



1  
2  
3

[This page intentionally left blank]

DRAFT

**407-007-0200 Purpose and Scope (Permanent 12/17/2021)**

- (1) The purpose of these rules, OAR 407-007-0200 to 407-007-0370, is to supplement OAR 125-007-0200 to 125-007-0330 with guidelines and requirements specific to background checks for Oregon Department of Human Services (Department or ODHS) and Oregon Health Authority (Authority) subject individuals (SIs). These rules provide for the reasonable screening under ORS 181A.195, 181A.200, 409.027, and 413.036 of SIs to determine if they have a history of specific criminal or abusive behavior identified in federal or state law or rules such that they should not be allowed to work, volunteer, be employed, reside, or otherwise perform in positions covered by these rules.
- (2) These rules apply to evaluating potentially disqualifying convictions and conditions of an SI when conducting fitness determinations based upon such information. The fact that an SI is approved does not guarantee employment or placement. These rules do not apply to individuals subject to OAR 407-007-0000 to 407-007-0100 (ODHS Employees, Volunteers, and Contractors) or 407-007-0400 to 407-007-0460 (Abuse Check Rules for Department Employees and Volunteers).
- (3) Providers for the Department and the Authority are subject to criminal records and abuse checks. The Authority authorizes the Department to act on its behalf in carrying out criminal and abuse checks associated with programs or activities administered by the Authority. References in these rules to the Department or Authority shall be construed to be references to either or both agencies.

**Statutory/Other Authority:** ORS 181A.195, 181A.200, 183.459, 409.025, 409.027, 409.050, 410.020, 411.060, 411.122, 413.036, 418.016, 418.640, 441.055, 443.730, 443.735 & 678.153

**Statutes/Other Implemented:** ORS 181A.195, 181A.200, 183.459, 409.010, 409.025, 409.027, 411.060, 411.122 & 443.004

**407-007-0210 Definitions (Permanent 12/17/2021)**

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

[Definitions from DAS rules, OAR 125-007-0210 added for ease of reading and will not be in filing]  
[Definitions from ODHS rules, OAR 407-007-0010 added for ease of reading and will not be in filing]

- (1) “Abuse” has the meaning given in the statutes promulgated by the Department or Authority corresponding to the setting in which the abuse was alleged or investigated.
- (2) “Abuse check” means obtaining and reviewing abuse allegations, abuse investigation reports, and associated exhibits and documents for the purpose of determining whether an SI has potentially disqualifying abuse.

- 1 (3) “Abuse investigation report” means a written report completed after an  
2 investigation into suspected abuse and retained by the Department or the Authority  
3 pursuant to ORS 124.085, 419B.030, or 430.757, or a similar report filed in another  
4 state agency or by another state.
- 5 (4) “Appeal process” means the process of contesting a final fitness determination of denied or  
6 approved with restrictions.
- 7 (1) “Appointing authority” means an individual designated by the qualified entity (QE) who is  
8 responsible for appointing QE designees (QEDs). Examples include but are not limited to human  
9 resources staff with the authority to offer and terminate employment, a business owner, a  
10 member of the board of directors, a director, or a program administrator.
- 11 (5) “Approved” means that a subject individual, following a final fitness determination,  
12 is fit to work, volunteer, be employed, or otherwise perform in the position listed in  
13 the criminal records check request.
- 14 (6) “Approved with restrictions” or restricted approval means an approval in which  
15 some restriction is made to the position listed in the criminal records check request  
16 including but not limited to the SI, the SI’s environment, the type or number of clients  
17 for whom the SI may provide care, or the information to which the SI has access.
- 18 (7) “Authority” means the Oregon Health Authority.
- 19 (1) “Authorized Agency” as defined in ORS 181A.215 or described in these rules.
- 20 (9) “Background check” means a criminal records check and an abuse check.
- 21 (10) “Background check submission” means the date when the Background Check Unit  
22 receives a request for a criminal records check or abuse check as required by  
23 Oregon statute or administrative rule, including the subject individual’s  
24 authorization for the checks.
- 25 (11) “Background Check Unit” means the Background Check Unit (BCU), a Shared  
26 Services unit which conducts criminal records checks, abuse checks and fitness  
27 determinations for the Department and the Authority.
- 28 (12) “Care” means the provision of care, treatment, education, training, instruction,  
29 supervision, placement services, recreation, or support to children, the elderly, or  
30 individuals with disabilities (see ORS 181A.200).
- 31 (13) “Client” means any individual who receives services, care, or funding for care  
32 through the Department or the Authority.
- 33 (2) "Conviction" means that a court of law has entered a final judgment on a verdict or finding of  
34 guilty, a plea of guilty, a plea of nolo contendere (no contest) or any determination of guilt  
35 entered by a court of law against a subject individual (SI) in a criminal case, unless that judgment  
36 has been reversed or set aside by a subsequent court decision.
- 37 (2) “Credible evidence” means available facts, when viewed objectively with the surrounding  
38 circumstances, would cause a reasonable person to believe that an event has occurred.

- 1 (4) "Criminal Offender Information" means records, including fingerprints and photographs,  
2 received, compiled and disseminated by the Oregon Department of State Police (OSP) , or by  
3 other states, for purposes of identifying criminal offenders and alleged offenders, and maintained  
4 as part of an individual's records of arrests, the nature and disposition of criminal charges,  
5 sentencing, confinement, but does not include the retention by OSP or records of transfer of  
6 inmates between penal institutions or other correctional facilities, and release. It also includes the  
7 OSP Computerized Criminal History System (see OAR 257-010-0015).
- 8 (15) "Criminal records check" means obtaining and reviewing criminal records and  
9 includes either or both of the following:
- 10 (a) An Oregon criminal records check where criminal offender information is  
11 obtained from Oregon State Police (OSP) using LEDS Law Enforcement Data  
12 System].
- 13 (b) A national criminal records check where criminal records are obtained from  
14 the FBI through the use of fingerprint cards sent to OSP and other identifying  
15 information. A national criminal records check also includes criminal records  
16 obtained from the FBI exclusively using identifying information if the FBI has  
17 determined that the SI's fingerprints are illegible.
- 18 (16) "Denied" means that a subject individual, following a fitness determination  
19 including a weighing test, is not fit to work, volunteer, be employed, or otherwise  
20 perform in the position listed in the criminal records check request.
- 21 (17) "Department" means the Department of Human Services.
- 22 (20) "Fingerprint capture" means taking the SI's fingerprints for a national criminal  
23 records check in a manner that meets current Oregon statutes and the OSP's  
24 capacity for receiving fingerprints.
- 25 (21) "Fitness determination" means, regarding a criminal records check and abuse  
26 check when either or both are considered, the evaluation of whether an SI is fit to  
27 hold a position, provide care or be granted licensure, certifications, registrations or  
28 permit to provide care. Fitness determination includes:
- 29 (a) The decision regarding SI disclosures, an Oregon criminal records check, and  
30 preliminary review (a preliminary fitness determination); or
- 31 (b) The decision regarding SI disclosures, completed criminal and abuse records  
32 check when either or both are considered including the gathering of other  
33 information as necessary, and a final review by an AD (a final fitness  
34 determination).
- 35 (22) "Founded or substantiated" has the meaning given these terms in the Department or  
36 Authority's administrative rules corresponding to the setting in which the abuse was  
37 investigated.
- 38 (23) "Good cause" means a valid and sufficient reason for not complying with time  
39 frames set during the criminal records check process, abuse check process or  
40 appeal process, including but not limited to an explanation of circumstances beyond  
41 an SI's reasonable control.

- 1 (3) “Good Standing” means the SI is in an approved status on the registry (see OAR 407-007-0600  
2 to 407-007-0640) and may continue to work without active supervision (see OAR 407-007-  
3 0315(7)) in an approved status in any current position listed for the SI.
- 4 (24) “Hearing representative” means a Department employee representing the  
5 *Department* in a contested case hearing.
- 6 (4) “Ineligible” means BCU has determined that an SI has one or more convictions that prohibit the  
7 SI from holding the position listed in the background check request. Ineligibility is due to either  
8 the SI being subject to:
- 9 (a) ORS 443.004 and either OAR 407-007-0275 or 407-007-0277; or  
10 (b) A federal law or regulation that includes mandatory exclusions.
- 11 (5) “Mandatory exclusion” means a conviction or condition from a federal law, regulation or  
12 directive that would prohibit the SI from holding the position listed in the background check  
13 request.
- 14 (26) “Office of Training, Investigations, and Safety (OTIS)” means the Office of Training,  
15 Investigations, and Safety, formerly the Office of Adult Abuse Prevention and  
16 Investigations, a shared service of the Department and Authority which is  
17 responsible for coordinating and conducting abuse investigations and providing  
18 protective services regarding reports of abuse and neglect of vulnerable  
19 individuals.
- 20 (27) “Oregon Criminal History and Abuse Records Data System (ORCHARDS)” means the  
21 electronic and online records system used to process and maintain background  
22 checks in compliance with OAR 407-007-0000 to 407-007-0640.
- 23 (28) “Other criminal history information” means any information obtained and allowed  
24 for a fitness determination that is not criminal offender information from OSP. Other  
25 criminal history information includes but is not limited to police investigations and  
26 records, information from local or regional criminal records information systems,  
27 justice records, court records, information from the Oregon Judicial Case  
28 Information Network, sexual offender registration records, warrants, Oregon  
29 Department of Corrections records, Oregon Department of Transportation’s Driver  
30 and Motor Vehicle Services Division information, disclosures by an SI, and any other  
31 information from any jurisdiction obtained by or provided to the Department for the  
32 purpose of conducting a fitness determination during the current background check  
33 or from any previous background checks completed by the Department.
- 34 (6) “Portability” means the ability of an SI to use one approved background check for a defined  
35 period of time for immediate hirability for a position offered by a QE within a group as  
36 determined by the Department. See OAR 407-007-0600 to 407-007-0640.
- 37 (29) “Position” means the job or placement listed on the criminal records check or  
38 background check request for the SI to initiate an abuse check, criminal records  
39 check, or background check. Covered positions include any type of employment,  
40 volunteer placement, contract placement, or a living or visiting situation at a facility  
41 where such a background check is required.

- 1 (7) “Potentially disqualifying abuse” means abuse that is considered potentially disqualifying in a  
2 background check pursuant to OAR 407-007-0290(11). If formal review or appeal rights are  
3 offered to the alleged perpetrator (SI), BCU may consider the abuse as potentially disqualifying  
4 after these rights are completed or timed out.
- 5 (8) “Proctor foster parent” means an individual who is an applicant for certification or  
6 recertification of a proctor foster home by a child-caring agency pursuant to OAR 413-215-0301  
7 to 413-215-0396.
- 8 (9) “Qualified entity (QE)” means a community mental health or developmental disability program,  
9 local health department, or an individual, business, or organization, whether public, private,  
10 for-profit, nonprofit, or voluntary, that provides care, including a business or organization that  
11 licenses, certifies, or registers others to provide care (see ORS 181A.200).
- 12 (10) “QE designee (QED)” means an approved SI appointed by the QE’s appointing authority to  
13 handle background checks on behalf of the QE.
- 14 (11) “QE Initiator (QEI)” means an approved SI to whom BCU has granted access to BCU’ online  
15 background check system for one QE for the purpose of entering background check request  
16 data.
- 17 (12) “Subject individual (SI)” means an individual on whom BCU may conduct a criminal records  
18 check or an abuse check or both, and from whom BCU may require fingerprints for the purpose  
19 of conducting a national criminal records check.
- 20 (a) An SI includes any of the following:
- 21 (A) An individual who is licensed, certified, registered, or otherwise regulated or  
22 authorized for payment by the Department or Authority and who provides care.
- 23 (B) An employee, contractor, temporary worker, or volunteer who provides care or  
24 has direct contact with clients, client information, or client funds within or on  
25 behalf of any entity or agency licensed, certified, registered, or otherwise  
26 regulated by the Department or Authority.
- 27 (C) Any individual who is paid directly or indirectly with public funds who has or will  
28 have direct contact with recipients of:
- 29 (i) Services within an adult foster home (defined in ORS 443.705); or  
30 (ii) Services within a residential facility (defined in ORS 443.400).
- 31 (D) Any individual secured by any residential care or assisted living facility licensed by  
32 the Department in accordance with OAR chapter 411 division 54 through the  
33 services of a personnel services or staffing agency who works and provides care  
34 or has direct contact with clients, client information, or client funds.
- 35 (E) Any individual secured by any residential care or assisted living facility licensed by  
36 the Department in accordance with OAR chapter 411 division 85 through the  
37 services of a personnel services or staffing agency who works and provides care  
38 or has direct contact with clients, client information, or client funds.

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



~~(iv) — Each individual 16 years of age or older who lives in the provider’s home if child care is provided in the home;~~

~~(v) — Each individual who visits the provider’s home during the hours care is provided and may have unsupervised access to a child in care.~~

(~~KL~~) An appointing authority, QED, or QEI associated with any entity or agency licensed, certified, registered, otherwise regulated by the Department, or subject to these rules.

(~~LM~~) An individual providing on the job certified nursing assistant classes to staff within a long term care facility.

(~~MN~~) A student enrolled in a Board of Nursing approved nursing assistant training program in which the instruction and training occurs solely in a nursing facility.

(~~NO~~) Except for those excluded under section (12)(b)(B), a student or intern who provides care or has direct contact with clients, client information, or client funds within or on behalf of a QE.

(~~PO~~) Any individual ~~servicing as an owner, operator, or manager of associated with a~~ room and board facility pursuant to OAR chapter 411, division 68-, including:

(i) Any registered operator or registration applicant; or

(ii) All persons intending to work in, or currently working in a room and board facility, including, but not limited to, tenant managers, including trainees, and licensed healthcare workers when employed by or contracted with the registrant or the room and board facility.

(~~QP~~) An employee providing care to clients of the Department’s Aging and People with Disabilities (APD) programs who works for an in-home care agency as defined by ORS 443.305 which has enrolled to deliver Medicaid funded services as described in OAR 411-033-0000 to 411-033-0030 for Department clients.

