information, as determined by *BCU*.
 - (e) Disclosure of other information to be considered in the event of a *weighing test*.
 - (A) The *SI* may provide mitigating information for *BCU* to review in a *weighing test*.
 - (B) *BCU* may require the *SI* to provide other information as needed to conduct the *weighing test*.
 - (C) The *SI* is not required to disclose any criminal history which has been expunged or set aside by a court in any jurisdiction. However, if the *SI* does disclose expunged or set aside criminal history, the *Department* may not consider the criminal history as potentially disqualifying or in a *weighing test* if the *Department* has proof that the criminal history has been expunged or set aside by a court in any jurisdiction.
 - (f) For an *SI* who is a *proctor foster parent*:

- 1 (A) The *SI* must provide a release of information allowing the *Department* to provide
2 the *QE* with information regarding the open or pending *abuse* investigations or
3 *founded or substantiated* allegations of *abuse* against the *SI*.
- 4 (B) The *SI* must also disclose:
- 5 (i) Any currently open or pending child or adult *abuse* investigations in
6 which the *SI* is reported or alleged to be responsible for the *abuse*;
- 7 (ii) Any child or adult *abuse* investigations with an outcome of *founded or*
8 *substantiated* in which the *SI* is determined to have been responsible for
9 the *abuse*; and
- 10 (iii) Any restraining order or protective orders against the *SI*.
- 11 (C) If the *SI* has any of the following, the *Department* shall provide the *QE*
12 notification:
- 13 (i) Information regarding the open or pending *abuse* investigations in which
14 the *SI* is a reported or alleged perpetrator.
- 15 (ii) Information regarding substantiated allegations of *abuse* against the *SI*.
- 16 (iii) Confirmation of the *SI* being certified or licensed by the *Department* as a
17 child foster home parent.
- 18 (g) For childcare provider *SIs* listed in OAR 407-007-0210(8)(a)(J), the *SI* must disclose any
19 involvement in protective services or abuse investigations regarding children or
20 vulnerable adults.
- 21 (2) The *background check* request shall include the following notices to the *SI*:
- 22 (a) A notice regarding disclosure of Social Security number indicating that:
- 23 (A) The *SI*'s disclosure is voluntary; and
- 24 (B) The *Department* requests the Social Security number solely for the purpose of
25 positively identifying the *SI* during the *criminal records check* process.
- 26 (b) A notice that the *SI* may be subject to fingerprinting as part of a *criminal records check*.
- 27 (c) A notice that *BCU* shall conduct an abuse check on the *SI*. Unless required by rule, an *SI*
28 is not required to disclose any history of potentially disqualifying *abuse*, but may provide
29 *BCU* with mitigating or other information.
- 30 (3) Using identifying information submitted in a *background check* request, *BCU* shall conduct an
31 *abuse check* to determine if the *SI* has potentially disqualifying *abuse*.
- 32 (4) *BCU* shall conduct an Oregon *criminal records check*. Using information submitted on the
33 *background check* request, *BCU* may obtain *criminal offender information* from LEDS and may
34 request *other criminal records information* as needed.

- 1 (5) *BCU* shall handle *criminal offender information* in accordance with applicable OSP requirements
2 in ORS chapter 181 and the rules adopted pursuant thereto (see OAR chapter 125, division 007
3 and chapter 257, division 15).
- 4 (6) *BCU* may conduct a fingerprint-based national *criminal records check*.
- 5 (a) A fingerprint-based national *criminal records check* may be completed under any of the
6 following circumstances:
- 7 (A) The *SI* has been outside Oregon for 60 or more consecutive days during the
8 previous five years.
- 9 (B) The LEDS check, *SI* disclosures, or any other criminal records information
10 obtained by *BCU* indicate there may be criminal records outside of Oregon.
- 11 (C) The LEDS check, *SI* disclosures, or any other criminal records information
12 obtained by *BCU* do not provide enough information to confirm that there are
13 no criminal records outside of Oregon.
- 14 (D) The *SI* has an out-of-state driver license or out-of-state identification card.
- 15 (E) *BCU* or the *QE* has reason to question the identity of the *SI* or the information on
16 the criminal record found in LEDS.
- 17 (F) A fingerprint-based *criminal records check* is required by federal or state laws or
18 regulations, other *Department* or *Authority* rules, or by contract with the
19 *Department* or *Authority*.
- 20 (G) The *SI* is an employee of an agency which the Centers for Medicare and Medicaid
21 Services has designated high risk pursuant to 42 CFR 424.518.
- 22 (H) Any *SI* applying to be or renewing the position with regard to child adoption or
23 children in foster care licensed by the *Department* or child-caring agencies.
24 Renewing *SIs* do not need a fingerprint-based *criminal records check* if *BCU* has a
25 record of a previous fingerprint-based *criminal records checks* that is within
26 three years from the date of the current *background check* request. Applicable *SI*
27 positions include:
- 28 (i) A relative caregiver, foster parent, *proctor foster parent*, or adoptive
29 parent in Oregon;
- 30 (ii) An adult household member in an adoptive or child foster home 18 years
31 of age and over;
- 32 (iii) A household member in an adoptive or child foster home under 18 years
33 of age if there is reason to believe that the household member may pose
34 a risk to children placed in the home; or
- 35 (iv) A respite care provider in an adoptive or child foster home.
- 36 (I) *BCU* has reason to believe that fingerprints are needed to make a *final fitness*
37 *determination*.

- 1 (b) BCU shall request a *fingerprint capture* for an *SI* under the age of 18 in accordance with
2 OAR 125-007-0220(3).
- 3 (c) The *SI* shall complete and submit a *fingerprint capture* when requested by *BCU* within
4 the time frame indicated in a written notice. *BCU* shall send the request to the *QE* and
5 the *QED* shall notify the *SI*.
- 6 (A) BCU shall give the *SI* notice regarding the Social Security number as set forth in
7 section (2)(a) of this rule.
- 8 (B) BCU may require new *fingerprint capture* and its submission if previous
9 *fingerprint captures* result in a rejection by OSP or the FBI.
- 10 (7) For childcare provider *SIs* listed in OAR 407-007-0210(8)(a)(J), a background check shall include:
- 11 (a) A fingerprint-based national *criminal records check*;
- 12 (b) A search of the National Crime Information Center's National Sex Offender Registry and
13 the Oregon state sex offender registry (these checks are included in the Oregon and
14 fingerprint based national *criminal records check*); and
- 15 (c) In any state where the *SI* has resided for 60 or more consecutive days during the
16 previous five years:
- 17 (A) A *criminal records check*;
- 18 (B) An *abuse check*;
- 19 (C) A state sex offender registry check.
- 20 (8) BCU may also conduct a state-specific *criminal records check* instead of or in addition to a
21 national *criminal records check*. Reasons for a state-specific *criminal records check* include but
22 are not limited to:
- 23 (a) When BCU has reason to believe that out-of-state criminal records may exist and a
24 national *criminal records check* cannot be accomplished.
- 25 (b) When BCU has been unable to complete a national *criminal records check* due to
26 illegible fingerprints.
- 27 (c) When the national *criminal records check* results show incomplete information about
28 charges or criminal records without final disposition.
- 29 (d) When there is indication of residency or criminal records in a state that does not submit
30 all criminal records to the FBI.
- 31 (e) When, based on available information, BCU has reason to believe that a state-specific
32 *criminal records check* is necessary.
- 33 (9) In order to complete a *background check* and *fitness determination*, BCU may require additional
34 information from the *SI* including but not limited to additional criminal, judicial, other
35 background information, or proof of identity.

