



TEMPORARY ADMINISTRATIVE ORDER

INCLUDING STATEMENT OF NEED & JUSTIFICATION

APD 8-2026

CHAPTER 411

DEPARTMENT OF HUMAN SERVICES

AGING AND PEOPLE WITH DISABILITIES AND DEVELOPMENTAL DISABILITIES

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ARCHIVES DIVISION SECRETARY OF STATE & LEGISLATIVE COUNSEL

FILING CAPTION: APD: Updating Agency with Choice rules to follow HB4115 and HB4016, passed in 2026

EFFECTIVE DATE: 06/05/2026 THROUGH 12/01/2026

AGENCY APPROVED DATE: 05/22/2026

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NEED FOR THE RULE(S):

The Oregon Department of Human Services, through the Office of Aging and People with Disabilities, needs to update its rules to follow the requirements in House Bills 4115 and 4016. House Bill 4115 changes background checks so they must be done every three years instead of every two. House Bill 4016 adds a new tax compliance requirement that contractors must meet before they can receive a state contract.

JUSTIFICATION OF TEMPORARY FILING:

Failure to act promptly and immediately amend OAR chapter 411, division 039 will result in serious prejudice to the public interest, the Commission, and individuals who receive long term services and supports through ODHS APD. These rules need to be adopted promptly so that Agency with Choice follows House Bills 4115 and 4016 (2026 Regular Session).

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

HB 4115, Enrolled (2026)

<https://olis.oregonlegislature.gov/liz/2024R1/Downloads/MeasureDocument/HB4115>

RULES:

411-039-0020, 411-039-0070

AMEND: 411-039-0020

RULE SUMMARY: This rule is being updated to include ORS 305.380 and 305.385, which means it now directly follows the state laws on tax compliance and makes the requirement clearer and legally aligned.

CHANGES TO RULE:

411-039-0020

Application for Licensure

(1) An entity or organization that establishes, conducts, or represents itself to the public as an Agency with Choice or as providing a Self-Directed Service Delivery Model to "Individuals" defined in OAR 411-039-0010(23), must be licensed as an Agency with Choice by the Department. ¶

(2) Each applicant must submit a written application, provided by the Department for a license to operate an Agency with Choice. The application is not complete until all information required to make a decision is received by the Department. The Department will notify the applicant within 7 days if the application is found to be incomplete. If an applicant does not provide the missing information, the application will be voided 60 days after initial receipt by the Department. ¶

(3) The application must include all required information and documentation as specified by the Department including, but not limited to: ¶

(a) The application form must be signed and dated by the applicant's legally authorized representative. ¶

(b) Comprehensive description of the Agency with Choice, services offered, supports delivered, administrative control, and lines of authority and responsibility from the Licensee to the Individual level; ¶

(c) Identification of any person, including owners and partners, with a financial interest representing more than 5 percent of ownership in the applicant. Identification includes the person's name, role, date of birth, and, where applicable, social security number. The person's date of birth and social security number shall be withheld from public viewing. For an Agency with Choice managed by a Board of Directors, the Department is required under 42 USC §405(c)(2)(C)(i) (United States Code), 42 CFR §455.104 (United States Code of Federal Regulation) and 26 CFR §301-6109-1 to obtain a social security number and date of birth for each board member. ¶

(d) Completed Background Check request form for the applicant(s), Administrator, and for each person with 5 percent or more incident of ownership, regardless of the person's effect on the operation of the agency. ¶

(e) Proof of fiscal responsibility and capacity to prevent fraud, waste, and Abuse by including an auditor's certified financial statement, and other verifiable documentary evidence of fiscal solvency documenting that the prospective Licensee has sufficient resources to operate the agency for 90 days, Proof of fiscal responsibility must include liquid assets sufficient to operate the agency for 45 days. Anticipated Medicaid income is not considered "liquid assets," but may be considered "financial resources." Liquid assets may be demonstrated by: ¶

(A) An available line of credit; ¶

(B) A performance bond; or ¶

(C) Any other method satisfactory to the Department. ¶

(f) Completed Tax Compliance Certification issued by the Oregon Department of Revenue; in accordance with ORS 305.380 and ORS 305.385. ¶

(g) Comprehensive plan of operation for the Agency with Choice; ¶

(h) All written policies and procedures, including, but not limited to: ¶

(A) Outline, in writing, how the Agency with Choice and services are designed to empower Individuals including detailed descriptions of the services provided, administrative control, and lines of authority and responsibility from the licensee to the Individual receiving services and support; ¶

(B) Personnel operations including a well-defined process for hiring, terminating, training, evaluating, retaining, and managing the Agency with Choice staff including those Direct Support Workers requested by the Individual; ¶