(Q) An individual subject to ORS 475A and OAR 333-333-4100, including:

(i) Any person identified as an applicant on a worker permit or license application under OAR chapter 333, division 333; or

(i) Any licensee or work permit holder who is applying for a renewal under OAR chapter 333, division 333.

(~~RQ~~) Any individual who is required to complete a background check pursuant to Department or Authority program rules, if the requirement is within the Department or Authority’s statutory authority. Specific statutory authority or reference to these rules and who is subject to a background check must be specified in the program rules. Whether hiring on a preliminary basis, restricted approval, or how often a recheck is needed may also be specified in the program rules. The exceptions in section (12)(b) do not apply to these SIs.

1 (SR) Any individual who is required to complete a background check pursuant to a  
2 contract with the Department or Authority to provide care to vulnerable  
3 individuals, if the requirement is within the Department or Authority's statutory  
4 authority. Specific statutory authority or reference to these rules and the  
5 positions under the contract subject to a background check must be specified in  
6 the contract. Whether hiring on a preliminary basis, restricted approval or how  
7 often a recheck is needed may also be specified in the contract. The exceptions  
8 in section (12)(b) do not apply to these SIs.

9 (b) An SI does not include:

10 (A) Any individual under 16 years of age.

11 (B) A student or intern in a clinical placement at a clinical training setting subject to  
12 administrative rules implemented under ORS 413.435 and OAR 409-030-0100 to  
13 409-030-0250.

14 (C) Department, Authority, or QE clients. The only circumstance in which BCU allows  
15 a check to be performed on a client pursuant to this paragraph is if the client  
16 falls within the definition of "subject individual" as listed in sections (12)(a)(A)-(E)  
17 and (12)(a)(G)-(S) of this rule, or if the facility is dually licensed for different  
18 populations of vulnerable individuals.

19 (D) Individuals ~~working in child care facilities certified or registered by~~ required to  
20 complete a background check through the Central Background Registry under  
21 the Office of Child Care of the Oregon Department of Education.

22 (E) Volunteers providing any care or services for a QE's special event lasting no more  
23 than 2 weeks whose access to clients is no more than three days within the two-  
24 week period. These volunteers must always be actively supervised in accordance  
25 with OAR 407-007-0315 and have no unsupervised contact with clients.

26 (F) Individuals employed by a private business that provides services to clients and  
27 the general public and is not regulated by the Department or Authority.

28 (G) Individuals employed by a business that provides appliance or structural repair  
29 for clients and the general public and who are temporarily providing these  
30 services in a licensed or certified QE. The QE must ensure active supervision of  
31 these individuals while on QE property and the QE may not allow unsupervised  
32 contact with QE clients or residents. This exclusion does not apply to a business  
33 that receives funds from the Department or Authority for care provided by an  
34 employee of the business.

35 (H) Individuals employed by a private business in which a client of the Department  
36 or Authority is working as part of a Department- or Authority-sponsored  
37 employment service program. This exclusion does not apply to an employee of a  
38 business that receives funds from the Department or Authority for care provided  
39 by the employee.

- 1 (I) Employees, contractors, students, interns, and volunteers working in hospitals,  
2 ambulatory surgical centers, outpatient renal dialysis facilities extended stay  
3 centers, and freestanding birthing centers, as defined in ORS 442.015, and  
4 special inpatient care facilities as defined by the Authority in administrative rule.
- 5 (J) Employees, contractors, students, interns, and volunteers working in home  
6 health agencies, in-home care agencies, or hospice programs as defined by the  
7 Authority in administrative rule.
- 8 (K) Volunteers, who are not under the direction and control of a licensed, certified,  
9 registered, or otherwise regulated QE.
- 10 (L) Individuals employed or volunteering in a Medicare-certified health care  
11 business which is not subject to licensure or certification by the State of Oregon.
- 12 (M) Individuals working in restaurants or at public swimming pools.
- 13 (N) Hemodialysis technicians.
- 14 (O) Employees, contractors, temporary workers, or volunteers who provide care, or  
15 have direct contact with clients, client information, or client funds of an alcohol  
16 and drug program that is certified, licensed, or approved by the Authority's  
17 Health Systems Division to provide prevention, evaluation, or treatment services.  
18 This exclusion does not apply to programs specifically required by other  
19 Authority program rules to conduct criminal records checks in accordance with  
20 these rules.
- 21 (P) Individuals working for a transit service provider which conducts background  
22 checks pursuant to ORS 267.237.
- 23 (Q) Emergency medical technicians and first responders certified by the Authority's  
24 Emergency Medical Services and Trauma Systems program.
- 25 (R) Employees, contractors, temporary workers, or volunteers of continuing care  
26 retirement communities registered under OAR chapter 411, division 67.
- 27 (S) Individuals hired by or on behalf of a resident in a QE to provide care privately to  
28 the resident.
- 29 (T) An employee, contractor, temporary worker, or volunteer who provides care or  
30 has direct contact with specific clients, client information, or client funds within  
31 or on behalf of any entity or agency licensed, certified, registered, or otherwise  
32 regulated by the Department or Authority, where the clients served permanently  
33 reside in another state.

34 (31) "Weighing test" means a process carried out by the Department in which available  
35 information is considered to make a fitness determination.

36 **Statutory/Other Authority:** ORS 181A.200, 409.027 & 409.050

37 **Statutes/Other Implemented:** ORS 181A.195, 181A.200, 409.010, 409.027, 418.248, & 443.004

38

39

**407-007-0220 Background Check Required (Permanent 12/17/2021)**

- (1) An SI must have a background check in the following circumstances:
  - (a) An individual who becomes an SI on or after the effective date of these rules.
  - (b) The SI changes employers to a different QE.
  - (c) The individual, whether previously considered an SI or not, changes positions under the same QE, and the new position requires a background check.
  - (d) The individual, whether previously considered an SI or not, changes Department or Authority-issued licenses, certifications, or registrations, and the license, certification, or registration requires a background check under these rules.
  - (e) For a student enrolled in a nursing facility nursing assistant training program for employment at the facility, a new background check is required when the student is first enrolled in the training program to be in contact with nursing facility patients, and again if the student becomes an employee at the facility unless the first background check results in good standing in the background check registry and portability pursuant to OAR 407-007-0600 to 407-007-0640.
  - (f) A background check is required by federal or state laws or regulations, other Department or Authority administrative rules, or by contract with the Department or Authority.
  - (g) When BCU or the QE has reason to believe that a background check is justified, if allowed by statute or rule. Examples include but are not limited to:
    - (A) Credible evidence of new potentially disqualifying convictions or conditions. Pursuant to OAR 407-007-0620(6), BCU must either immediately remove an SI's portability, revoke an SI's good standing, or both if BCU receives credible evidence indicating that the SI has new potentially disqualifying convictions or conditions.
    - (B) A lapse in working or volunteering in a position under the direction and control of the QE but the SI is still considered in the position. For example, an extended period of leave by an SI. The QE determines the need for a background check.
    - (C) Quality assurance monitoring by the Department or Authority of a previously conducted criminal records check or abuse check.
- (2) If the SI is subject to a background check due to involvement with the foster or adoptive placement of a child and:
  - (a) Is subject to the Interstate Compact on Placement of Children (ORS 417.200 and OAR 413-040-0200 to 413-040-0330), the background check must comply with Interstate Compact requirements.
  - (b) Is subject to the Inter-County Adoption Act of 2000 (42 USC 14901 et seq.), the background check must comply with federal requirements and ORS 417.262.

- 1 (3) If QEs, Department program rules, or Authority program rules require an SI to report any new  
2 arrests, charges, or convictions, the QE may determine if personnel action is required if the SI  
3 does not report. Personnel action may include a new background check if allowed by statute or  
4 rule.
- 5 (4) A homecare worker or personal support worker, as defined in ORS 410.600, is subject to section  
6 (1) of this rule. However, a homecare worker or personal support worker does not need a new  
7 background check when adding new client employers by meeting the following requirements:  
8 the homecare worker or personal support worker must have:
- 9 (a) A Department background check notice of final fitness determination dated within the  
10 recheck period according to Department program rules showing that the homecare  
11 worker or personal support worker has been:
- 12 (A) Approved;  
13 (B) Approved with restrictions that do not prohibit additional clients; or  
14 (C) Approved but not having portability pursuant to OAR 407-007-0600 to 407-007-  
15 0640; and
- 16 (b) The background check notice of final fitness determination lists a worksite of “various,”  
17 “various clients,” “statewide,” or similar wording.
- 18 (5) A personal care services provider, lifespan respite or other respite care provider, or an  
19 independent provider paid with Department or Authority funds is subject to section (1) of this  
20 rule. However, an SI in these positions may change or add clients within the same QE,  
21 Department, or Authority district without a new background check if the prior, documented  
22 criminal records check or abuse check conducted within the previous 24 months through the  
23 Department or Authority has been:
- 24 (a) Approved;  
25 (b) Approved with restrictions that do not prohibit additional clients; or  
26 (c) Approved but not having portability pursuant to OAR 407-007-0600 to 407-007-0640.
- 27 (6) ~~A child care provider SI as described in OAR 407-007-0210(12)(a)(K) is subject to section (1) of~~  
28 ~~this rule. However, this SI does not need a new background check when changing or adding~~  
29 ~~clients if this SI has been approved without restrictions within the required recheck period~~  
30 ~~according to Department program rules. Regardless of section (1) of this rules, an individual~~  
31 ~~subject to OAR chapter 333 division 333 is subject to a criminal records check as required by~~  
32 ~~ORS chapter 475A and OAR 333-333-4100.~~
- 33 (7) If an SI remains with a QE in the same position listed in the background check request and the  
34 QE merges with another QE, is sold to another QE, or changes names, the SI does not need a  
35 new background check. The changes to the QE may be noted in documentation attached to the  
36 notice of fitness determination but do not warrant a new background check.

- 1 (8) For a student enrolled in a nursing facility nursing assistant training program for employment at  
2 the facility, a new background check is not required at graduation from the training program or  
3 at the granting of certification by the Board of Nursing.
- 4 (9) The SI on the background check registry in good standing maintained under OAR 407-007-0600  
5 to 407-007-0640 is subject to section (1) of this rule when the SI's new background check being  
6 considered is not for a position that would result in placement on the background check  
7 registry maintained under OAR 407-007-0600 to 407-007-0640 if approved.
- 8 (10) The restrictions on criminal records checks in this section may exempt an SI from background  
9 checks required under section (1) of this rule as determined by the Department pursuant to  
10 ORS 443.004(1)(b).
- 11 (a) This section applies to an SI subject to ORS 443.004 who is:
- 12 (A) An employee of a residential facility or an adult foster home;
- 13 (B) Any individual who is paid directly or indirectly with public funds who has or will  
14 have contact with a recipient of support services or a resident of an adult foster  
15 home or a residential facility; and
- 16 (C) A home care worker or a personal support worker as defined in ORS 410.600.
- 17 (b) The Department must complete not more than one criminal records check every 18  
18 months on an SI subject to this section, effective as of the completion of the SI's first  
19 background check after the implementation of ORS 443.004 (1)(b) (Or Law 2021 chapter  
20 198), on June 8, 2021.
- 21 (c) A criminal records check, as part of a new background check, may be completed more  
22 often only if the Department:
- 23 (A) Receives credible evidence of a new criminal conviction;
- 24 (B) Receives credible evidence of potentially disqualifying abuse;
- 25 (C) Is required by federal law to conduct more frequent criminal record checks;
- 26 (D) Is notified by a QE and an SI has changed position or duties for which there are  
27 different criminal records check requirements; or
- 28 (E) Determines that it would be burdensome for an SI to wait for a new criminal  
29 records check, including but not limited to:
- 30 (i) The Department receives credible evidence of a change in circumstances  
31 that could positively impact a previous fitness determination;
- 32 (ii) The SI is seeking certification, licensure, or some other qualification  
33 associated with his or her job that requires a background check;
- 34 (d) If the Department determines that a new fitness determination is necessary and a new  
35 criminal records check is not allowed, the Department may complete a new abuse check  
36 and use information from the most recent criminal records check completed on the SI in  
37 the Department's records. An example of when a new fitness determination is

necessary, and a new criminal records check is not allowed, is when BCU learns of a new potentially disqualifying condition.

(e) If an SI changes positions while staying with the same QE and the new position is not subject to the registry under OAR 407-007-0600 to 407-007-0640, the QED must document that no new background check may be completed for the new position pursuant to ORS 443.004 and OAR 407-007-0220(10)(b).

(f) If the SI is applying for a position that requires a background check under these rules but is not subject to ORS 443.004, the restrictions in this section do not apply and do not count as criminal records checks towards this section.

(11) Background checks are completed on SIs who otherwise meet the qualifications of the position listed on the background check request, the position description completed by the QE, and the program rules governing the QE and position. A background check may not be used to screen applicants for a position or who do not meet such qualifications.

**Statutory/Other Authority:** ORS 181A.200, 409.027 & 409.050

**Statutes/Other Implemented:** ORS 181A.195, 181A.200, 409.010, 409.027 & 443.004

#### **407-007-0230 Qualified Entities (Permanent 6/15/2016)**

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

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

(3) BCU may allow a QE's appointing authority or the QED to appoint one or more QEDs based on the needs of the QE and the volume of SIs under the QE.

(4) A QE's appointing authority shall appoint QEDs as needed to remain in compliance with these rules and shall communicate any changes regarding QEDs or QEDs to BCU. BCU strongly recommends that the QE have at least one QED at any facility where clients are receiving care in order to handle any immediate QED responsibilities, such as removing an SI from work or placement when required.

(5) If for any reason a QE no longer has any QEDs, the QE or appointing authority shall ensure that the confidentiality and security of background check records by immediately providing all background check related documents to BCU or to another QE as determined by BCU.

(6) BCU shall provide QEs with periodic training and on-going technical assistance.