1 (10) If BCU determines that an *SI* has additional potentially disqualifying convictions or conditions
2 which have occurred after receiving the *background check* request, BCU shall provide the *SI*, if
3 available, the opportunity to disclose any information required in section (1)(d), (1)(e) or (1)(f)
4 of this rule before completion of the final *fitness determination*.

5 (11) *BCU* may conduct a *background check* in situations of imminent danger.

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

10 (b) If *BCU* determines that a *fitness determination* based on the new *background check*
11 would be adverse to the *SI*, *BCU* shall provide the *SI*, if available, the opportunity to
12 disclose any information required in section (1)(d), (1)(e) or (1)(f) of this rule before
13 completion of the *final fitness determination*.

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

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

16 *Stats. Implemented: ORS 181A.195, 181A.200, 409.010, & OL 2016, chapter 106, section 6.*

17
18 **407-007-0275 Convictions Under ORS 443.004 Resulting in Ineligibility for Aging**
19 **and People with Disabilities Program and Developmental Disabilities 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 Disabilities (DD)
22 program.

23 (b) Works with *clients* of the *Department's* APD programs and who is:

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

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

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

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

31 (C) A *homecare* worker as defined in ORS 410.600, a personal support worker as
32 defined in ORS 410.600, a personal care services provider, or an independent
33 provider employed by a *Department client* who provides *care* to the *client* if the
34 *Department* helps pay for the services.

35 (D) An employee providing *care* to the *Department's* APD program *clients* who works
36 for an in-home care agency as defined by ORS 443.305 which has a contract with
37 the *Department's* APD programs.

1 (E) An individual in a position specified as being subject in relevant Oregon statutes
2 or Oregon administrative rules.

3 (2) If BCU determines that an individual subject to this rule has a *conviction* listed in ORS 443.004,
4 BCU shall make the determination of “*Ineligible due to ORS 443.004.*” Under OAR 125-007-
5 0260, this determination is considered an incomplete *fitness determination*. A *fitness*
6 *determination* with a *weighing test* is not required regardless of any other potentially
7 disqualifying *convictions* and conditions the *SI* has. BCU shall provide notice of *ineligibility due*
8 *to ORS 443.004* to the individual.

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

12 (4) If an individual subject to this rule is grandfathered or not found *Ineligible due to ORS 443.004*,
13 the individual is subject to a *fitness determination* under OAR 125-007-0260 and 407-007-0320.

14 (5) A determination of “*Ineligible due to ORS 443.004*” is not subject to appeal rights under OAR
15 125-007-0300, 407-007-0330, 407-007-0335, 943-007-0335, or 943-007-0501.

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

17 *Stats. Implemented: ORS 181A.200 & ORS 443.004*

18

19 **407-007-0277 Convictions Under ORS 443.004 Resulting in Ineligibility for Mental** 20 **Health or Alcohol and Drug Program SIs**

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

23 (2) If BCU determines that an individual is subject to this rule and has a *conviction* listed in ORS
24 443.004(5), BCU shall make the determination of “*Ineligible due to ORS 443.004.*” Under OAR
25 125-007-0260, this determination is considered an incomplete *fitness determination*. A *fitness*
26 *determination* with a *weighing test* is not required regardless of any other potentially
27 disqualifying *convictions* and conditions the *SI* has. BCU shall provide notice of ineligibility due
28 to ORS 443.004 to the individual.

29 (3) If an individual subject to this rule is not found *Ineligible due to ORS 443.004*, the individual is
30 subject to a *fitness determination* under OAR 125-007-0260 and 407-007-0320.

31 (4) A determination of “*Ineligible due to ORS 443.004*” is not subject to appeal rights under OAR
32 125-007-0300, 943-007-0335 or 943-007-0501.

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

34 *Stats. Implemented: ORS 181A.200 & 443.004*

35

36 **407-007-0279 Federal Mandatory Exclusions**

37 (1) *Convictions* and conditions under 42 USC 1320a-7(a) (Exclusion of certain individuals and
38 entities from participation in Medicare and State health programs) result in *mandatory*
39 *exclusion* for *SIs* if they occurred within five years from the date the *final fitness determination*.

1 If the *convictions* and conditions under 42 USC 1320a-7(a) occurred after five years from the
2 date the *final fitness determination*, the individual is subject to a *fitness determination* under
3 OAR 125-007-0260 and 407-007-0320.

4 (a) Section (1) of this rule applies to an *SI* who is:

5 (A) A home care worker or personal support worker as defined in ORS 410.600; or

6 (B) Employed by:

7 (i) A residential facility as defined in ORS 443.400 that receives Medicare or
8 state health care funds;

9 (ii) An in-home care agency as defined in ORS 443.005 that receives
10 Medicare or state health care funds;

11 (iii) A home health agency as defined in ORS 443.005 that receives Medicare
12 or state health care funds;

13 (b) If *BCU* determines that an individual is subject to this rule and has an exclusion listed in
14 42 USC 1320a-7, *BCU* shall make the determination of *mandatory exclusion*. *Convictions*
15 or conditions requiring *mandatory exclusion* include:

16 (A) *Convictions* related to the delivery of Medicare or State health care program
17 services.

18 (B) *Convictions* related to the *abuse* of a *client* or patient.

19 (C) Felony *convictions* related to health care fraud.

20 (D) Felony *convictions* related to the manufacture, delivery, prescription or
21 dispensing of a controlled substance.

22 (c) Under OAR 125-007-0260, the determination of *mandatory exclusion* is considered an
23 incomplete *fitness determination*. A *fitness determination* with a *weighing test* is not
24 required regardless of any other potentially disqualifying *convictions* and conditions the
25 *SI* has.

26 (d) A determination of *mandatory exclusion* is subject to appeal rights only if allowed under
27 42 UCS 1320a-7(c) or 42 USC 1320a-7(d). If allowed, appeals shall comply with OAR 125-
28 007-0300, 943-007-0335 and 943-007-0501.

29 (2) *Convictions* and conditions under 42 USC 12645g (Criminal history checks” under the National
30 and Community Service State Grant Program) result in *Mandatory exclusion* for *SIs*.