(C) Established guidelines for conducting Background Checks, as defined in OAR 411-039-0070 and verifying the qualifications of potential employees; ¶

(D) Individual notification requirements including a detailed procedure for the provision of information to Individuals or their Authorized Representatives of their rights, services provided, and any changes affecting their

services;¶¶

(E) Management of Individual records including details for controlling access and providing secure storage; and¶¶

(F) Medical and non-medical emergency response including details on staff responsibilities, communication and documentation.¶¶

(i) Copy of the Agency with Choice's written disclosure statement; ¶¶

(j) Copy of the Agency with Choice's nondiscrimination notice; and¶¶

(k) A signed Labor Relations Attestation.¶¶

(4) An Agency with Choice must notify the Department in writing of any updates to its information. If any details from the most recent application changes outside of the renewal date, the Agency with Choice is required to submit changes in writing to the Department within 30 calendar days of the change. ¶¶

(5) Licenses are not transferrable to any other person or entity. If there is a Change of Ownership, the Agency with Choice must submit a new application reflecting the change in the owner or Administrator. The Department will decide to grant or not grant the new applicant a license. ¶¶

(6) Applicants must be free of incident of ownership history in any agency, facility, or business that failed to reimburse any state for Medicaid overpayments or civil penalties within the past five years.¶¶

(7) Applicants must be free of incident of ownership history in any agency, facility, or business that failed to compensate employees or pay worker's compensation, utilities, or other costs necessary for agency operation within the past five years.¶¶

(8) Applicants must be free of incident of ownership history in any agency, facility, or home in any state that had its license or certification involuntarily suspended or terminated or voluntarily terminated during any state or federal sanction process within the past five years.¶¶

(9) Applicants must be free of any incident of Medicaid fraud in any state, United States territory or the District of Columbia and must not be on the Office Inspector exclusion list within the past 25 years. ¶¶

(10) Applicants must comply with ORS 652.220 and must not unlawfully discriminate against an employee in the payment of wages or other compensation for work of comparable character based on an employee's membership in a protected class. ¶¶

(11) Applicants must comply with ORS 656.017, and provide workers compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2).¶¶

(12) The Department may deny or not renew the license if an applicant fails to provide complete, accurate, and truthful information during the application, licensing or renewal processes.¶¶

(13) The Department must notify an applicant in writing if a license application is denied or approved within 14 days of such determination.¶¶

(14) A license is valid for two years unless revoked or suspended by the Department.¶¶

(15) No Agency with Choice may use the term "in-home care agency" in its advertising, publicity, or any other form of communication.¶¶

(16) A cost report may be required earlier than annually if there is a Change of Ownership or termination of the Agency with Choice's license.

Statutory/Other Authority: Or Laws 2024, ch. 37, Or Laws 2026, ch. 102

Statutes/Other Implemented: ORS 124.050, 305.380, 305.383, Or Laws 2024, ch. 37, Or Laws 2026, ch. 102

AMEND: 411-039-0070

RULE SUMMARY: The rule is being updated because background checks will now be required every three years instead of every two. An Agency with Choice must make sure each required person gets a background check every three years after their last one, following OAR 407 007 0200 to 407 007 0370.

CHANGES TO RULE:

411-039-0070

Background Checks for Subject Individuals

(1) An Agency with Choice must submit a Background Check request for each Subject Individual to the Background Check Unit (BCU), prior to allowing the Subject Individual to work. A Subject Individual must not begin work on a preliminary basis. Preliminary approval is not permitted under these rules. ¶

(2) The Agency with Choice must comply with OAR 407-007-0200 through 407-007-0370 for all Subject Individuals, as applicable.¶

(3) The Agency with Choice must maintain documentation of the BCU Background Check approval in the Subject Individual's personnel record.¶

(4) An Agency with Choice must perform and document a query of the List of Excluded Individuals and Entities (LEIE).¶

(5) An Agency with Choice must ensure that a Background Check is performed on a Subject Individual every ~~two~~three years from the date of the Subject Individuals last Background Check in accordance with OAR 407-007-0200 to 407-007-0370.¶

(6) Any cost for a Background Check shall be the responsibility of the Agency with Choice and must not exceed the cost charged to the Department.¶

(7) The Agency with Choice must notify the BCU, and the Department within 24 hours if any Subject Individual is involved in a potentially disqualifying crime under OAR 407-007-0281 or potentially disqualifying condition under OAR 407-007-0290, ORS 409.025, and 409.027.

Statutory/Other Authority: Or Laws 2024, ch. 37, Or Laws 2026, ch. 59

Statutes/Other Implemented: ORS 124.050, 443.004, Or Laws 2024, ch. 37, Or Laws 2026, ch. 59