(7) Any decisions made by BCU in regard to these rules are final and may not be overturned by any QE.

1 **Statutory/Other Authority:** ORS 181A.200, 409.027 & 409.050

2 **Statutes/Other Implemented:** ORS 181A.195, 181A.200, 409.010, 409.027 & 443.004

3  
4  
5 **407-007-0240 QE Designees and QE Initiators (Permanent 2/10/2020)**

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

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

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

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

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

14 (D) The licensee of the QE.

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

17 (c) A QED must have:

18 (A) Competency in computer skills for accessing BCU's online background check  
19 systems, entering data, corresponding via email, and managing background  
20 check records online;

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

22 (C) A work-related email account.

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

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

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

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

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

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



- 1 (c) Ensure that adequate measures are taken to protect the confidentiality of the records  
2 and documents required by these rules. A QED may not view criminal offender  
3 information. A QED may not view abuse investigation reports and associated abuse  
4 investigation exhibits or documents as part of the background check process.
- 5 (d) Verify the SI's identity or ensure that the same verification requirements are understood  
6 by each individual responsible for verifying identity. The QE may verify identity at any  
7 time during the hiring or placement process up to the submission of the background  
8 check request.
- 9 (A) If conducting a background check on the SI for the first time or at rehire of the SI,  
10 a QED shall verify identity or ensure identity is verified by using methods which  
11 include but are not limited to reviewing the SI's current and valid government-  
12 issued photo identification and confirming the information on the photo  
13 identification with the SI and with the identifying information included in the  
14 background check request and any personnel documents if available.
- 15 (B) If an SI is being rechecked for the same QE without any break in placement,  
16 service, or employment, review of government-issued photo identification is  
17 strongly encouraged. At a minimum, the QED shall verify the SI's name, current  
18 address, and any aliases or previous names, or ensure this information is  
19 verified.
- 20 (e) If conducting a background check on the SI for the first time or at rehire of the SI, ensure  
21 that an SI is not permitted to work, volunteer, reside, or otherwise hold any position  
22 covered by these rules before the submission of the background check request to BCU.
- 23 (f) Initiate and submit an SI's background check in BCU's online system, ensuring  
24 completeness and accuracy of information required from the QED. The QED is  
25 responsible for monitoring the application for completion by the SI or closing the  
26 application if the SI does not complete it.
- 27 (g) Know whether an SI may be hired or placed in the position identified in the background  
28 check request on a preliminary basis, based on program or Licensing rules, or on federal  
29 or state requirements. The QED shall maintain the SI's status in BCU's online  
30 background check system regarding hiring or placement prior to a final outcome of the  
31 background check request. The QED may request that BCU make a preliminary fitness  
32 determination requiring a weighing test. The request must be through CRIMS or in  
33 writing.
- 34 (h) Know whether an SI who is allowed hiring or placement on a preliminary basis is  
35 required to be actively supervised or not. If active supervision is required, the QED is  
36 responsible for ensuring that active supervision is understood by each individual  
37 responsible for providing such supervision over an SI while the background check is  
38 pending.
- 39 (i) Ensure that if an SI is revoked from working or placement on a preliminary basis, the SI  
40 is immediately removed from the position and remains removed until BCU reinstates

- 1 hired on a preliminary basis or the completion of a final fitness determination allowing  
2 the SI to resume the position.
- 3 (j) Ensure that the SI has directions to complete a fingerprint capture and monitor the SI's  
4 process in getting the fingerprints taken in a timely manner.
- 5 (k) Notify BCU of any changes regarding an SI who still has a background check in process,  
6 including but not limited to address or employment status changes.
- 7 (L) Monitor the status of background check applications and investigate any delays in  
8 processing.
- 9 (m) Ensure that the outcome of the background check is followed by the QE and any SI  
10 supervisors.
- 11 (A) If the background check is closed or withdrawn, the QED must ensure that the SI  
12 is immediately removed from the position and is not allowed to start any  
13 position with the QE until a new background check is submitted and all  
14 background check and program rules requirements have been met.
- 15 (B) If the final fitness determination of the background check is approved, the QED  
16 must document the hiring of the SI and the permanent hire date in BCU's online  
17 background check system if the SI is subject to OAR 407-007-0600 to 407-007-0640.
- 18 (C) If the final fitness determination of the background check is a restricted  
19 approval, The QED must ensure that the QE and the SI's supervisors are aware of  
20 the restrictions in writing so that the restrictions may be followed.
- 21 (D) If the background check is not approved, the QED must ensure that the SI is  
22 immediately removed from the position and is not allowed to start any new  
23 position with the QE until a new background check is completed and approved.
- 24 (n) Ensure notification of the SI of any needed action. For example, if BCU notifies the QED  
25 that the SI needs fingerprints taken, needs to provide BCU more information, or needs a  
26 new background check, the QED will ensure the SI is told about the requirement and the  
27 deadline for the requirement.
- 28 (o) Ensure that documentation required by these rules is processed and maintained in  
29 accordance with these rules. The QED shall maintain required documentation in BCU's  
30 online background check system.
- 31 (p) Notify BCU immediately if the QED has new a potentially disqualifying conviction or  
32 condition.
- 33 (4) BCU may change QED status in the following circumstances which include but are not limited  
34 to:
- 35 (a) When the position with the QE ends or when the QE terminates the appointment. The  
36 QE shall notify BCU immediately upon the end of the position or termination of the  
37 appointment and BCU shall inactivate QED status.

- 1 (b) If a QED fails to comply with responsibilities or fails to continue to meet the  
2 requirements for QED status, as applicable. After suspending or revoking the  
3 appointment, the QE must immediately notify the BCU. If BCU takes the action to  
4 suspend or revoke the appointment, it must immediately notify the QE.
- 5 (c) If a QED fails to recertify, BCU shall revoke QED status.
- 6 (5) Any changes to QED status are not subject to appeal rights unless the denial or termination  
7 results in immediate loss of employment or position. A QED losing employment or position has  
8 the same hearing rights as other SIs under these rules.
- 9 (6) If a QED leaves employment or position with the QE for any reason, BCU shall inactivate QED  
10 status. If the individual finds employment with another QE, BCU shall determine the  
11 requirement for reactivation of QED status.
- 12 (7) BCU shall review and recertify appointments of QEDs, up to and including a new application,  
13 background check, and additional training under the following circumstances:
- 14 (a) Every three years; or
- 15 (b) At any time BCU has reason to believe the individual no longer meets QED requirements  
16 including but not limited to indication of criminal or abusive behavior or noncompliance  
17 with these rules.
- 18 (8) With BCU approval, QEs may appoint QEIs to enter background check request into BCU's online  
19 background check system. QEIs must:
- 20 (a) Be currently approved SIs for the QE;
- 21 (b) Possess competency in computer skills for accessing BCU's online background check  
22 system and entering background check records electronically;
- 23 (c) Maintain internet access and working email accounts to access BCU's background check  
24 system; and
- 25 (d) Meet other criteria and responsibilities as determined by BCU and the QE.

26 **Statutory/Other Authority:** ORS 181A.200, 409.027 & 409.050

27 **Statutes/Other Implemented:** ORS 181A.195, 181A.200, 409.010, 409.027 & 443.004

28

29

30 **407-007-0250 Background Check Process (Permanent 12/17/2021)**

- 31 (1) In order to conduct a background check on an SI, BCU must receive authorization from the SI  
32 allowing the criminal records check and abuse check to proceed. If the SI refuses to provide  
33 authorization for the background check, BCU terminates the background check immediately  
34 and the QE may not allow the SI to work, volunteer, be employed, reside, or otherwise perform  
35 in positions covered by these rules.
- 36 (2) BCU conducts a criminal records check on an SI through LEDS maintained by the Oregon State  
37 Police (OSP) and handles criminal offender information in accordance with ORS chapter 181A

- 1 and the rules adopted thereto (see OAR chapter 125, division 007; and chapter 257, division  
2 15).
- 3 (3) If a national criminal records check is necessary, OSP provides BCU results of national criminal  
4 records checks conducted pursuant to ORS 181A.195, including fingerprint identification,  
5 through the FBI.
- 6 (4) The criminal records check may include one or more types of criminal records checks as defined  
7 in OAR 407-007-0010. BCU considers the date of the last criminal records check completed  
8 before the final fitness determination as the date of the background check's criminal records  
9 check.
- 10 (5) BCU conducts abuse checks on an SI using available abuse investigation reports and associated  
11 documents. **SIs completing a criminal records check pursuant to OAR 333-333-4100 are not**  
12 **subject to an abuse check and OAR 407-007-0290(11) is not considered potentially**  
13 **disqualifying.**
- 14 (6) A QE and SI must use ORCHARDS to request a background check. In accordance with OAR 125-  
15 007-0220, the background check request includes the following information regarding an SI:
- 16 (a) Legal name and aliases;
- 17 (b) Date of birth;
- 18 (c) Address and recent residency information;
- 19 (d) Driver license or identification card information;
- 20 (e) Position title and description of duties to be considered;
- 21 (f) Indication of the SI's direct contact with any of the following:
- 22 (A) Children (for a child-caring agency governed by OAR chapter 413 division 215,  
23 children includes an individual who is under 21 years of age who is residing in or  
24 receiving care or services);
- 25 (B) Adults;
- 26 (C) Seniors (65 years and older);
- 27 (D) Confidential information;
- 28 (E) Secure Facilities;
- 29 (F) Finances or financial records; or
- 30 (G) Information Technology Systems.
- 31 (g) Worksite location or locations where the SI will be working;
- 32 (h) Disclosure of all potentially disqualifying criminal history pursuant to OAR 407-007-0281  
33 and 407-007-0290:
- 34 (A) While the SI may provide minimal information to meet this requirement, the  
35 Department finds that more details from the SI provides positive information for  
36 the weighing test in OAR 407-007-0300. The SI may disclose details of

1 potentially disqualifying arrests, charges, convictions, and any other conditions  
2 at a minimum, and may disclose all arrests, charges, and convictions regardless  
3 of outcome or when the arrests, charges, or convictions occurred. Disclosure  
4 includes any juvenile or adult record of custody, arrests, charges, or the outcome  
5 of custody, arrests, or charges against a juvenile or adult.

6 (B) The disclosed crimes and the dates must reasonably match the SI's criminal  
7 offender information and other criminal history information, as determined by  
8 BCU.

9 (C) The SI is not required to disclose any criminal history which has been expunged  
10 or set aside by a court in any jurisdiction. However, if the SI does disclose  
11 expunged or set aside criminal history, the Department may not consider the  
12 criminal history as potentially disqualifying or in a weighing test if the  
13 Department has proof that the criminal history has been expunged or set aside  
14 by a court in any jurisdiction.

15 (D) The Department may only consider criminal history as allowed in the weighing  
16 test, OAR 407-007-0300.

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

18 (A) The SI may provide mitigating information for BCU to review in a weighing test.

19 (B) BCU may require the SI to provide other information as needed to conduct the  
20 weighing test.

21 (j) For an SI who is a proctor foster parent:

22 (A) The SI must provide a release of information allowing the Department to provide  
23 the QE with information regarding the open or pending abuse investigations or  
24 founded or substantiated allegations of abuse against the SI.

25 (B) The SI must also disclose:

26 (i) Any currently open or pending child or adult abuse investigations in  
27 which the SI is reported or alleged to be responsible for the abuse;

28 (ii) Any child or adult abuse investigations with an outcome of founded or  
29 substantiated in which the SI is determined to have been responsible for  
30 the abuse; and

31 (iii) Any restraining order or protective orders against the SI.

32 (C) If the SI has any of the following, the Department must provide the QE  
33 notification:

34 (i) Information regarding the open or pending abuse investigations in which  
35 the SI is a reported or alleged perpetrator.

36 (ii) Information regarding substantiated allegations of abuse against the SI.

(iii) Confirmation of the SI being certified or licensed by the Department as a child foster home parent.

~~(k) For child care provider SIs listed in OAR 407-007-0210(12)(a)(K), the SI must disclose any involvement in protective services or abuse investigations regarding children or vulnerable adults.~~

(7) The background check request must include the following notices to the SI:

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

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

(B) The Department requests the Social Security number for the purpose of positively identifying the SI during the criminal records check process.

(b) A notice that the SI may be subject to fingerprinting as part of a criminal records check.

(c) A notice that BCU conducts an abuse check on the SI. Unless required by rule, an SI is not required to disclose any history of potentially disqualifying abuse, but may provide BCU with mitigating or other information.

(d) A notice that the SI has the right to challenge criminal or abuse history through the local source of the information.

(8) Using identifying information submitted in a background check request, BCU conducts an abuse check to determine if an SI has potentially disqualifying abuse. If required by federal law or regulation, the abuse check must include an out of state child abuse check.

(9) BCU conducts an Oregon criminal records check. Using information submitted on the background check request, BCU may obtain criminal offender information from LEDS and may request other criminal history information as needed.

(10) BCU may conduct a fingerprint-based national criminal records check.

(a) A fingerprint-based national criminal records check may be completed under any of the following circumstances:

(A) The SI has been outside Oregon for 60 or more consecutive days during the previous five years.

(B) The criminal offender information from the LEDS check, SI disclosures, or any other criminal history information obtained by BCU indicate there may be criminal records outside of Oregon.

(C) The criminal offender information from the LEDS check, SI disclosures, or any other criminal history information obtained by BCU do not provide enough information to confirm that there are no criminal records outside of Oregon.

(D) The SI has an out-of-state driver license or out-of-state identification card.

(E) BCU or the QE has reason to question the identity of the SI or the information on the criminal record found in LEDS.