31 (a) Section (2) of this rule applies to an *SI* who is working or volunteering under the
32 National and Community Service Act of 1990 as amended by the Serve America Act,
33 including participants and employees in:

34 (A) Americorps;

35 (B) Foster Grandparents;

36 (C) Senior Companions; or

- 1 (D) Any other programs funded under national service laws.
- 2 (b) If *BCU* determines that an individual is subject to this rule and has an exclusion listed in
3 42 USC 12645g, *BCU* shall make the determination of *mandatory exclusion*. Exclusions
4 include:
- 5 (A) Listing on, or requirement to be listed on a sex offender registry;
- 6 (B) *Conviction* for murder.
- 7 (C) Refusal to complete the *background check*.
- 8 (D) False statement by the *SI* in connection with criminal history disclosure.
- 9 (c) Under OAR 125-007-0260(2)(d), the determination of “*mandatory exclusion*” is
10 considered an incomplete *fitness determination*. A *fitness determination* with a
11 *weighing test* is not required regardless of any other potentially disqualifying *convictions*
12 and conditions the *SI* has.
- 13 (d) A determination of “*mandatory exclusion*” due to 42 USC 12645g is not subject to
14 appeal rights under OAR 125-007-0300, 407-007-0330, 407-007-0335, 943-007-0335, or
15 943-007-0501.
- 16 (3) Prohibitions under 45 USC 9858f(Criminal background checks) under the Child Care and
17 Development Block Grant result in *mandatory exclusion* for *SIs*.
- 18 (a) Section (3) of this rule applies to childcare provider *SI* under OAR 407-007-0210(8)(a)(J).
- 19 (b) If *BCU* determines that an individual is subject to this rule and has an exclusion listed in
20 45 USC 9858f, *BCU* shall make the determination of *mandatory exclusion*. Exclusions
21 include:
- 22 (A) Refusal to complete the *background check*;
- 23 (B) Knowingly making a materially false statement in connection with the *SI*’s
24 criminal records check;
- 25 (B) Listing on, or requirement to be listed on, a sex offender registry;
- 26 (C) Felony *conviction* consisting of:
- 27 (i) Murder;
- 28 (ii) Child abuse or neglect;
- 29 (iii) A crime against children, including child pornography;
- 30 (iv) Spousal abuse;
- 31 (v) Rape or sexual assault;
- 32 (vi) Kidnapping;
- 33 (vii) Arson
- 34 (viii) Physical assault or battery; or

- 1 (ix) A drug-related offense, if it occurred within five years from the date the
2 final decision; and
- 3 (D) *Conviction* of a violent misdemeanor as an adult against a child including but not
4 limited to:
- 5 (i) Child abuse;
- 6 (ii) Child endangerment;
- 7 (iii) Sexual assault; or
- 8 (iv) Child pornography.
- 9 (c) *A fitness determination with a weighing test* is not required if the SI has an exclusion
10 listed in this section (with the exception of a drug-related offense within five years from
11 the date the final decision), regardless of any other potentially disqualifying *convictions*
12 and conditions the *SI* has. BCU shall make the determination of *mandatory exclusion*.
- 13 (d) If the SI has only the exclusion of a drug-related offense within five years from the date
14 of the final decision, and no other exclusions listed in this section, BCU shall conduct a
15 *weighing test* pursuant to OAR 407-007-0300 in making a final decision. If the weighing
16 test determines that the SI is a risk to the well-being of vulnerable individuals, BCU shall
17 make the determination of *mandatory exclusion*.
- 18 (e) Pursuant to OAR 125-007-0260(2)(d), the determination of *mandatory exclusion* is
19 considered an incomplete *fitness determination*.
- 20 (f) A determination of *mandatory exclusion* due to 45 USC 9858f is not subject to appeal
21 rights under OAR 125-007-0300, 407-007-0335, 943-007-0335, or 943-007-0501. The SI
22 may appeal only to challenge the accuracy or completeness of the *criminal records*
23 *check*.
- 24 (A) The *SI* may not hold the position during an appeal.
- 25 (B) If the mandatory exclusion is changed at any time during the appeal process, the
26 change does not guarantee placement of the *SI*, or the *SI* childcare provider.
- 27 (C) An *SI* may represent himself or herself or have legal representation during the
28 appeal process. For the purpose of this rule, the term "*SI*" shall be considered to
29 include the *SI*'s legal representative.
- 30 (D) To request an appeal, the *SI* shall complete and sign the Child Care Provider
31 Hearing Request form, and submit it to *BCU* via mail or fax within 45 calendar
32 days after the effective date of the mandatory exclusion. In the event an appeal
33 is not timely by the date of receipt or by the date of postmark, *BCU* shall
34 determine, based on a written statement from the *SI* and available information,
35 if there is *good cause* to proceed with the appeal.
- 36 (E) *BCU* may conduct additional *criminal records checks* during the appeal process to
37 update or verify the *SI*'s potentially disqualifying *convictions* or conditions. If *BCU*
38 finds new potentially disqualifying *convictions* and conditions during the appeal

1 resulting in mandatory exclusion, *BCU* shall amend the notice of *fitness*
2 *determination* while still maintaining the original hearing rights and deadlines.

3 (F) *BCU* shall provide notice to the *SI*, indicating its efforts to verify the
4 completeness of the criminal records check and the accuracy of the information
5 challenged by the *SI*. If *BCU* determines that the criminal records check was
6 incomplete or inaccurate, *BCU* shall rectify these issues during the appeal or
7 explain to the *SI* the issues preventing *BCU*. If the mandatory exclusion is
8 maintained, the *SI* has no other appeal rights through *BCU*.

9 (G) *BCU* shall ensure the appeal is completed in a timely manner.

10
11 *Stat. Auth.: ORS 181A.195 & 409.050*

12 *Stats. Implemented: ORS 181A.195*

13 14 **407-007-0290 Other Potentially Disqualifying Conditions**

15 Pursuant to OAR 125-007-0270, the following are potentially disqualifying conditions, if they exist on
16 the date of the *final fitness determination* unless otherwise noted:

- 17 (1) The *SI* makes a false statement to the *QE* or Department, including the provision of materially
18 false information, false information regarding criminal records, or failure to disclose
19 information regarding criminal records. Nondisclosure of violation or infraction charges may
20 not be considered a false statement. Potentially disqualifying false statement includes:
- 21 (a) Significant criminal history without reasonable disclosure by the *SI*, as determined by
22 the *Department*;
 - 23 (b) Criminal history within the past 10 years without reasonable disclosure by the *SI*, as
24 determined by the *Department*; or
 - 25 (c) Non-disclosed criminal history, with nothing potentially disqualifying, indicates behavior
26 that poses a risk to vulnerable individuals.
- 27 (2) The *SI* is a registered sex offender in any jurisdiction. There is a rebuttable presumption that an
28 *SI* is likely to engage in conduct that would pose a significant risk to vulnerable individuals if the
29 *SI* has been designated as a level three sex offender under ORS 163A.100(3), a predatory sex
30 offender prior to January 1, 2014, or found to be a sexually violent dangerous offender under
31 ORS 144.635 (or similar designations in other jurisdictions).
- 32 (3) The *SI* has an outstanding warrant for any crime in any jurisdiction.
- 33 (4) The *SI* has a deferred sentence, conditional discharge, or is participating in a diversion program
34 for any crime in any jurisdiction.
- 35 (5) The *SI* is currently on probation, parole, or post-prison supervision for any crime in any
36 jurisdiction, regardless of the original *conviction* date (or date of guilty or no contest plea if
37 there is no *conviction* date).