- 1 (F) A fingerprint-based criminal records check is required by federal or state laws or  
2 regulations, other Department or Authority rules, or by contract with the  
3 Department or Authority.
- 4 (G) The SI is an employee of an agency which the Centers for Medicare and Medicaid  
5 Services has designated high risk pursuant to 42 CFR 424.518.
- 6 (H) Any SI applying to be or renewing the position with regard to child adoption or  
7 children in foster care licensed by the Department or child-caring agencies.  
8 Renewing SIs do not need a fingerprint-based criminal records check if BCU has a  
9 record of a previous fingerprint-based criminal records checks that is within  
10 three years from the date of the current background check request. Applicable SI  
11 positions include:
- 12 (i) A relative caregiver, foster parent, proctor foster parent, or adoptive  
13 parent in Oregon;
- 14 (ii) An adult household member in an adoptive or child foster home 18 years  
15 of age and over;
- 16 (iii) A household member in an adoptive or child foster home under 18 years  
17 of age if there is reason to believe that the household member may pose  
18 a risk to children placed in the home; or
- 19 (iv) A respite care provider or alternate caregiver in an adoptive or child  
20 foster home.
- 21 (I) BCU has reason to believe that fingerprints are needed to make a final fitness  
22 determination.
- 23 (b) If an SI is under the age of 18 years old, BCU must request a fingerprint capture in  
24 accordance with OAR 125-007-0220(3).
- 25 (c) The SI must complete and submit a fingerprint capture when requested by BCU within  
26 the time frame indicated in a written notice. BCU sends the request to the QE and the  
27 QED must notify the SI. BCU may require new fingerprint capture and its submission if  
28 previous fingerprint captures result in a rejection by OSP or the FBI.

29 ~~(11) For child care provider SIs listed in OAR 407-007-0210(12)(a)(K), a background check must~~  
30 ~~include:~~

31 ~~(a) A fingerprint-based national criminal records check;~~

32 ~~(b) A search of the National Crime Information Center's National Sex Offender Registry and~~  
33 ~~the Oregon state sex offender registry (these checks are included in the Oregon and~~  
34 ~~fingerprint based national criminal records check); and~~

35 ~~(c) In any state where the SI has resided for 60 or more consecutive days during the~~  
36 ~~previous five years:~~

37 ~~(A) Research for other criminal history information;~~

38 ~~(B) An abuse check of child abuse and neglect registries;~~

~~(C) — A state sex offender registry check.~~

(1211) For SIs who are subject to the Adam Walsh Act of 2006, or SIs who are employees of qualified entities which are subject to the federal 2018 Family First Prevention Services Act and which receive title IV-E funds, a background check must include:

- (a) A fingerprint-based national criminal records check;
- (b) In any state where the SI has resided for 60 or more consecutive days during the previous five years, an abuse check of child abuse and neglect registries.

(1312) BCU requires that due diligence be exercised in complying with national criminal records check requirements including fingerprints. However, if BCU determines that an SI is unable to submit fingerprints, BCU must document the circumstances that led to the decision to waive fingerprinting and proceed with obtaining other criminal history information from states based on SI's residential history and disclosures in lieu of a fingerprint-based criminal records check as required in this rule. A fingerprint-based national criminal records may be waived due to inability to submit fingerprints unless fingerprints are required by state or federal laws or regulations. Reasons for inability to submit fingerprints include but are not limited to:

- (a) A physical condition in which all the SI's fingerprints are illegible or missing, or which makes the capture of fingerprints impossible;
- (b) A mental or psychological condition which makes the capture of fingerprints impossible;
- (c) Undue safety risk to the SI or other individuals in capturing the fingerprints.

(1413) BCU may also research other criminal history information from other states instead of or in addition to a national criminal records check. Reasons for such research include but are not limited to:

- (a) When BCU has reason to believe that out-of-state criminal records may exist and a national criminal records check cannot be accomplished.
- (b) When BCU has been unable to complete a national criminal records check due to illegible fingerprints.
- (c) When the national criminal records check results show incomplete information about charges or criminal records without final disposition.
- (d) When there is indication of residency or criminal records in a state that does not submit all criminal records to the FBI.
- (e) When, based on available information, BCU has reason to believe that other criminal history information regarding the SI is present in another state.

(1514) The criminal records check may include one or both types of criminal records checks as defined in OAR 407-007-0010.

(1615) In order to complete a fitness determination, BCU may conduct further research regarding criminal history and abuse history through local jurisdiction courts, Department records, or other resources.



1 (~~1617~~) In order to complete a background check and fitness determination, BCU may require  
2 additional information from the SI including but not limited to additional criminal, judicial,  
3 other background information, or proof of identity.

4 (~~1817~~) If BCU determines that an SI has additional potentially disqualifying convictions or conditions  
5 which have occurred after receiving the background check request, BCU must provide the SI, if  
6 available, the opportunity to disclose any information required in section (6) of this rule before  
7 completion of the final fitness determination.

8 (~~1918~~) BCU may conduct a background check in situations of imminent danger on SIs who have been  
9 background checked under these rules and who are currently with the same QE.

10 (a) If the Department or Authority determines there is indication of criminal or abusive  
11 behavior that could more likely than not pose an immediate risk to vulnerable  
12 individuals, BCU may conduct a new criminal records check on an SI without the  
13 completion of a new background check request if allowed by statute or law.

14 (b) If BCU determines that a fitness determination based on the new background check  
15 would be adverse to the SI, BCU must provide the SI, if available, the opportunity to  
16 disclose any information required in section (6) of this rule before completion of the final  
17 fitness determination.

1 (~~2019~~) If the criminal records check process results in an incomplete fitness determination as  
2 described in OAR 407-007-0320(2)(d), BCU closes the criminal records check. When a criminal  
3 records check results in an incomplete fitness determination, the SI must not be allowed to  
4 work, volunteer, be employed, or otherwise perform in the position listed on the criminal  
5 records check request. An incomplete fitness determination results in immediate termination,  
6 dismissal, or removal of the SI.

7 (~~2120~~) BCU must document criminal records checks conducted under this rule.

8 **Statutory/Other Authority:** ORS 181A.200, 409.027 & 409.050

9 **Statutes/Other Implemented:** ORS 181A.195, 181A.200, 409.010, 418.248 & 443.004

10  
11  
12 **407-007-0275 Convictions Under ORS 443.004 Resulting in Ineligibility for Aging**  
13 **and People with Disabilities Program and Developmental Disabilities Program SIs**  
14 **(Permanent 12/17/2021)**

15 (1) This rule applies to an SI who:

16 (a) Works with clients receiving services through programs and agencies certified, licensed  
17 or otherwise regulated by the Department's Office of Developmental Disabilities (DD)  
18 Services.

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

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

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

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

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

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

31 (D) An employee providing care to the Department's APD program clients who  
32 works for an in-home care agency as defined by ORS 443.305 which has enrolled  
33 to deliver Medicaid funded services as described in OAR 411-033-0000 to 411-  
34 033 to 0030 for Department clients.

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

- 1 (2) If BCU determines that an individual subject to this rule has a conviction listed in ORS 443.004,  
2 BCU must make the determination of ineligible due to ORS 443.004. Under OAR 125-007-0260,  
3 this determination is considered an incomplete fitness determination. A fitness determination  
4 with a weighing test is not required regardless of any other potentially disqualifying convictions  
5 and conditions the SI has. BCU must provide notice of ineligibility due to ORS 443.004 to the  
6 individual.
- 7 (3) An individual subject to this rule who is an employee and hired prior to July 28, 2009 is exempt  
8 from section (2) of this rule provided that the employee remains working for the same  
9 employer after July 28, 2009. The SI may transfer or promote to other positions with this same  
10 employer and remain exempt from section (2) of this rule. This exemption is not applicable to  
11 licensees. In this context:
- 12 (a) For a homecare worker as defined in ORS 410.600, a personal support worker as defined  
13 in ORS 410.600, a personal care services provider, or an independent provider employed  
14 by a Department client, the employer of record is the Department unless restricted to  
15 one QE or client by a restricted approval under OAR 407-007-0320.
- 16 (b) For adult foster homes and child foster homes, the SI may change jobs between homes  
17 throughout Oregon unless restricted to one QE or home by a restricted approval under  
18 OAR 407-007-0320.
- 19 (c) If the SI works at a QE facility or agency that has a parent company or corporation, the SI  
20 may work at any QE facility or agency under the parent company or corporation.
- 21 (d) For all other SIs, the employer is a QE.
- 22 (4) If an individual subject to this rule is grandfathered under section (3) of this rule or is not found  
23 Ineligible due to ORS 443.004, the individual is subject to a fitness determination under OAR  
24 125-007-0260 and 407-007-0320 for any other potentially disqualifying convictions or  
25 conditions in OAR 407-007-0281 and 407-007-0290. The original one or more convictions that  
26 led to grandfathering could be used as potentially disqualifying and in a weighing test only if  
27 there was a repetition of behavior shown in criminal history subsequent to the grandfathering  
28 convictions.
- 29 (5) A determination of "Ineligible due to ORS 443.004" is not subject to appeal rights under OAR  
30 125-007-0300, 407-007-0330, or 943-007-0501.

31 **Statutory/Other Authority:** ORS 181A.195 & 409.050

32 **Statutes/Other Implemented:** ORS 181A.195 & 443.004

33  
34  
35 **407-007-0277 Convictions Under ORS 443.004 Resulting in Ineligibility for Mental**  
36 **Health or Alcohol and Drug Program SIs (Permanent 2/10/2020)**

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

- 1 (2) If BCU determines that an individual is subject to this rule and has a conviction listed in ORS  
2 443.004(5), BCU shall make the determination of ineligible due to ORS 443.004. Under OAR  
3 125-007-0260, this determination is considered an incomplete fitness determination. A fitness  
4 determination with a weighing test is not required regardless of any other potentially  
5 disqualifying convictions and conditions the SI has. BCU shall provide notice of ineligibility due  
6 to ORS 443.004 to the individual.
- 7 (3) An individual subject to this rule who is an employee and hired prior to July 28, 2009 is exempt  
8 from section (2) of this rule provided that the employee remains working for the same  
9 employer after July 28, 2009. The SI may transfer or promote to other positions with this same  
10 employer and remain exempt from section (2) of this rule. This exemption is not applicable to  
11 licensees. In this context:
- 12 (a) For a personal support worker as defined in ORS 410.600, employed by an Authority  
13 client, the employer of record is the Authority unless restricted to one QE or client by a  
14 restricted approval under OAR 407-007-0320.
- 15 (b) For adult foster homes, the SI may change jobs between homes throughout Oregon  
16 unless restricted to one QE or home by a restricted approval under OAR 407-007-0320.
- 17 (c) If the SI works at a QE facility or agency that has a parent company or corporation, the SI  
18 may work at any QE facility or agency under the parent company or corporation.
- 19 (d) For all other SIs, the employer is a QE.
- 20 (4) If an individual subject to this rule is grandfathered under section (3) of this rule or is not found  
21 ineligible due to ORS 443.004, the individual is subject to a fitness determination under OAR  
22 125-007-0260 and 407-007-0320 for any other potentially disqualifying convictions or  
23 conditions in OAR 407-007-0281 and 407-007-0290. The original one or more convictions that  
24 led to grandfathering could be used as potentially disqualifying and in a weighing test only if  
25 there was a repetition of behavior shown in criminal history subsequent to the grandfathering  
26 convictions.
- 27 (5) A determination of ineligible due to ORS 443.004 is not subject to appeal rights under OAR 125-  
28 007-0300 or 943-007-0501.

29 **Statutory/Other Authority:** ORS 181A.195 & 409.050

30 **Statutes/Other Implemented:** ORS 181A.195 & 443.004

31

32 **407-007-0279 Federal Mandatory Exclusions (*Permanent 12/17/2021*)**

- 33 (1) Mandatory exclusions under 42 USC 1320a-7(a) (Exclusion of certain individuals and entities  
34 from participation in Medicare and State health programs) may result in ineligibility for an SI if  
35 the convictions or conditions meet certain time frames or criteria in 42 USC 1320a-7(c).
- 36 (a) Section (1) of this rule applies to an SI who is or seeks to be:
- 37 (A) A home care worker or personal support worker as defined in ORS 410.600; or
- 38 (B) Works for or seeks to work for:

- 1 (i) A residential facility as defined in ORS 443.400 that receives Medicare or  
2 state health care funds;
- 3 (ii) An in-home care agency as defined in ORS 443.005 that receives  
4 Medicare or state health care funds;
- 5 (iii) A home health agency as defined in ORS 443.014 that receives Medicare  
6 or state health care funds;
- 7 (iv) A nursing facility licensed by the Department in accordance with OAR  
8 chapter 411 division 85;
- 9 (v) An assisted living facility or a residential care facility licensed by the  
10 Department in accordance with OAR chapter 411 division 54;
- 11 (vi) A personnel or staffing agency providing staff to a nursing facility,  
12 assisted living facility, or residential care facility licensed by the  
13 Department as listed in this subsection;
- 14 (vii) An adult foster home licensed by the Department or Authority, or  
15 licensed locally under the direction of the Department or Authority.
- 16 (viii) Any other QE determined by the Department or Authority to have a  
17 federal requirement for an OIG check.
- 18 (b) Indication that an individual has an exclusion can be determined by searching the OIG's  
19 List of Excluded Individuals. This exclusion list is available to QEDs when initiating and  
20 before submitting background check requests through ORCHARDS.
- 21 (c) If a QED or BCU determines that an individual subject to this rule has an exclusion listed  
22 in 42 USC 1320a-7:
  - 23 (A) The QED withdraws the background check application before submitting it  
24 because the SI is not eligible for the position; or
  - 25 (B) BCU must make the determination of ineligibility due to mandatory exclusion.
- 26 (d) Convictions or conditions which are mandatory exclusions under section (1) of this rule  
27 include but are not limited to:
  - 28 (A) Convictions related to the delivery of Medicare or State health care program  
29 services.
  - 30 (B) Convictions related to the abuse of a client or patient.
  - 31 (C) Felony convictions related to health care fraud.
  - 32 (D) Felony convictions related to the manufacture, delivery, prescription or  
33 dispensing of a controlled substance.

- 1 (e) When checking for a background check application, a QED or BCU can consider an SI has  
2 having a mandatory exclusion if the SI is verified using his or her Social Security Number.  
3 Unless the mandatory exclusion has been rescinded under federal directive and the SI is  
4 no longer showing on the Office of the Inspector General's (OIG's) Exclusion list, an SI  
5 remains ineligible for the following periods of time:
- 6 (A) The minimum period of exclusion is not less than five years from the date of  
7 conviction;
- 8 (B) If the SI's mandatory exclusion is based on a conviction occurring on or after  
9 August 5, 1997 and the SI has on one previous occasion one or more convictions  
10 which are also mandatory exclusions, the minimum period of exclusion is not  
11 less than 10 years from the date of conviction; or
- 12 (C) If the SI's mandatory exclusion is based on a conviction occurring after August 5,  
13 1997 and the SI has on two or more previous occasions one or more convictions  
14 which are also mandatory exclusions, the minimum period of exclusion is  
15 permanent.
- 16 (f) Under OAR 125-007-0260(2)(d), the determination of ineligibility due to mandatory  
17 exclusion is considered an incomplete fitness determination. A fitness determination  
18 with a weighing test is not required regardless of any other potentially disqualifying  
19 convictions and conditions the SI has. When a background check results in an  
20 incomplete fitness determination, the SI must not be allowed to work, volunteer, be  
21 employed, or otherwise perform in the position listed on the background check request.  
22 An incomplete fitness determination must result in immediate termination, dismissal, or  
23 removal of the SI.
- 24 (g) A determination of ineligibility due to mandatory exclusion is subject to appeal rights  
25 only if allowed under 42 UCS 1320a-7(g).
- 26 (h) If the SI no longer appears on the OIG's List of Excluded Individuals, the SI is subject to a  
27 fitness determination under OAR 125-007-0260 and 407-007-0320.
- 28 (2) Convictions and conditions under 42 USC 12645g (Criminal history checks under the National  
29 and Community Service State Grant Program) result ineligibility for an SI.
- 30 (a) Section (2) of this rule applies to an SI who works or seeks to work as an employee,  
31 volunteer, or contractor under the National and Community Service Act of 1990 as  
32 amended by the Serve America Act, including participants and employees in:
- 33 (A) Americorps;
- 34 (B) Foster Grandparents;
- 35 (C) Senior Companions; or
- 36 (D) Any other programs funded under national service laws.

- 1 (b) If BCU determines that an individual is subject to this rule and has an exclusion listed in  
2 42 USC 12645g, BCU must make the determination of ineligibility due to mandatory  
3 exclusion. Exclusions include:
- 4 (A) Listing on, or requirement to be listed on, a sex offender registry;  
5 (B) Conviction for murder.  
6 (C) Refusal to complete the background check.  
7 (D) False statement by the SI in connection with criminal history disclosure,  
8 specifically intentionally providing false information impacting the ability to conduct the  
9 background check, such as:
- 10 (i) A false name;  
11 (ii) A government-issued identification belonging to another person;  
12 (iii) A false identification; or  
13 (iv) Fingerprints of another person.
- 14 (c) Under OAR 125-007-0260(2)(d), a determination of ineligibility due to mandatory  
15 exclusion is considered an incomplete fitness determination. A fitness determination  
16 with a weighing test is not required regardless of whether the SI has any other  
17 potentially disqualifying convictions and conditions. When a background check results in  
18 an incomplete fitness determination, the SI must not be allowed to work, volunteer, be  
19 employed, or otherwise perform in the position listed on the background check request.  
20 An incomplete fitness determination must result in immediate termination, dismissal, or  
21 removal of the SI.
- 22 (d) A determination of ineligibility due to mandatory exclusion is not subject to appeal  
23 rights under OAR 125-007-0300, 407-007-0330, or 943-007-0501.

24 ~~(3) Prohibitions under 45 USC 9858f (Criminal background checks) under the Child Care and~~  
25 ~~Development Block Grant result in ineligibility for an SI.~~

26 ~~(a) Section (3) of this rule applies to child care provider SI under OAR 407-007-~~  
27 ~~0210(12)(a)(K).~~

28 ~~(b) If BCU determines that an individual is subject to this rule and has an exclusion listed in~~  
29 ~~45 USC 9858f, BCU must make the determination of ineligibility due to mandatory~~  
30 ~~exclusion. Exclusions include:~~

31 ~~(A) Refusal to complete the background check;~~

32 ~~(B) Knowingly making a materially false statement in connection with the SI's~~  
33 ~~criminal records check;~~

34 ~~(C) Listing on, or requirement to be listed on, a sex offender registry;~~

35 ~~(D) Felony conviction consisting of:~~

36 ~~(i) Murder;~~

1 ~~(ii) Child abuse or neglect;~~

2 ~~(iii) A crime against children, including child pornography;~~

3 ~~(iv) Spousal abuse;~~

4 ~~(v) Rape or sexual assault;~~

5 ~~(vi) Kidnapping;~~

6 ~~(vii) Arson~~

7 ~~(viii) Physical assault or battery; or~~

8 ~~(ix) A drug related offense, if it occurred within five years from the date the~~  
9 ~~final decision; and~~

10 ~~(E) Conviction of a violent misdemeanor as an adult against a child including but not~~  
11 ~~limited to:~~

12 ~~(i) Child abuse;~~

13 ~~(ii) Child endangerment;~~

14 ~~(iii) Sexual assault; or~~

15 ~~(iv) Child pornography.~~

16 ~~(c) A fitness determination with a weighing test is not required if the SI has an exclusion~~  
17 ~~listed in this section (with the exception of a drug related offense within five years from~~  
18 ~~the date the final decision), regardless of any other potentially disqualifying convictions~~  
19 ~~and conditions the SI has. BCU must make the determination of ineligibility due to~~  
20 ~~mandatory exclusion. When a background check results in an incomplete fitness~~  
21 ~~determination, the SI must not be allowed to work, volunteer, be employed, or~~  
22 ~~otherwise perform in the position listed on the background check request. An~~  
23 ~~incomplete fitness determination must result in immediate termination, dismissal, or~~  
24 ~~removal of the SI.~~

25 ~~(d) If the SI has only the exclusion of a drug related offense within five years from the date~~  
26 ~~of the final decision, and no other exclusions listed in this section, BCU must conduct a~~  
27 ~~weighing test pursuant to OAR 407-007-0300 in making a final decision. If the weighing~~  
28 ~~test determines that the SI is a risk to the well-being of vulnerable individuals, BCU must~~  
29 ~~make the determination of mandatory exclusion.~~

30 ~~(e) Pursuant to OAR 125-007-0260(2)(d), the determination of ineligibility due to~~  
31 ~~mandatory exclusion is considered an incomplete fitness determination.~~

32 ~~(f) A determination of ineligibility due to mandatory exclusion is not subject to appeal~~  
33 ~~rights under OAR 125-007-0300, 407-007-0330, or 943-007-0501. The SI may appeal~~  
34 ~~only to challenge the accuracy or completeness of the criminal records check.~~

35 ~~(A) The SI may not hold the position during an appeal.~~



- ~~(B) If the mandatory exclusion is changed at any time during the appeal process, the change does not guarantee placement of the SI, or the SI child care provider.~~
- ~~(C) An SI may represent himself or herself or have legal representation during the appeal process. For the purpose of this rule, the term "SI" includes the SI's legal representative.~~
- ~~(D) Any appeal or subsequent request for information must be received by the Department by 11:59 p.m. on the due date, or if mailed, postmarked by 11:59 p.m. on the due date.~~
- ~~(i) To request an appeal, the SI must complete, sign, and date the Child Care Mandatory Exclusion Appeal Request form and submit it to BCU via mail or fax on or before the due date.~~
- ~~(ii) The due date is 30 calendar days after the effective date of the mandatory exclusion.~~
- ~~(iii) In the event BCU does not receive an appeal by the due date, BCU must determine, based on a written statement from the SI and available information, if there is good cause to proceed with the appeal.~~
- ~~(E) BCU may conduct additional criminal records checks during the appeal process to update or verify the SI's potentially disqualifying convictions or conditions. If BCU finds new potentially disqualifying convictions and conditions during the appeal resulting in mandatory exclusion, BCU must amend the notice of fitness determination while still maintaining the original hearing rights and deadlines.~~
- ~~(F) BCU must provide notice to the SI, indicating its efforts to verify the completeness of the criminal records check and the accuracy of the information challenged by the SI. If BCU determines that the criminal records check was incomplete or inaccurate, BCU must rectify these issues during the appeal or explain to the SI the issues preventing BCU from making the criminal records check complete or accurate. If the mandatory exclusion is maintained, the SI has no other appeal rights through BCU.~~
- ~~(G) BCU must ensure the appeal is completed in a timely manner.~~

**(43)** Prohibitions under 42 USC 671(a)(20) under the State Plan for Foster Care and Adoption Assistance result in ineligibility for an SI.

(a) Section (4) of this rule applies to the following SIs:

- (A) An SI who is an employee of a QE which is subject to Section 471(a)(20)(D) of the federal 2018 Family First Prevention Services Act and which receives title IV-E funds; and
- (B) For child foster homes licensed by the Department's DD programs, or child foster or adoptive homes governed by OAR chapter 413 division 215 and the federal 2006 Adam Walsh Act:

- 1 (i) A foster parent or proctor foster parent;
- 2 (ii) An adoptive parent applicant or an approved adoptive parent;
- 3 (iii) A household member in an adoptive or foster home 18 years of age and
- 4 over;
- 5 (iv) A household member in an adoptive or foster home under 18 years of
- 6 age if there is reason to believe that the household member may pose a risk to
- 7 children placed in the home.
- 8 (b) If BCU determines that an individual is subject to this rule and has an exclusion listed in
- 9 42 USC 671(a)(20)(A), BCU must make the determination of ineligibility due to
- 10 mandatory exclusion. Exclusions include:
  - 11 (A) Felony conviction consisting of:
    - 12 (i) Child abuse or neglect;
    - 13 (ii) Spousal abuse;
    - 14 (iii) A crime against children (including child pornography);
    - 15 (iv) A crime involving violence, including rape, sexual assault, or homicide,
    - 16 but not including other physical assault or battery;
  - 17 (B) If, within five years from the date of the final decision, a felony conviction of:
    - 18 (i) Physical assault or battery; or
    - 19 (ii) A drug-related offense.
- 20 (c) Under OAR 125-007-0260(2)(d), the determination of ineligibility due to mandatory
- 21 exclusion is considered an incomplete fitness determination. A fitness determination
- 22 with a weighing test is not required regardless of any other potentially disqualifying
- 23 crimes or conditions the SI has. When a background check results in an incomplete
- 24 fitness determination, the SI must not be allowed to work, volunteer, be employed, or
- 25 otherwise perform in the position listed on the background check request. An
- 26 incomplete fitness determination must result in immediate termination, dismissal, or
- 27 removal of the SI.
- 28 (d) A determination of ineligibility due to mandatory exclusion is not subject to appeal
- 29 rights under OAR 125-007-0300 or 943-007-0501.

30 **Statutory/Other Authority:** ORS 181A.195 & 409.050

31 **Statutes/Other Implemented:** ORS 181A.195

32  
33 **407-007-0281 Potentially Disqualifying Convictions (Permanent 03/02/2022)**

34 A conviction of any of the following crimes is potentially disqualifying. However, offenses or

35 convictions that are classified as less than a misdemeanor, such as violations or infractions, are not

36 potentially disqualifying (see ORS 161.505 to 161.565).

37

(1) Pursuant to OAR 125-007-0270, any conviction of a misdemeanor or felony in any jurisdiction, a U.S. military crime, or an international crime is a permanent review crime for the following:

- (a) An SI associated with Department Child Welfare adoptive and foster homes subject to criminal records checks under OAR 413-120-0400 to 413-120-0475.
- (b) An SI who is an employee, contractor or volunteer for a Department Child Welfare licensed child caring agency governed by OAR chapter 413 division 215.
- (c) An SI, as listed in OAR 407-007-0210(12)(a)(H) associated with a child adoptive or foster home licensed by a child caring agency governed by OAR chapter 413 division 215.

~~(d) An SI, as listed in OAR 407-007-0210(12)(a)(K), as a child care provider or associated with a child care provider.~~

(2) Potentially disqualifying convictions for SIs subject to ORS 475A and OAR chapter 333 division 333 include section (3) of this rule with the following exceptions:

(a) BCU may not consider the following for SIs applying for license or renewal of license:

(A) The manufacture of psilocybin or the manufacture of a marijuana item, as defined in ORS 475C.009, if:

(i) The date of the conviction is two or more years before the submission date of the application; and

(ii) The SI has not been convicted more than once for the manufacture of psilocybin or a marijuana item; or

(A) The possession of a controlled substance, as defined in ORS 475.005, or a marijuana item, as defined in ORS 475C.009, if:

(i) The date of the conviction is two or more years before the date of the application; or

(ii) The person has not been convicted more than once for the possession of a controlled substance or a marijuana item.