- 1 (6) The *SI* has been found in violation of post-prison supervision, parole, or probation for any crime
2 in any jurisdiction, regardless of the original *conviction* date (or date of guilty or no contest plea
3 if there is no *conviction* date) within five years from the date the *final fitness determination*.
- 4 (7) The *SI* has an unresolved arrest, charge, or a pending indictment for any crime in any
5 jurisdiction.
- 6 (8) The *SI* has been arrested in any jurisdiction as a fugitive from another state or a fugitive from
7 justice, regardless of the date of arrest.
- 8 (9) The *SI* has an adjudication in a juvenile court in any jurisdiction, finding that the *SI* was
9 responsible for a potentially disqualifying crime that would result in a *conviction* if committed
10 by an adult. Subsequent adverse rulings from a juvenile court, such as probation violations,
11 shall also be considered potentially disqualifying if within five years from the date of the *final*
12 *fitness determination*.
- 13 (10) The *SI* has a finding of “guilty except for insanity,” “guilty except by reason of insanity,” “not
14 guilty by reason of insanity,” “responsible except for insanity,” “not responsible by reason of
15 mental disease or defect,” or similarly worded disposition in any jurisdiction regarding a
16 potentially disqualifying crime, unless the local statutes indicate that such an outcome is
17 considered an acquittal.
- 18 (11) The *SI* has potentially disqualifying *abuse* as determined from *abuse investigation reports* which
19 have an outcome of founded or substantiated, and in which the *SI* is determined to have been
20 responsible for the *abuse*. For the following *SIs*, potentially disqualifying *abuse* includes:
- 21 (a) For an *SI* associated with child foster homes licensed by the *Department’s* DD programs,
22 or child foster or adoptive homes governed by OAR chapter 413 division 215:
- 23 (A) Child protective services history held or received by the *Department* or *OAAPI*
24 regardless of the date of initial report;
- 25 (B) Child protective services history reviewed pursuant to the federal Adam Walsh
26 Act requirements, determined by *BCU* to be potentially disqualifying; and
- 27 (C) Adult protective services investigations of neglect, physical *abuse*, sexual *abuse*,
28 or financial exploitation initiated on or after January 1, 2010, as provided to *BCU*
29 by *OAAPI* and APD programs based on severity.
- 30 (b) For an *SI* on the *background check* registry maintained under OAR 407-007-0600 to 407-
31 007-0640; licensed, certified, or otherwise regulated by the *Department*; associated
32 with any *QE* licensed, certified, or otherwise regulated by the *Department* (any *QE*
33 licensed, certified, or regulated only with the *Authority* and not the *Department* are not
34 included):
- 35 (A) Child protective services history held or received by the *Department* or *OAAPI*
36 regardless of the date of initial report; and
- 37 (B) Adult protective services investigations of neglect, physical *abuse*, sexual *abuse*,
38 or financial exploitation initiated on or after January 1, 2010, as provided to *BCU*
39 by the *OAAPI* and APD programs based on severity.

- 1 (c) For any other *SI* with direct contact with children:
- 2 (A) Child protective services history held or received by the *Department* or *OAAPI*
- 3 regardless of the date of initial report; and
- 4 (B) Adult protective services investigations of neglect, physical *abuse*, sexual *abuse*,
- 5 or financial exploitation initiated on or after January 1, 2010, as provided to *BCU*
- 6 by the *OAAPI* and APD programs based on severity.
- 7 (d) For all other *SIs*, adult protective services investigations of neglect, physical *abuse*,
- 8 sexual *abuse*, or financial exploitation initiated on or after January 1, 2010, as provided
- 9 to the *BCU* by *OAAPI* and APD programs based on severity.
- 10 (12) For an *SI* who is a *proctor foster parent*, the *SI* has any restraining order or protective order
- 11 against the *SI*.
- 12 (13) For an *SI* who is *SI* who is a *proctor foster parent*, the *SI* makes a false statement to the *QE* or
- 13 *Department*, including the provision of materially false information, regarding *abuse*,
- 14 restraining orders, or protective orders; or failure to disclose information regarding *abuse*,
- 15 restraining orders, or protective orders. Nondisclosure of unsubstantiated or inconclusive *abuse*
- 16 or dismissed restraining orders or protective orders, may not be considered a false statement.

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

18 *Stats. Implemented: ORS 181A.195, 181A.200, 409.010, 409.027, 443.004, & OL 2016, chapter 106, section 6.*

19

20 **407-007-0300 Weighing Test**

21 If an *SI* has potentially disqualifying *convictions* under OAR 125-007-0270 or potentially disqualifying

22 conditions under OAR 407-007-0290, *BCU* shall conduct a *weighing test*. The *weighing test* shall include

23 consideration of factors pursuant to ORS 181A.195 and the following if available to the *BCU* at the time

24 of the *weighing test*.

- 25 (1) Circumstances regarding the nature of potentially disqualifying *convictions* and conditions
- 26 including but not limited to:
- 27 (a) The details of incidents leading to the charges of potentially disqualifying *convictions* or
- 28 resulting in potentially disqualifying conditions.
- 29 (b) Age of the *SI* at time of the potentially disqualifying *convictions* or conditions.
- 30 (c) Facts that support the *convictions* or potentially disqualifying conditions.
- 31 (d) Passage of time since commission of the potentially disqualifying *convictions* or
- 32 conditions.
- 33 (e) Consideration of state or federal laws, regulations, or rules covering the *position*,
- 34 facility, employer, or *QE* regarding the potentially disqualifying *convictions* or conditions.
- 35 (2) If applicable, circumstances regarding the nature of potentially disqualifying *abuse* including but
- 36 not limited to:
- 37 (a) The nature and type of *abuse*; and

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

- 1 (4) BCU shall consider the relevancy of the SI's criminal activity or potentially disqualifying
2 conditions to the paid or volunteer *position*, or to the environment in which the SI will reside,
3 work, or visit.

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

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

6

7 **407-007-0315 Hired on a Preliminary Basis**

- 8 (1) A preliminary *fitness determination* is required to determine if an SI may participate in training
9 or orientation, work, volunteer, or otherwise perform in the *position* listed on the *background*
10 *check* request prior to a *final fitness determination*. An SI may not be hired on a preliminary
11 basis prior to the completion of a preliminary *fitness determination*.
- 12 (2) An SI may be hired on a preliminary basis only during the period of time prior to a *final fitness*
13 *determination* and into the *position* listed on the *background check* request.
- 14 (3) The SI must provide information required for a *background check* request and the QED must
15 review the information.
- 16 (4) The QED shall make one of the following determinations:
- 17 (a) If the SI makes no disclosures of criminal history, the QED may hire the SI on a
18 preliminary basis in accordance with relevant program rules or QE policies.
- 19 (b) If the SI discloses any criminal history and all of the history occurred outside the five
20 year period from the date the SI manually or electronically signed the *background check*
21 request, the QED may hire the SI on a preliminary basis in accordance with relevant
22 program rules or QE policies.
- 23 (c) If the SI indicates any criminal history occurring within the five year period from the
24 date the SI manually or electronically signed the *background check* request:
- 25 (A) The QED may allow the SI to be hired on a preliminary basis if the disclosed
26 criminal history has the outcome of "dismissed," "no complaint filed,"
27 "expunged," or other outcome that BCU determines is not adverse.
- 28 (B) The QED may not allow the SI to be hired on a preliminary basis if the disclosed
29 criminal history has an outcome of "pending outcome," "diversion or conditional
30 discharge," "convicted," "on probation," "juvenile adjudication," "unknown," or
31 other outcome that BCU determines is adverse.
- 32 (5) The QED shall submit the *background check* request to BCU immediately upon verification of
33 the SI's identity, the SI's completion of the *background check* request, and the QED's
34 completion of the preliminary *fitness determination*.
- 35 (6) If requested by the QED, BCU may conduct a preliminary *fitness determination* with a *weighing*
36 *test* pursuant to OAR 125-007-0250.
- 37 (7) The QE may not hire a SI on a preliminary basis under any of the following circumstances:

- 1 (a) Being hired on a preliminary basis or probationary status is not allowed under program
2 rules.
- 3 (b) The *SI* has disclosed criminal history occurring within the past five years that has an
4 outcome of “pending outcome,” “diversion or conditional discharge,” “convicted,” “on
5 probation,” “juvenile adjudication,” “unknown” or other outcome *BCU* determines to be
6 adverse and *BCU* has not completed a preliminary *fitness determination* resulting in the
7 *QE* being allowed to hire the *SI* on a preliminary basis.
- 8 (c) The *QE* or *BCU* determines that:
- 9 (A) More likely than not, the *SI* poses a potential threat to vulnerable individuals,
10 based on a preliminary *fitness determination* and *weighing test*;
- 11 (B) The *SI*’s most recent *background check* under these rules or other *Department* or
12 *Authority criminal records check* rules or *abuse check* rules resulted in a denial;
13 or
- 14 (C) The *SI* is currently involved in contesting a *background check* under these or
15 other *Department* or *Authority criminal records check* rules or *abuse check* rules;
16 or
- 17 (D) *BCU* has reason to believe hiring on a preliminary basis is not appropriate based
18 on circumstances or compliance with the *background check* process of the *SI*,
19 *QED*, or *QE*.
- 20 (d) An outcome of no hiring on a preliminary basis may only be overturned by the *BCU*.
- 21 (8) An *SI* hired on a preliminary basis shall be actively supervised at all times unless sections (9) or
22 (10) of this rule apply.
- 23 (a) The individual providing active supervision at all times shall do the following:
- 24 (A) Be in the same building as the *SI* or, if outdoors of *QE* buildings or any location
25 off the *QE* property, be within line-of-sight and hearing, except as provided in
26 section (8)(b)(B) of this rule;
- 27 (B) Know where the *SI* is and what the *SI* is doing; and
- 28 (C) Periodically observe the actions of the *SI*.
- 29 (b) The individual providing the active supervision may be either:
- 30 (A) An *SI* who has been *approved* without restrictions pursuant to these rules or
31 previous *Department* or *Authority criminal records check* rules; or
- 32 (B) The adult *client*, an adult *client*’s adult relation, the *client*’s legal representative,
33 or a child’s parent or guardian. Active supervision by these individuals is
34 appropriate in situations where *care* is given directly to *clients* usually in a home
35 such as but not limited to in-home *care*, home health, or *care* by home *care*
36 workers, personal *care* assistants, or child *care* providers.

- 1 (i) The adult *client* may actively supervise a *homecare* worker, *personal care*
2 services provider, independent provider, or an employee of an in-home
3 *care* agency or home health agency if the *client* makes an informed
4 decision to employ the provider. Someone related to the *client* may also
5 provide active supervision if the relative has been *approved* by the
6 Department, the *Authority*, the *QED*, or the private-pay *client* receiving
7 services through an in-home *care* or home health agency.
- 8 (ii) A child *client's* parent or guardian shall be responsible for providing
9 active supervision in the case of child *care* providers. The supervision is
10 not required to be performed by someone in the same building as the
11 child.
- 12 (9) An SI allowed to work on a preliminary basis is exempt from active supervision if SI is working
13 under an approved background check and is currently going through a recheck required by
14 program rules or OAR 407-007-0600 to 407-007-0640 unless there is evidence of criminal
15 activity or potentially disqualifying abuse within the previous 24 months. If BCU finds evidence
16 of criminal activity or potentially disqualifying abuse within the previous 24 months, BCU may
17 revoke working on a preliminary basis.
- 18 (10) An SI approved without restrictions within the previous 24 months through a documented
19 criminal records check or abuse check pursuant to these rules or prior Department or Authority
20 criminal records check rules or abuse check rules may be hired on a preliminary basis without
21 active supervision. Twenty-four months is calculated from date of previous approval to the date
22 of hire in the new position. Exemption from active supervision is not allowed in any of the
23 following situations:
- 24 (a) If the *SI* cannot provide documented proof that he or she worked continuously under
25 the previous *approval* for at least one year.
- 26 (b) If there is evidence of criminal activity or potentially disqualifying *abuse* within the
27 previous 24 months.
- 28 (c) If, as determined by the *QE* or *BCU*, the job duties in the new *position* are so
29 substantially different from the previous *position* that the previous *fitness determination*
30 is inadequate for the current position.
- 31 (11) Revocation of hired on a preliminary basis is not subject to hearing or appeal. The *QE* or *BCU*
32 may immediately revoke hired on a preliminary basis for any of the following reasons:
- 33 (a) There is any indication of falsification of application.
- 34 (b) The *SI* fails to disclose *convictions* for any potentially disqualifying crimes, any arrests
35 that did not result in *convictions* or any out of state arrests or *convictions*.
- 36 (c) The *QE* or *BCU* determines that allowing the *SI* to be hired on a preliminary basis is not
37 appropriate, based on the application, criminal record, *position* duties, or *Department*
38 program rules.

1 (12) Nothing in this rule is intended to require that an *SI* who is eligible to be hired on a preliminary
2 basis be allowed to work, volunteer, be employed, or otherwise perform in the *position* listed
3 on the *background check* request prior to a *final fitness determination*.

4 (13) Preliminary *fitness determinations* must be documented in writing, including any details
5 regarding a *weighing test*, if required.

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

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

8

9 **407-007-0320 Final Fitness Determinations**

10 (1) A *final fitness determination* pursuant to OAR 125-007-0260 and these rules will be made after
11 all necessary *background checks* have been received and a *weighing test*, if necessary, has been
12 completed. For the purpose of a *final fitness determination* as defined in OAR 407-007-
13 0010(18), an *authorized designee* includes:

14 (a) A *BCU* staff trained to make a *final fitness determination*;

15 (b) A *BCU hearing representative* if a *fitness determination* is contested under OAR 407-007-
16 0330, 407-007-0335, or 943-007-0501; or

17 (c) An administrative law judge if a contested *fitness determination* results under a
18 contested case hearing through the Office of Administrative Hearings.

19 (2) The *final fitness determination* results in one of the following outcomes:

20 (a) The *authorized designee* may approve an *SI* if:

21 (A) The *SI* has no potentially disqualifying *convictions* or potentially disqualifying
22 conditions; or

23 (B) The *SI* has potentially disqualifying *convictions* or potentially disqualifying
24 conditions and, after a *weighing test*, the *authorized designee* determines that
25 more likely than not, the *SI* poses no risk to the physical, emotional, or financial
26 well-being of vulnerable individuals.