(b) BCU may only consider the following for SIs applying for a permit or renewal of a permit:

(A) Any felony conviction; or

(B) Any felony or misdemeanor conviction under OAR ORS 475A.210 to 475A.722 if the date of the conviction is less than two years before the date of the application or renewal

(3) For all other SIs subject to these rules:

- 1 (a) The crimes listed in this section are permanent review crimes which require that a  
2 fitness determination with a weighing test be completed regardless of date of  
3 conviction.
- 4 (A) ORS 163.095, Aggravated murder
- 5 (B) ORS 163.107, Murder I
- 6 (C) ORS 163.115, Murder II
- 7 (D) ORS 163.118, Manslaughter I
- 8 (E) ORS 163.125, Manslaughter II
- 9 (F) ORS 163.145, Criminally negligent homicide
- 10 (G) ORS 163.149, Aggravated vehicular homicide
- 11 (H) ORS 163.165, Assault III
- 12 (I) ORS 163.175, Assault II
- 13 (J) ORS 163.185, Assault I
- 14 (K) ORS 163.187, Strangulation
- 15 (L) ORS 163.200, Criminal mistreatment II
- 16 (M) ORS 163.205, Criminal mistreatment I
- 17 (N) ORS 163.225, Kidnapping II
- 18 (O) ORS 163.235, Kidnapping I
- 19 (P) ORS 163.263, Subjecting another person to involuntary servitude in the  
20 second degree
- 21 (Q) ORS 163.264, Subjecting another person to involuntary servitude in the  
22 first degree
- 23 (R) ORS 163.266, Trafficking in persons
- 24 (S) ORS 163.275, Coercion
- 25 (T) ORS 163.355, Rape III
- 26 (U) ORS 163.365, Rape II

- 1 (V) ORS 163.375, Rape I
- 2 (W) ORS 163.385, Sodomy III
- 3 (X) ORS 163.395, Sodomy II
- 4 (Y) ORS 163.405, Sodomy I
- 5 (Z) ORS 163.408, Unlawful sexual penetration II
- 6 (AA) ORS 163.411, Unlawful sexual penetration I
- 7 (BB) ORS 163.413, Purchasing sex with a minor, if the courts designate the
- 8 offense as a sex crime pursuant to ORS 163.413(3)(d), or the offense is
- 9 the defendant's second or subsequent convictions under ORS
- 10 163.413(3)(b)(B)
- 11 (CC) ORS 163.415, Sexual abuse III
- 12 (DD) ORS 163.425, Sexual abuse II
- 13 (EE) ORS 163.427, Sexual abuse I
- 14 (FF) ORS 163.432, Online sexual corruption of a child in the second degree, if
- 15 the offender reasonably believed the child to be more than five years
- 16 younger than the offender
- 17 (GG) ORS 163.433, Online sexual corruption of a child in the first degree, if the
- 18 offender reasonably believed the child to be more than five years
- 19 younger than the offender
- 20 (HH) ORS 163.435, Contributing to the sexual delinquency of a minor
- 21 (II) ORS 163.445, Sexual misconduct, if the offender is at least 18 years of age
- 22 (JJ) ORS 163.465, Public indecency
- 23 (KK) ORS 163.467, Private indecency
- 24 (LL) ORS 163.525, Incest, with a child victim
- 25 (MM) ORS 163.535, Abandonment of a child
- 26 (NN) ORS 163.537, Buying or selling a person under 18 years of age
- 27 (OO) ORS 163.547, Child neglect I

1	(PP)	ORS 163.670, Using child in display of sexually explicit conduct
2	(QQ)	ORS 163.680, Paying for viewing a child’s sexually explicit conduct
3	(RR)	ORS 163.684, Encouraging child sexual abuse I
4	(SS)	ORS 163.686, Encouraging child sexual abuse II
5	(TT)	ORS 163.687, Encouraging child sexual abuse III
6	(UU)	ORS 163.688, Possession of materials depicting sexually explicit conduct of a child I
7		
8	(VV)	ORS 163.689, Possession of materials depicting sexually explicit conduct of a child II
9		
10	(WW)	ORS 163.700, Invasion of personal privacy II
11	(XX)	ORS 163.701, Invasion of personal privacy I
12	(YY)	ORS 163A.005, All crimes listed in definition of “Sex Crime,” including Transporting child pornography into the state
13		
14	(ZZ)	ORS 164.055, Theft I
15	(AAA)	ORS 164.057, Aggravated theft I
16	(BBB)	ORS 164.098, Organized retail theft
17	(CCC)	ORS 164.125, Theft of services
18	(DDD)	ORS 164.215, Burglary II
19	(EEE)	ORS 164.225, Burglary I
20	(FFF)	ORS 164.325, Arson I
21	(GGG)	ORS 164.377, Computer crime
22	(HHH)	ORS 164.405, Robbery II
23	(III)	ORS 164.415, Robbery I
24	(JJJ)	ORS 165.013, Forgery I
25	(KKK)	ORS 165.022, Criminal possession of a forged instrument I
26	(LLL)	ORS 165.032, Criminal possession of a forgery device

1	(MMM)	<del>ORS 165.800, Identity theft</del>
2	(NNN)	ORS 165.803, Aggravated identity theft
3	(OOO)	ORS 167.012, Promoting prostitution
4	(PPP)	ORS 167.017, Compelling prostitution
5	(QQQ)	ORS 167.057, Luring a minor
6	(RRR)	ORS 167.320, Animal abuse I
7	(SSS)	ORS 167.322, Aggravated animal abuse I
8	(TTT)	ORS 167.333, Sexual assault of animal
9	(UUU)	ORS 475.752(1), (2) and (6), Prohibited acts generally (regarding delivery and manufacture drug crimes; formerly ORS 475.840, 2005-2011)
10		
11	(VVV)	ORS 475.806, Unlawful manufacture of hydrocodone
12	(WWW)	ORS 475.808, Unlawful manufacture of hydrocodone within 1,000 feet of school
13		
14	(XXX)	<del>ORS 475.810, Unlawful delivery of hydrocodone</del>
15	(YYY)	ORS 475.812, Unlawful delivery of hydrocodone within 1,000 feet of school
16		
17	(ZZZ)	ORS 475.816, Unlawful manufacture of methadone
18	(AAAA)	ORS 475.818, Unlawful manufacture of methadone within 1,000 feet of school
19		
20	(BBBB)	ORS 475.820, Unlawful delivery of methadone
21	(CCCC)	ORS 475.822, Unlawful delivery of methadone within 1,000 feet of school
22	(DDDD)	<del>ORS 475.826, Unlawful manufacture of oxycodone</del>
23	(EEEE)	ORS 475.828, Unlawful manufacture of oxycodone within 1,000 feet of school
24		
25	(FFFF)	ORS 475.830, Unlawful delivery of oxycodone
26	(GGGG)	ORS 475.832, Unlawful delivery of oxycodone within 1,000 feet of school

1	(HHHH)	ORS 475.840(1) and (2), Prohibited acts generally (regarding delivery and
2		manufacture drug crimes formerly ORS 475.992; renumbered to ORS
3		475.752 in 2011)
4	(IIII)	ORS 475.846, Unlawful manufacture of heroin
5	(JJJJ)	ORS 475.848, Unlawful manufacture of heroin within 1,000 feet of school
6	(KKKK)	ORS 475.850, Unlawful delivery of heroin
7	(LLLL)	ORS 475.852, Unlawful delivery of heroin within 1,000 feet of school
8	(MMMM)	ORS 475.866, Unlawful manufacture of 3,4-
9		methylenedioxymethamphetamine
10	(NNNN)	ORS 475.868, Unlawful manufacture of 3,4-
11		methylenedioxymethamphetamine within 1,000 feet of school
12	(OOOO)	ORS 475.870, Unlawful delivery of 3,4-methylenedioxymethamphetamine
13	(PPPP)	ORS 475.872, Unlawful delivery of 3,4-methylenedioxymethamphetamine
14		within 1,000 feet of school
15	(QQQQ)	ORS 475.876, Unlawful manufacture of cocaine
16	(RRRR)	ORS 475.878, Unlawful manufacture of cocaine within 1,000 feet of
17		school
18	(SSSS)	ORS 475.880, Unlawful delivery of cocaine
19	(TTTT)	ORS 475.882, Unlawful delivery of cocaine within 1,000 feet of school
20	(UUUU)	ORS 475.886, Unlawful manufacture of methamphetamine
21	(VVVV)	ORS 475.888, Unlawful manufacture of methamphetamine within 1,000
22		feet of school
23	(WWWW)	ORS 475.890, Unlawful delivery of methamphetamine
24	(XXXX)	ORS 475.892, Unlawful delivery of methamphetamine within 1,000 feet
25		of school
26	(YYYY)	ORS 475.904, Unlawful delivery of controlled substance within 1,000 feet
27		of school
28	(ZZZZ)	ORS 475.906, Penalties for distribution to minors



- 1 (AAAAA) ORS 475.908, Causing another person to ingest a controlled substance
- 2 (BBBBB) ORS 475.910, Application of controlled substance to the body of another  
3 person
- 4 (CCCCC) ORS 475.912, Unlawful delivery of imitation controlled substance
- 5 (DDDDD) ORS 475.914, Prohibited acts for registrants (with the Oregon State Board  
6 of Pharmacy)
- 7 (EEEEEE) 475C.333, Prohibition against giving marijuana item as prize
- 8 (FFFFFF) 475C.345, Unlawful delivery of marijuana item
- 9 (GGGGG) 475C.349, Unlawful manufacture of marijuana item
- 10 (HHHHH) 475C.369 Administration to another person under 18 years of age
- 11 (HHHHH) 475C.373, Unlawful sale or delivery of marijuana paraphernalia
- 12 (IIIII) Or Law Ch. 542 Sec. 41, Unlawful production of marijuana (to be repealed  
13 1/1/2024)
- 14 (JJJJJ) Any crime of attempt, solicitation, or conspiracy to commit a crime listed  
15 in this section pursuant to ORS 161.405, 161.435, or 161.450
- 16 (KKKKK) Any crime in any other jurisdiction that is the substantial equivalent of  
17 any of the Oregon crimes listed in section (2)(a) of this rule, as  
18 determined by BCU. This includes any U.S. military crimes which are the  
19 substantial equivalent of crimes listed in section (2)(a) of this rule.
- 20 (b) The crimes listed in this section are ten-year review crimes which require that a fitness  
21 determination with a weighing test be completed if the date of conviction is within ten  
22 years of the background check submission.
- 23 (A) Any misdemeanor or felony not listed in section 2(a) or (2)(c) of this rule in  
24 Oregon or any other jurisdiction. This includes U.S. military crimes not  
25 considered to be the substantial equivalent of crimes listed in section (2)(a) of  
26 this rule.
- 27 (B) Any crime of attempt, solicitation, or conspiracy to commit a crime pursuant to  
28 ORS 161.405 or 161.435, or 161.450 included in section (2)(b).
- 29 (c) Two or more convictions of ORS 813.010 (Driving under the Influence of Intoxicants  
30 (DUII)) or 830.325 (Operating Boat while under Influence of Intoxicants) or a  
31 misdemeanor conviction under a law in any jurisdiction that imposes criminal penalties  
32 for operating a vehicle or boat while under the influences of intoxicants, are potentially

1 disqualifying if they have occurred within five years of the date of the criminal records  
2 check.

3 (A) A single conviction of a crime in section (2)(c) is not considered potentially  
4 disqualifying regardless of the date of conviction.

5 (B) If an SI has two or more convictions of a crime in section (2)(c) and only one, or  
6 none, occurred within five years from the date of the background check  
7 submission, the convictions are not potentially disqualifying.

8 (3) Evaluations of crimes may be based on available information in Oregon laws and laws in other  
9 jurisdictions regarding the crime.

10 (4) Under no circumstances may a crime be considered potentially disqualifying if it is:

11 (a) Related to marijuana if the crime is no longer a criminal offense in the originating  
12 jurisdiction.

13 (b) Part of a juvenile record that has been expunged pursuant to ORS 419A.260 to  
14 419A.262.

15 (c) Part of an adult record that has been set aside pursuant to ORS 137.225.

16 *Statutory/Other Authority: ORS 181A.195 & 409.050*

17 *Statutes/Other Implemented: ORS 181A.195 & 2019 OR Law ch 423*

19  
20 **407-007-0290 Potentially Disqualifying Conditions (Permanent 12/17/2021)**

21 Pursuant to OAR 125-007-0270, the following are potentially disqualifying conditions, if they exist on  
22 the date of the final fitness determination unless otherwise noted. **This rule does not apply to SIs**  
23 **subject to ORS 475A and OAR chapter 333, division 333.**

24 (1) False statement is potentially disqualifying when all the following conditions are met:

25 (a) In a background check request, an SI has submitted the answer, “No” to the question  
26 regarding whether the SI has criminal history;

27 (b) The Department finds potentially disqualifying criminal history in the criminal records  
28 check; and

29 (c) The found potentially disqualifying criminal history occurred before the date of the SI’s  
30 submission of the criminal records check request.

31 (2) The SI is a registered sex offender in any jurisdiction. There is a rebuttable presumption that an  
32 SI is likely to engage in conduct that would pose a significant risk to vulnerable individuals if the  
33 SI has been designated as a level three sex offender under ORS 163A.100(3), a predatory sex

- 1 offender prior to January 1, 2014, or found to be a sexually violent dangerous offender under  
2 ORS 144.635 (or similar designations in other jurisdictions).
- 3 (3) The SI has an outstanding warrant for any permanent review crime in any jurisdiction.
- 4 (4) The SI has a deferred sentence, conditional discharge, or is participating in a diversion program  
5 for a permanent review crime in any jurisdiction.
- 6 (5) The SI is currently on probation, parole, or post-prison supervision for a potentially disqualifying  
7 crime in any jurisdiction.
- 8 (6) The SI has been found in violation of post-prison supervision, parole, or probation for a  
9 potentially disqualifying crime or condition in any jurisdiction within five years from the date of  
10 the final fitness determination.
- 11 (7) The SI has an unresolved arrest, charge, or a pending indictment for a permanent review crime  
12 in any jurisdiction.
- 13 (8) The SI has been arrested in any jurisdiction as a fugitive from another state or a fugitive from  
14 justice for a permanent review crime that results in a potentially disqualifying conviction or  
15 condition.
- 16 (9) The SI has an adjudication in a juvenile court in any jurisdiction, finding that the SI was  
17 responsible for a permanent review crime that would result in a conviction if committed by an  
18 adult. Subsequent adverse rulings from a juvenile court, such as probation violations, are also  
19 potentially disqualifying if within five years from the date of the final fitness determination.
- 20 (10) The SI has a finding of “guilty except for insanity,” “guilty except by reason of insanity,” “not  
21 guilty by reason of insanity,” “responsible except for insanity,” “not responsible by reason of  
22 mental disease or defect,” or similarly worded disposition in any jurisdiction regarding a  
23 permanent review crime, unless the local statutes indicate that such an outcome is considered  
24 an acquittal.
- 25 (11) The SI has potentially disqualifying abuse as determined from abuse investigation reports which  
26 have an outcome of founded or substantiated, and in which the SI is determined to have been  
27 responsible for the abuse. For the following SIs, potentially disqualifying abuse includes:
- 28 (a) For an SI subject to ~~45 USC 9858f (Criminal background checks) under the Child Care and~~  
29 ~~Development Block Grant;~~ 42 USC 671(a)(20) under the State Plan for Foster Care and  
30 Adoption Assistance (the Adam Walsh Act of 2006) or who is an employee of a QE  
31 subject to Section 471(a)(20)(D) of the federal 2018 Family First Prevention Services Act  
32 and which receives title IV-E funds:
- 33 (A) Child protective services history held or received by the Department or OTIS  
34 regardless of the date of the initial report;
- 35 (B) Child protective services history from any state or jurisdiction reviewed pursuant  
36 to the federal requirements and determined by BCU to be potentially  
37 disqualifying; and

- 1 (C) Adult protective services investigations of neglect, physical abuse, sexual abuse,  
2 or financial exploitation initiated on or after January 1, 2010, as provided to BCU  
3 by OTIS and APD programs based on severity.
- 4 (b) For an SI on the background check registry maintained under OAR 407-007-0600 to 407-  
5 007-0640; licensed, certified, or otherwise regulated by the Department; associated  
6 with any QE licensed, certified, or otherwise regulated by the Department (any QE  
7 licensed, certified, or regulated only with the Authority and not the Department are not  
8 included):
- 9 (A) Child protective services history held or received by the Department or OTIS  
10 regardless of the date of the initial report; and
- 11 (B) Adult protective services investigations of neglect, physical abuse, sexual abuse,  
12 or financial exploitation initiated on or after January 1, 2010, as provided to BCU  
13 by the OTIS and APD programs based on severity.
- 14 (c) For any other SI with direct contact with children:
- 15 (A) Child protective services history held or received by the Department or OTIS  
16 regardless of the date of the initial report; and
- 17 (B) Adult protective services investigations of neglect, physical abuse, sexual abuse,  
18 or financial exploitation initiated on or after January 1, 2010, as provided to BCU  
19 by the OTIS and APD programs based on severity.
- 20 (d) For all other SIs, adult protective services investigations of neglect, physical abuse,  
21 sexual abuse, or financial exploitation initiated on or after January 1, 2010, as provided  
22 to the BCU by OTIS and APD programs based on severity.
- 23 (12) For an SI who is a proctor foster parent, the SI has any restraining order or protective order  
24 against the SI.
- 25 (13) For an SI who is SI who is a proctor foster parent, the SI makes a false statement to the QE or  
26 Department, including the provision of materially false information, regarding abuse,  
27 restraining orders, or protective orders; or failure to disclose information regarding abuse,  
28 restraining orders, or protective orders. Nondisclosure of unsubstantiated or inconclusive abuse  
29 or dismissed restraining orders or protective orders, may not be considered a false statement.

30 **Statutory/Other Authority:** ORS 181A.200, 409.027 & 409.050

31 **Statutes/Other Implemented:** ORS 181A.195, 181A.200, 409.010, 409.027, 418.248. 443.004,  
32  
33  
34

**407-007-0300 Weighing Test (Permanent 12/17/2021)**

If an SI has potentially disqualifying convictions under OAR 407-007-0281, or potentially disqualifying conditions under OAR 407-007-0290, BCU conducts a weighing test. The weighing test includes consideration of factors pursuant to ORS 181A.195 and the following if available to the BCU at the time of the weighing test.

- (1) Circumstances regarding the nature of potentially disqualifying convictions and conditions including but not limited to:
  - (a) The details of incidents leading to the potentially disqualifying convictions or conditions.
  - (b) Age, maturity and mental capacity of the SI at time of the potentially disqualifying convictions or conditions.
  - (c) Facts that support the potentially disqualifying convictions or conditions.
  - (d) Passage of time since commission of the potentially disqualifying convictions or conditions.
  - (e) Consideration of state or federal laws, regulations, or rules covering the position, facility, employer, or QE regarding the potentially disqualifying convictions or conditions.
  - (f) Consideration of state or federal laws, regulations, or rules that impact what is considered potentially disqualifying. For example:
    - (A) Effective February 1, 2021, most possession crimes in Oregon were reduced to violations, making them no longer potentially disqualifying.
    - (B) The Department may give less weight to a potentially disqualifying conviction or condition which is only potentially disqualifying because it was a crime at the time it occurred but at the time of the weighing test is no longer considered a crime nor is associated with any potentially disqualifying conviction or condition.
    - (C) The consideration given potentially disqualifying convictions or conditions impacted by federal laws, regulations, or rules is determined by the number of these potentially disqualifying convictions or conditions and evaluation of relevant factors in sections (1), (2) and (3) of this rule.
- (2) If applicable, circumstances regarding the nature of potentially disqualifying abuse including but not limited to:
  - (a) The nature and type of abuse; and
  - (b) Other information gathered during the scope of the abuse investigation.
  - (c) The date of the abuse incident and abuse investigation.
  - (d) The quality of the abuse investigation including, if applicable, any exhibits and related documents with consideration taken into account regarding completeness, objectivity, and sufficiency.
  - (e) Due process or lack thereof provided to the SI after the abuse investigation.

- 1 (f) Required conditions and actions resulting from the founded or substantiated abuse that  
2 would allow for reinstatement of the SI in the position including but not limited to  
3 training, counseling, corrective or disciplinary action, and the SI's compliance.
- 4 (3) Other factors when available including but not limited to:
- 5 (a) Periods of incarceration, including rehabilitation or other impacts on SI.
- 6 (b) Status of and compliance with parole, post-prison supervision, or probation regarding  
7 potentially disqualifying convictions or conditions.
- 8 (c) Evidence of alcohol or drug issues directly related to potentially disqualifying convictions  
9 or conditions.
- 10 (d) Evidence of other treatment or rehabilitation related to potentially disqualifying  
11 convictions or conditions.
- 12 (e) Likelihood of repetition of behaviors leading to potentially disqualifying convictions or  
13 conditions.
- 14 (f) Other information related to criminal activity including charges, arrests, pending  
15 indictments, and convictions. Other behavior involving contact with law enforcement  
16 may also be reviewed if information is relevant to other criminal records or shows a  
17 pattern relevant to criminal history. Consideration of these activities and behaviors are  
18 only allowed for SIs listed in OAR 407-007-0281(1).
- 19 (g) Changes in circumstances subsequent to the potentially disqualifying convictions or  
20 conditions including but not limited to:
- 21 (A) History of high school, college, or other education related accomplishments.
- 22 (B) Work history (employee or volunteer).
- 23 (C) History regarding licensure, certification, or training for licensure or certification.
- 24 (D) Written recommendations from current or past employers, including  
25 Department client employers.
- 26 (h) Indication of the SI's cooperation, honesty during the background check process,  
27 including:
- 28 (A) Acknowledgment and acceptance of responsibility of potentially disqualifying  
29 convictions and conditions; or
- 30 (B) Providing false, incomplete or misleading information regarding potentially  
31 disqualifying convictions and conditions, or any subsequent circumstances.
- 32 (4) BCU must consider the relevancy of the SI's potentially disqualifying convictions or conditions  
33 to the paid or volunteer position, or to the environment in which the SI will reside, work, or  
34 visit.

35 **Statutory/Other Authority:** ORS 181A.200, 409.027, 409.050, 443.004, & 443.008

36 **Statutes/Other Implemented:** ORS 181A.195, 181A.200, 409.010, 409.027 & 443.004

**407-007-0315 Hired on a Preliminary Basis (Permanent 12/17/2021)**

- (1) A preliminary fitness determination is required to determine if an SI may participate in training or orientation, work, volunteer, or otherwise perform in the position listed on the background check request prior to a final fitness determination. An SI may not be hired on a preliminary basis prior to the completion of a preliminary fitness determination.
- (2) An SI may be hired on a preliminary basis only:
  - (a) During the period of time prior to a final fitness determination;
  - (b) For the position listed on the background check request; and
  - (c) If not prohibited by section (4) of this rule.
- (3) To be hired on a preliminary basis, an SI and QED must provide minimum information required for a background check request as indicated in OAR 407-007-0250(1) and 407-007-0250(6).
- (4) The QE may not hire a SI on a preliminary basis under any of the following circumstances:
  - (a) Program rules, Oregon statutes, or federal directives do not allow hiring on a preliminary basis.
  - (b) Once submitted in ORCHARDS, the background check record indicates that preliminary hire is not allowed and the QE does not subsequently request a review by BCU as indicated in section (5) of this rule resulting in the QE being allowed to hire the SI on a preliminary basis.
  - (c) The QE or BCU determines that:
    - (A) More likely than not, the SI poses a potential threat to vulnerable individuals, based on a preliminary fitness determination and weighing test;
    - (B) The SI's most recent background check under these rules or other Department or Authority criminal records check rules or abuse check rules resulted in a denial; or
    - (C) The SI is currently involved in contesting a background check under these or other Department or Authority criminal records check rules or abuse check rules; or
    - (D) BCU has reason to believe hiring on a preliminary basis is not appropriate based on circumstances or compliance with the background check process of the SI, QED, or QE.
  - (d) An outcome of not hiring on a preliminary basis may only be overturned by the BCU.
- (5) If requested by the QED, BCU may review a newly submitted background check request when hiring on a preliminary basis has not been allowed. For example:
  - (a) BCU may review the background check request for disclosed criminal history that caused BCU's background check online system to not allow hiring on a preliminary basis. If BCU does not find any potentially disqualifying convictions or conditions in the SI's

1 disclosures, BCU updates the SI's status accordingly. The QE may hire the SI on a  
2 preliminary basis if nothing in section (4) of this rule applies.

3 (b) If the SI has disclosed potentially disqualifying convictions or conditions, BCU may  
4 conduct a preliminary fitness determination pursuant to OAR 125-007-0250 with a  
5 weighing test. If BCU makes a positive decision in the preliminary fitness determination,  
6 BCU updates the SI's status accordingly and the QE may hire the SI on a preliminary  
7 basis if nothing in section (4) of this rule applies. If BCU makes a negative decision, BCU  
8 must revoke hiring of the SI on a preliminary basis.

9 (6) An SI hired on a preliminary basis must be actively supervised at all times unless sections (7) or  
10 (8) of this rule apply.

11 (a) The individual providing active supervision at all times must do the following:

12 (A) Be in the same building as the SI or, if outdoors of QE buildings or any location  
13 off the QE property, be within line-of-sight and -of-hearing, except as provided in  
14 section (6)(b)(B) of this rule;

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

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

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

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

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

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

32 (ii) A child client's parent or guardian is responsible for providing active  
33 supervision in the case of child care providers. The supervision is not  
34 required to be performed by someone in the same building as the child.  
35



- 1 (7) An SI allowed to work on a preliminary basis is exempt from active supervision if SI is working  
2 under an approved background check and is currently going through a recheck required by  
3 program rules or OAR 407-007-0600 to 407-007-0640 unless there is evidence of potentially  
4 disqualifying convictions or conditions since the previous background check. If BCU finds  
5 evidence of criminal activity or potentially disqualifying abuse since the previous background  
6 check, BCU may revoke working on a preliminary basis.
- 7 (8) An SI approved without restrictions within the previous 24 months through a documented  
8 criminal records check or abuse check pursuant to these rules or prior Department or Authority  
9 criminal records check rules or abuse check rules may be hired on a preliminary basis without  
10 active supervision. Twenty-four months is calculated from date of previous approval to the date  
11 of hire in the new position. Exemption from active supervision is not allowed in any of the  
12 following situations:
- 13 (a) If the SI cannot provide documented proof that he or she worked continuously under  
14 the previous approval for at least one year.
- 15 (b) If there is evidence of potentially disqualifying convictions or conditions within the  
16 previous 24 months.
- 17 (c) If, as determined by the QE or BCU, the job duties in the new position are so  
18 substantially different from the previous position that the previous fitness  
19 determination is inadequate for the current position.
- 20 (9) Revocation of hired on a preliminary basis is not subject to hearing or appeal. The QE or BCU  
21 may immediately revoke hired on a preliminary basis for either of the following reasons:
- 22 (a) There is any indication of falsification of the background check application.
- 23 (b) The QE or BCU determines that allowing the SI to be hired on a preliminary basis is not  
24 appropriate, based on the application, criminal record, position duties, preliminary  
25 fitness determination by the Department, or Department program rules.
- 26 (10) Nothing in this rule is intended to require that an SI who is eligible to be hired on a preliminary  
27 basis be allowed to work, volunteer, be employed, or otherwise perform in the position listed  
28 on the background check request prior to a final fitness determination.
- 29 (11) Preliminary fitness determinations must be documented in writing, including any details  
30 regarding a weighing test, if required.

31 **Statutory/Other Authority:** ORS 181A.200, 409.027 & 409.050

32 **Statutes/Other Implemented:** ORS 181A.195, 181A.200, 409.010, 409.027 & 443.004

33  
34  
35 **407-007-0318 Approval for “Family First” Subject Individuals (Permanent**  
36 **12/17/2021)**

- 37 (1) Approval in this rule applies to the background check process for certain employees of a child  
38 caring agency which is subject to the federal 2018 Family First Prevention Services Act and  
39 receives title IV-E funds. Specifically, this rule applies to an SI who:

- 1 (a) Is an employee of a child caring agency licensed by ODHS Child Welfare, OAR 413-215-  
2 0001 to 413-215-1031;
- 3 (b) Resided outside of Oregon for 60 or more consecutive days during the previous five  
4 years requiring a check of child abuse and neglect registries from states other than  
5 Oregon.
- 6 (2) An SI is eligible for an Approval if all the following conditions are met:
  - 7 (a) The QED has submitted the background check to BCU.
  - 8 (b) The SI has submitted fingerprint capture and the fingerprint criminal records check has  
9 been completed and the results have been returned to BCU;
  - 10 (c) Requested documentation required for the out of state child abuse check has been  
11 completed by the SI and BCU, and BCU has submitted the documentation to the state  
12 for the abuse check; and
  - 13 (d) Based on all the information currently available to BCU on the SI's Oregon and national  
14 criminal records check and Oregon adult and child abuse checks, the final fitness  
15 determination appears to be "approved" in accordance with OAR 407-007-0320.
- 16 (3) Should BCU at any time after an Approval receive a negative finding response from a request to  
17 another state made in section (2) of this rule, BCU must either:
  - 18 (a) Rescind the Approval and continue with the background check process which may  
19 include gathering further information and conducting a weighing test pursuant to OAR  
20 407-007-0300.
  - 21 (b) Notify the QE that a new background check is required.