27 (b) The *authorized designee* may approve an *SI with restrictions* if the *SI* has potentially
28 disqualifying *convictions* or potentially disqualifying conditions and, after a *weighing*
29 *test*, the *authorized designee* determines that more likely than not the *SI* poses no risk
30 to the physical, emotional, or financial well-being of vulnerable individuals if certain
31 restrictions are placed on the *SI*. Restrictions may include but are not limited to
32 restrictions to one or more specific *clients*, job duties, or environments. A new
33 *background check* and *fitness determination* shall be completed on the *SI* before
34 removing a restriction.

35 (c) The *authorized designee* shall deny an *SI* if the *SI* has potentially disqualifying *convictions*
36 or potentially disqualifying conditions and, after a *weighing test*, the *authorized*
37 *designee* determines more likely than not the *SI* poses a risk to the physical, emotional,
38 or financial well-being of vulnerable individuals.

- 1 (d) In the following situations the *SI* shall have no hearing rights and *the authorized*
2 *designee* shall consider a *background check* to have an outcome of incomplete *fitness*
3 *determination*:
- 4 (A) The *QE* or *SI* discontinues the application or fails to cooperate with the
5 *background check* or *fitness determination* process, including but not limited to
6 failure to disclose all requested criminal, *abuse* or other information, refusal to
7 be fingerprinted or failing to respond in a timely manner to written
8 correspondence from *BCU*. The *background check* request is considered closed.
- 9 (B) *BCU* determines that the *SI* is *ineligible due to ORS 443.004* in accordance with
10 *OAR 407-007-0275* or *407-007-0277*. The *background check* request is
11 considered completed.
- 12 (C) *BCU* or the *QE* withdraws or closes the *background check* request before a *final*
13 *fitness determination* for any reason. The *background check* request is
14 considered closed.
- 15 (D) The *SI* withdraws the application, leaves the *position* prior to completion of the
16 *background check*, or the *Department* cannot locate or contact the *SI*. The
17 *background check* request is considered closed.
- 18 (E) The *QE* determines that the *SI* ineligible for the *position* for reasons other than
19 the *background check*. The *background check* request is considered closed.
- 20 (F) The *SI* who is a *proctor foster parent* and fails to provide a release of information,
21 the *background check* request is considered closed.
- 22 (G) *The authorized designee* determines that the *final fitness determination* is
23 *Mandatory exclusion* due to the *SI* being subject to *OAR 407-007-0279* and
24 having a *conviction* or condition listed in *OAR 407-007-0279*. The *background*
25 *check* request is considered completed. The *SI* has hearing rights only if the
26 determination of mandatory exclusion is made pursuant to *OAR 407-007-*
27 *0279(3)(c)* or *407-007-0279(3)(d)*.
- 28 (H) The *SI* is a childcare provider and *BCU* makes a finding of failed in accordance
29 with *OAR 461-165-0180*. The *background check* request is considered closed.
- 30 (e) *BCU* shall issue an intent to deny if the *final fitness determination* meets the criteria in
31 *OAR 407-007-0335(1)*. The *SI* has expedited hearings rights under *OAR 407-007-0335*.
- 32 (3) Upon completion of a *final fitness determination*, *BCU* or the *QE* shall provide notice to the *SI*.
- 33 (a) If *approved*, *BCU* shall provide notice to the *QE* through *CRIMS*. The *QE* shall provide the
34 *SI* a copy of the notice or *CRIMS* documentation.
- 35 (b) If the *final fitness determination* is a denial based on potentially disqualifying *abuse*
36 under *OAR 407-007-0290(11)(d)* and there are no other potentially disqualifying
37 *convictions* or conditions, *BCU* shall issue a Notice of Intent to Deny and provide the *SI*
38 hearing rights under *OAR 407-007-0335*.

- 1 (c) Except as required by section (3)(a) of this rule, if denied or *approved with restrictions*,
2 BCU shall issue a notice of *fitness determination* to the *SI* which includes the potentially
3 disqualifying *convictions* or conditions that the outcome was based upon, information
4 regarding appeal rights, and the notice becoming a final order in the event of a
5 withdrawal or failure to appear at the hearing.
- 6 (d) The effective date of action shall be recorded on the notice or CRIMS documentation.
- 7 (4) BCU shall provide the *QE* notification of the *final fitness determination* when the *SI* is being
8 denied or *approved with restrictions*.
- 9 (5) BCU shall provide the childcare provider notification of the *final fitness determination* when an
10 *SI* associated with the childcare provider is being *denied*. If the childcare provider has *denied*
11 associated *SIs* and has not also been *denied* or mandatorily excluded, BCU shall fail the
12 childcare provider in accordance with OAR 461-165-0180.
- 13 (6) BCU shall provide the childcare provider notification of the final decision when an *SI* associated
14 with the childcare provider has a determination of *mandatory exclusion*. If the childcare
15 provider has mandatorily excluded associated *SIs* and has not also been *denied* or mandatorily
16 excluded, BCU shall fail the childcare provider in accordance with OAR 461-165-0180.
- 17 (7) When an *SI* is denied or the *background check* results in an incomplete *fitness determination*,
18 the *SI* shall not be allowed to work, volunteer, be employed, or otherwise perform in the
19 *position* listed on the *background check* request. A denial applies only to the *position* and
20 application in question. A denial or incomplete *fitness determination* shall result in immediate
21 termination, dismissal, or removal of the *SI*.
- 22 (8) When an *SI* is *approved with restrictions*, the *SI* shall only be allowed to work, volunteer, be
23 employed, or otherwise perform in the *position* listed on the *background check* request and
24 only under the stated restrictions. A restricted *approval* applies only to the *position* and
25 application in question. A restricted *approval* shall result in immediate implementation of the
26 restrictions.
- 27 (9) BCU shall maintain any documents obtained or created during the *background check* process.
- 28 (10) BCU shall make new *fitness determinations* for each *background check* request. The outcome of
29 previous *fitness determinations* does not set a precedent for subsequent *fitness determinations*.

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

31 *Stats. Implemented: ORS 181A.195, 181A.200, 409.010, 409.027, 443.004, & OL 2016, chapter 106, section 6.*

32

33 **407-007-0330 Contesting a Fitness Determination**

- 34 (1) An *SI* may contest a *final fitness determination* of denied or *approved with restrictions* pursuant
35 to OAR 125-007-0300 unless already granted contested case hearing rights under OAR 407-007-
36 0335.
- 37 (2) If an *SI* is determined to have a *mandatory exclusion* pursuant to federal law and OAR 407-007-
38 0279, the *SI* may have hearing rights only if allowed by federal law. For the purpose of this rule

- 1 the term “adverse fitness determination” includes a mandatory exclusion pursuant to OAR 407-
2 007-0279(1) if hearing rights are allowed by federal law.
- 3 (3) If an *SI* is denied or mandatorily excluded, the *SI* may not hold the *position*, provide services or
4 be employed, licensed, certified, or registered, or otherwise perform in *positions* covered by
5 these rules. An *SI* appealing a restricted *approval* may only work under the terms of the
6 restriction during the appeal.
- 7 (4) If an adverse outcome is changed at any time during the appeal process, the change does not
8 guarantee employment or placement.
- 9 (5) An *SI* may represent himself or herself or have legal representation during the appeal process.
10 For the purpose of this rule, the term “*SI*” shall be considered to include the *SI*’s legal
11 representative.
- 12 (a) An *SI* who is appealing an adverse outcome regarding the position of *homecare* worker
13 as defined in ORS 410.600 or personal support worker as defined in ORS 410.600 may be
14 represented by a labor union representative pursuant to ORS 183.459.
- 15 (b) For all other *SIs*, the *SI* may not be represented by a lay person.
- 16 (6) An *SI* may contest an adverse *fitness determination* by requesting a contested case hearing. The
17 contested case hearing process is conducted in accordance with OAR 125-007-0300, ORS
18 183.411 to 183.497 and the Attorney General’s Uniform and Model Rules of Procedure for the
19 Office of Administrative Hearings (OAH), OAR 137-003-0501 to 137-003-0700.
- 20 (a) To request a contested case hearing, the *SI* shall complete and sign the Hearing Request
21 form.
- 22 (b) The completed and signed form must be received by the *Department* within 45 calendar
23 days after the effective date of action.
- 24 (c) *BCU* shall accept a properly addressed hearing request that was not timely filed if it was
25 postmarked within the time specified for timely filing.
- 26 (d) In the event an appeal is not timely by the date of receipt or by the date of postmark,
27 *BCU* shall determine, based on a written statement from the *SI* and available
28 information, if there is *good cause* to proceed with the appeal.
- 29 (e) *BCU* may refer an untimely request to the OAH for a hearing on the issue of timeliness.
- 30 (7) *BCU* may conduct an administrative review before referring the appeal to the OAH.
- 31 (a) The *SI* must participate in the administrative review. Participation may include but is not
32 limited to providing additional information or additional documents requested by the
33 *BCU* within a specified amount of time.
- 34 (b) The administrative review is not open to the public.
- 35 (8) *BCU* may conduct additional *criminal records checks* or *abuse* checks during the contested case
36 hearing process to update or verify the *SI*’s potentially disqualifying *convictions* or conditions
37 and factors to consider in the *weighing test*. If *BCU* finds new potentially disqualifying
38 *convictions* and conditions during the administrative review, *BCU* shall make a new *final fitness*

- 1 *determination* and amend the notice of *fitness determination* while still maintaining the original
2 hearing rights and deadlines.
- 3 (9) The *Department* shall be represented by a *hearing representative* in contested case hearings.
4 The *Department* may also be represented by the Office of the Attorney General.
- 5 (a) The administrative law judge shall make a new *final fitness determination* based on
6 evidence and the contested case hearing record.
- 7 (b) The only remedy an administrative law judge may grant is a *final fitness determination*
8 that the *SI* is *approved, approved with restrictions, denied, or mandatorily excluded*
9 *pursuant to OAR 407-007-0279(1)*. Under no circumstances shall the *Department* or the
10 *QE* be required to place an *SI* in any *position*, nor shall the *Department* or the *QE* be
11 required to accept services or enter into a contractual agreement with an *SI*.
- 12 (10) The notice of *final fitness determination* issued is final as if the *SI* never requested a hearing in
13 the following situations:
- 14 (a) The *SI* failed to request a hearing in the time allotted in this rule. No other document
15 will be issued after the notice of *final fitness determination*.
- 16 (b) The *SI* withdraws the request for hearing at any time during the appeal process.
- 17 (11) *BCU* may make an informal disposition based on the administrative review. The *Department*
18 shall issue a final order and new notice of *final fitness determination*. If the resulting *fitness*
19 *determination* is an adverse outcome, the appeal shall proceed to a contested case hearing.
- 20 (12) *BCU* shall issue a dismissal order in the following situations:
- 21 (a) The *SI* may withdraw a hearing request verbally or in writing at any time before the
22 issuance of a final order. A dismissal order due to the withdrawal is effective the date
23 the withdrawal is received by *BCU* or the OAH. The *SI* may cancel the withdrawal in
24 writing within 14 calendar days after the date of withdrawal.
- 25 (b) *BCU* shall dismiss a hearing request when the *SI* fails to participate in the administrative
26 review. Failure to participate in the administrative review shall result in termination of
27 hearing rights. The order is effective on the due date for participation in the
28 administrative review. *BCU* shall review a *good cause* request to reinstate hearing rights
29 if received in writing by *BCU* within 14 calendar days.
- 30 (c) *BCU* shall dismiss a hearing request when the *SI* fails to appear at the time and place
31 specified for the contested case hearing. The order is effective on the date scheduled for
32 the hearing. *BCU* shall review a *good cause* request to reinstate hearing rights if
33 received in writing by *BCU* within 14 calendar days of the order.
- 34 (13) After a hearing, the administrative law judge shall issue a proposed and final order.
- 35 (a) If no written exceptions are received by *BCU* within 14 calendar days after the service of
36 the proposed and final order, the proposed and final order becomes the final order.
- 37 (b) If timely written exceptions to the proposed and final order are received by *BCU*, the
38 *Department's* Director or designee shall consider the exceptions and serve a final order,

1 or request a written response or a revised proposed and final order from the
2 administrative law judge.

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

5 (15) BCU may provide the QED with the results of the appeal.

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

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

8

9 **407-007-0335 Decision and Hearing Rights for Potentially Disqualifying Abuse**

10 (1) This rule applies only to background checks in which:

11 (a) An *SI* has potentially disqualifying *abuse* against an adult with no other potentially
12 disqualifying *convictions* or conditions; and

13 (b) BCU determines that the individual found to be responsible for abuse was not provided
14 any notice regarding the outcome of the abuse or was not provided any type of appeal
15 or review of the finding; and

16 (c) After a *weighing test* under OAR 407-007-0300, BCU determines that more likely than
17 not, the *SI* poses a risk to the physical, emotional, or financial well-being of vulnerable
18 individuals.

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

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

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

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

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

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

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

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

- 1 (5) An *SI* has the right to represent him or herself or have legal representation during the expedited
2 hearing process. For the purpose of this rule, the term “*SI*” shall be considered to include the
3 *SI*’s legal representative if the *SI* has provided *BCU* with such information.
- 4 (a) An *SI* who is appealing a Notice of Intent to Deny regarding the position of *homecare*
5 worker as defined in ORS 410.600 or personal support worker as defined in ORS 410.600
6 may be represented by a labor union representative pursuant to ORS 183.459.
- 7 (b) For all other *SIs*, the *SI* may not be represented by a lay person.
- 8 (6) If the *SI* fails to request an expedited hearing under this rule within the allowed time, *BCU* shall
9 issue a Notice of Denial to the *SI* and to the *QE*. The *SI* shall have no further hearing rights under
10 OAR 407-007-0330.
- 11 (7) If the *SI* requests an expedited hearing in a timely manner, the *SI* shall remain in the same
12 status made in a preliminary fitness determination under OAR 407-007-0315 until the date of a
13 final order or the Notice of Denial, unless the Department determines that there is an
14 immediate risk to vulnerable individuals.
- 15 (8) *BCU* may conduct an administrative review before referring the appeal to OAH.
- 16 (a) The *SI* must participate in the administrative review. Participation may include but is not
17 limited to providing additional information or additional documents requested by *BCU*
18 within a specified amount of time.
- 19 (b) The administrative review is not open to the public.
- 20 (c) *BCU* may make an informal disposition based on the administrative review. *BCU* shall
21 issue a final order and a notice of *fitness determination*.
- 22 (9) The *Department* shall be represented by a *hearing representative* in expedited hearings. The
23 *Department* may also be represented by the Office of the Attorney General.
- 24 (a) *BCU* shall provide the administrative law judge and the *SI* a complete copy of available
25 information used during the *background checks* and *fitness determinations*. The
26 claimant is entitled to reasonable notice of all hearing documents either through
27 personal service, electronically, regular mail, or certified mail.
- 28 (b) An *SI* may not have access to confidential information contained in abuse investigation
29 reports or other records collected or developed during the *abuse* check process without
30 a protective order limiting further disclosure of the information.
- 31 (10) The expedited hearing shall be conducted by the OAH by telephone within 15 business days
32 from the receipt of the completed and signed Expedited Hearing Request form.
- 33 (a) The expedited hearing is not open to the public.
- 34 (b) The administrative law judge shall make a new *fitness determination* based on evidence
35 and the record.
- 36 (c) The only remedy an administrative law judge may grant is a *fitness determination* that
37 the subject individual is *approved*, *approved with restrictions*, or denied. Under no
38 circumstances shall the *Department* or the *QE* be required to place an *SI* in any position,

- 1 nor shall the *Department* or the *QE* be required to accept services or enter into a
2 contractual agreement with an *SI*.
- 3 (11) *BCU* shall issue a dismissal order in the following situations:
- 4 (a) The *SI* may withdraw an expedited hearing request verbally or in writing at any time
5 before the issuance of a final order. A dismissal order due to the withdrawal is effective
6 the date the withdrawal is received by *BCU* or the *OAH*. The *SI* may cancel the
7 withdrawal in writing within four calendar days after the date of withdrawal.
- 8 (b) *BCU* shall dismiss a hearing request when the *SI* fails to participate in the administrative
9 review. Failure to participate in the administrative review shall result in termination of
10 hearing rights. The order is effective on the due date for participation in the
11 administrative review.
- 12 (c) If the *QE* terminates employment or position of the *SI* for reasons unrelated to the
13 potentially disqualifying *abuse*, *BCU* may close the application.
- 14 (d) *BCU* shall dismiss a hearing request when the *SI* fails to appear at the time specified for
15 the expedited hearing. The order is effective on the date scheduled for the hearing.
- 16 (12) After an expedited hearing, the administrative law judge shall issue a final order within three
17 business days.
- 18 (a) If the final order maintains *BCU*'s intent to deny, *BCU* shall issue a Notice of Denial by
19 the next business day after the date of the final order. The *SI* shall have no further
20 hearing rights under OAR 407-007-0330.
- 21 (b) If the final order reverses *BCU*'s intent to deny to an *approval* or a restricted *approval*,
22 *BCU* shall issue a Notice of *fitness determination* by the next business day after the date
23 of the final order unless *BCU* formally stays the final order. The *SI* shall have no further
24 hearing rights under OAR 407-007-0330.
- 25 (13) Final orders, including dismissal and default orders, are subject to reconsideration or rehearing
26 petitions within 60 calendar days after the order is served, pursuant to OAR 137-003-0675.

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

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

29

30 **407-007-0340 Record Keeping, Confidentiality**

- 31 (1) All LEDS reports are confidential and the *Department* and *Authority* shall maintain the reports
32 in accordance with applicable OSP requirements in ORS chapter 181 and the rules adopted
33 pursuant thereto (see OAR chapter 257, division 15).
- 34 (a) LEDS reports are confidential and may only be shared within *BCU* if there is a need to
35 know consistent with these rules.
- 36 (b) The LEDS report and any photocopies may not be shown or given to the *SI*.
- 37 (2) The results of a national *criminal records check* provided by the FBI or the OSP are confidential
38 and may not be disseminated by *BCU* unless:

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

25

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

- 27 (1) The *Department*, the *Authority*, and the *QE*, acting within the course and scope of employment,
28 have immunity from any civil liability that might otherwise be incurred or imposed for
29 determining, in accordance with ORS 181A.200, that an *SI* is fit or not fit to hold a *position*,
30 provide services, or be employed, licensed, certified, or registered.
- 31 (2) The *Department*, and *Authority*, and the *QE*, acting within the course and scope of employment,
32 and an employer or employer's agent are not liable for the failure to hire a prospective
33 employee or the decision to discharge an employee on the basis of a *fitness determination* or
34 closed case if they in good faith comply with:
- 35 (a) ORS 181A.200 and ORS 409.027; and
- 36 (b) The decision of the *QE* or employee of the *QE* acting within the course and scope of
37 employment.

- 1 (3) No employee of the state, a business, or an organization, acting within the course or scope of
2 employment, is liable for defamation, invasion of privacy, negligence, or any other civil claim in
3 connection with the lawful dissemination of information lawfully obtained under ORS
4 181A.200.

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

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

7

8 **407-007-0370 Variances**

- 9 (1) The *Department* and *Authority* may consider variance requests regarding these rules.
- 10 (a) The outcomes of a *fitness determination* made pursuant to these rules is not subject to
11 variance. Challenges to *fitness determinations* may only be made by *SIs* through
12 contested case hearing rights set forth in these rules.
- 13 (b) Neither the *Department* nor the *Authority* may grant variances to ORS 181A.195 and
14 181A.200.
- 15 (2) The *Department* or *Authority* may grant a variance to any section of these rules based upon a
16 demonstration by the *QE* that the variance would not pose a significant risk to physical,
17 emotional, or financial well-being of vulnerable individuals.
- 18 (3) The *QE* requesting a variance must submit, in writing, an application to the *BCU* that contains:
- 19 (a) The section of the rule from which the variance is sought;
- 20 (b) The reason for the proposed variance;
- 21 (c) The alternative practice, service, method, concept, or procedure proposed;
- 22 (d) A plan and timetable for compliance with the section of the rule from which the
23 variance is sought; and
- 24 (e) An explanation on how the welfare, health, or safety of individuals receiving *care* will be
25 ensured during the time the variance is in effect.
- 26 (4) The Assistant Director or *designee* for the *Department* and *Authority's* Shared Services, Office of
27 Human Resources shall approve or deny the request for a variance.
- 28 (5) *BCU* shall notify the *QE* of the decision within 60 calendar days of the receipt of the request and
29 shall provide a copy to other relevant *Department* or *Authority* program offices.
- 30 (6) Appeal of the denial of a variance request must be made in writing to the *Department* or
31 *Authority's* Director, whose decision is final.
- 32 (7) The *Department* or *Authority* shall determine the duration of the variance.
- 33 (8) The *QE* may implement a variance only after receipt of written *approval* from *BCU*.
- 34 (9) Granting a variance does not set a precedent that must be followed by the *Department* or
35 *Authority* when evaluating subsequent variance requests.

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

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