22 **Statutory/Other Authority:** ORS 181A.200, 409.027 & 409.050

23 **Statutes/Other Implemented:** ORS 181A.195, 181A.200, 409.010, 409.027

#### 24 25 26 **407-007-0320 Final Fitness Determinations (Permanent 2/10/2020)**

- 27 (1) A final fitness determination pursuant to OAR 125-007-0260 and these rules will be made after  
28 all necessary background checks have been received and a weighing test, if necessary, has been  
29 completed. For the purpose of a final fitness determination as defined in OAR 407-007-  
30 0010(18), an authorized designee includes:
  - 31 (a) A BCU staff trained to make a final fitness determination;
  - 32 (b) A BCU hearing representative if a fitness determination is contested under OAR 407-  
33 007-0330 or 943-007-0501; or
  - 34 (c) An administrative law judge if a contested fitness determination results under a  
35 contested case hearing through the Office of Administrative Hearings.
- 36 (2) The final fitness determination results in one of the following outcomes:
  - 37 (a) The authorized designee may approve an SI if:

- 1 (A) The SI has no potentially disqualifying convictions or potentially disqualifying  
2 conditions; or
- 3 (B) The SI has potentially disqualifying convictions or potentially disqualifying  
4 conditions and, after a weighing test, the authorized designee determines that  
5 more likely than not, the SI poses no risk to the physical, emotional, or financial  
6 well-being of vulnerable individuals.
- 7 (b) The authorized designee may approve an SI with restrictions if the SI has potentially  
8 disqualifying convictions or potentially disqualifying conditions and, after a weighing  
9 test, the authorized designee determines that more likely than not the SI poses no risk  
10 to the physical, emotional, or financial well-being of vulnerable individuals if certain  
11 restrictions are placed on the SI. Restrictions may include but are not limited to  
12 restrictions to one or more specific clients, job duties, or environments. A new  
13 background check and fitness determination shall be completed on the SI before  
14 removing a restriction.
- 15 (c) The authorized designee shall deny an SI if the SI has potentially disqualifying  
16 convictions or potentially disqualifying conditions and, after a weighing test, the  
17 authorized designee determines more likely than not the SI poses a risk to the physical,  
18 emotional, or financial well-being of vulnerable individuals.
- 19 (d) In the following situations the SI shall have no hearing rights and the authorized  
20 designee shall consider a background check to have an outcome of incomplete fitness  
21 determination:
- 22 (A) The QE or SI discontinues the application or fails to cooperate with the  
23 background check or fitness determination process, including but not limited to  
24 failure to disclose all requested criminal, abuse or other information, refusal to  
25 be fingerprinted or failing to respond in a timely manner to written  
26 correspondence from BCU. The background check request is considered closed.
- 27 (B) BCU determines that the SI is ineligible due to ORS 443.004 in accordance with  
28 OAR 407-007-0275 or 407-007-0277. The background check request is  
29 considered completed.
- 30 (C) BCU or the QE withdraws or closes the background check request before a final  
31 fitness determination for any reason. The background check request is  
32 considered closed.
- 33 (D) The SI withdraws the application, leaves the position prior to completion of the  
34 background check, or the Department cannot locate or contact the SI. The  
35 background check request is considered closed.
- 36 (E) The QE determines that the SI ineligible for the position for reasons other than  
37 the background check. The background check request is considered closed.
- 38 (F) The SI who is a proctor foster parent and fails to provide a release of  
39 information, the background check request is considered closed.

(G) The authorized designee determines that the final fitness determination is Mandatory exclusion due to the SI being subject to OAR 407-007-0279 and having a conviction or condition listed in OAR 407-007-0279. The background check request is considered completed. The SI has hearing rights only if the determination of mandatory exclusion is made pursuant to OAR 407-007-0279(3)(c) or 407-007-0279(3)(d).

~~(H) The SI is a child care provider SI and BCU makes a finding of failed in accordance with OAR 461-165-0180. The background check request is considered completed.~~

- (3) Upon completion of a final fitness determination, BCU or the QE shall provide notice to the SI.
- (a) If approved, BCU shall provide notice to the QE through CRIMSORCHARDS. The QE shall provide the SI a copy of the ~~notice or CRIMSORCHARDS~~ documentation.
  - (b) If denied or approved with restrictions, BCU shall issue a notice of fitness determination to the SI which includes the potentially disqualifying convictions or conditions that the outcome was based upon, information regarding appeal rights, and the notice becoming a final order in the event of a withdrawal or failure to appear at the hearing.

(c) The effective date of action shall be recorded on the ~~notice or CRIMSORCHARDS~~ documentation.

- (4) BCU shall provide the QED notification of the final fitness determination when the SI is being denied or approved with restrictions.

- (a) The notice to the QED shall not contain any details regarding the potentially disqualifying convictions or conditions.
- (b) If the final fitness determination is approved with restrictions, BCU shall inform the QED of the restrictions required on the SI and the SI's position.

~~(5) BCU shall provide the child care provider notification of the final fitness determination when an SI associated with the child care provider is being denied. If the child care provider has denied associated SIs and has not also been denied or mandatorily excluded, BCU shall fail the child care provider in accordance with OAR 461-165-0180.~~

~~(6) BCU shall provide the child care provider notification of the final decision when an SI associated with the child care provider has a determination of mandatory exclusion. If the child care provider has mandatorily excluded associated SIs and has not also been denied or mandatorily excluded, BCU shall fail the child care provider in accordance with OAR 461-165-0180.~~

- (7) When an SI is denied or the background check results in an incomplete fitness determination, the SI shall not be allowed to work, volunteer, be employed, or otherwise perform in the position listed on the background check request. A denial applies only to the position and application in question. A denial or incomplete fitness determination shall result in immediate termination, dismissal, or removal of the SI.

- 1 (~~86~~) When an SI is approved with restrictions, the SI shall only be allowed to work, volunteer, be  
2 employed, or otherwise perform in the position listed on the background check request and  
3 only under the stated restrictions. A restricted approval applies only to the position and  
4 application in question. A restricted approval shall result in immediate implementation of the  
5 restrictions.
- 6 (~~97~~) BCU shall maintain any documents obtained or created during the background check process.
- 7 (~~108~~) BCU shall make new fitness determinations for each background check request. The outcome of  
8 previous fitness determinations does not set a precedent for subsequent fitness  
9 determinations.

10 **Statutory/Other Authority:** ORS 181A.200, 409.027 & 409.050

11 **Statutes/Other Implemented:** ORS 181A.195, 181A.200, 409.010, 409.027, 443.004, & 418.248

12  
13  
14 **407-007-0330 Contesting a Fitness Determination (Permanent 12/17/2021)**

- 15 (1) An SI may contest an adverse fitness determination pursuant to OAR 407-007-0320. In this  
16 rule, an adverse fitness determination includes:
- 17 (a) A final fitness determination of denied or approved with restrictions pursuant to OAR  
18 407-007-0320; or
- 19 (b) A mandatory exclusion pursuant to federal law and OAR 407-007-0279 if hearing rights  
20 are allowed by federal law.
- 21 (2) The appeal process is conducted in accordance with OAR 125-007-0300, ORS 183.411 to  
22 183.497, and the Attorney General’s Uniform and Model Rules of Procedure for the Office of  
23 Administrative Hearings (OAH), OAR 137-003-0501 to 137-003-0700.
- 24 (3) During the appeal process, the final fitness determination remains in effect.
- 25 (a) If an SI is denied or mandatorily excluded, the SI may not hold the position, provide  
26 services or be employed, licensed, certified, or registered, or otherwise perform in  
27 positions covered by these rules.
- 28 (b) If an SI has an approval with restrictions, the SI may only work under the terms of the  
29 restriction listed on the notice of final fitness determination.
- 30 (4) A positive change does not guarantee employment or placement. A positive change is either:
- 31 (a) A denial changing to an approval or an approval with restrictions; or  
32 (b) An approval with restrictions changing to an approval.
- 33 (5) An SI may represent himself or herself or have legal representation during the appeal process.  
34 For the purpose of this rule, the term “SI” includes the SI’s legal representative if the SI has  
35 provided the Department with such information.

- 1 (a) An SI who is appealing an adverse outcome regarding the position of homecare worker  
2 as defined in ORS 410.600 or personal support worker as defined in ORS 410.600 may be  
3 represented by a labor union representative pursuant to ORS 183.459.
- 4 (b) If the SI is a member of a bargaining unit, the SI may be represented by the certified or  
5 recognized exclusive representative of the bargaining unit.
- 6 (c) For all other SIs, the SI's legal representative may be an Oregon licensed attorney.
- 7 (6) A hearing representative may represent BCU in contested case hearings. Alternatively, BCU may  
8 be represented by the Office of the Attorney General.
- 9 (7) Any contested case hearing request must be received by the Department by 11:59 p.m. on the  
10 due date, or if mailed, postmarked by 11:59 p.m. on the due date.
  - 11 (a) To request a contested case hearing, the SI must complete, sign and date the Hearing  
12 Request form.
  - 13 (b) The completed, signed, and dated form must be received by the Department on or  
14 before the due date. The due date is 30 calendar days after the effective date of action  
15 on the notice of fitness determination.
  - 16 (c) If a contested case hearing request is not timely, BCU must determine, based on a  
17 written statement from the SI and available information, if there is good cause to  
18 proceed with the appeal process.
  - 19 (d) BCU may refer an untimely request to OAH for a contested case hearing solely on the  
20 issue of the timeliness of the contested case hearing request.
- 21 (8) After BCU receives the SI's request for a contested case hearing, BCU may conduct an  
22 administrative review before referring the appeal to OAH.
  - 23 (a) The administrative review is not open to the public.
  - 24 (b) The SI must participate in the administrative review.
  - 25 (c) In addition to any other method of communication, the Department must provide the SI  
26 with written correspondence that initiates the administrative review process  
27 ("Correspondence").
  - 28 (d) The Correspondence must include a due date for the SI. Any response to the  
29 Department's Correspondence must be received by the Department by 11:59 p.m. on  
30 the due date, or if mailed, postmarked by 11:59 p.m. on the due date.
  - 31 (e) Participation by the SI may include but is not limited to providing additional information  
32 or additional documents requested on or before the due date specified in the  
33 Department's Correspondence.
  - 34 (f) For the purposes of this rule, failure to participate in the administrative review means  
35 that the SI does not respond in any way to the Department's Correspondence by the  
36 specified due date. Failure to participate in the administrative review process results in  
37 a dismissal order pursuant to paragraph (11)(b)(C) of this rule.

- 1 (g) The outcome of an administrative review is a new fitness determination.
- 2 (A) If the hearing representative makes a positive change to approved, BCU issues a
- 3 final order and an amended notice to the SI and the QE.
- 4 (B) If the hearing representative makes a positive change from denial to approval
- 5 with restrictions, BCU issues an amended notice to the SI and the QE. If the SI
- 6 does not continue with to a contested case hearing, BCU issues a final order as
- 7 an amended notice of fitness determination to the SI and the QE.
- 8 (C) If the hearing representative maintains the outcome of the final fitness
- 9 determination, or changes an approval with restrictions to a denial, BCU refers
- 10 the contested case hearing request to OAH.
- 11 (9) The SI may not challenge a finding of substantiated abuse or criminal conviction that was a
- 12 basis for the adverse outcome under this rule. The SI has the right to contest the weight the
- 13 Department has given to:
- 14 (a) The evidence;
- 15 (b) The factors used in the weighing test; or
- 16 (c) Any other information used in making the fitness determination.
- 17 (10) BCU may conduct additional research, including abuse checks or criminal records checks (if
- 18 allowed by law) during the appeal process to update or verify the SI's potentially disqualifying
- 19 convictions or conditions and factors to consider in the weighing test. If needed, BCU amends
- 20 the notice of fitness determination while still maintaining the original hearing rights and
- 21 deadlines.
- 22 (11) An administrative law judge from OAH conducts the contested case hearing.
- 23 (a) The contested case hearing is not open to the public.
- 24 (b) The Department must provide the administrative law judge and the SI a complete copy
- 25 of available information used during the criminal records checks and fitness
- 26 determinations. The SI is entitled to reasonable notice of all hearing documents through
- 27 proper service.
- 28 (c) An SI may not have access to confidential information contained in records collected or
- 29 developed during the criminal records check process without a protective order limiting
- 30 further disclosure of the information.
- 31 (A) The Department must request a protective order by motion to an administrative
- 32 law judge as provided for in OAR 137-003-0568(5) or to a court of law.

33

- 1 (B) In conjunction with a protective order issued pursuant to this section,  
2 individually identifying information relating to clients, witnesses, and other  
3 persons identified in abuse investigation reports or other records collected or  
4 developed during the criminal records check process must be redacted prior to  
5 disclosure, except for the information identifying the SI.
- 6 (d) The administrative law judge must make a new final fitness determination based on  
7 evidence and the contested case hearing record.
- 8 (e) The only remedy an administrative law judge may grant is a final fitness determination  
9 that the SI is approved, approved with restrictions, denied, or mandatorily excluded  
10 pursuant to OAR 407-007-0279(1).
- 11 (f) Under no circumstances must the Department or the QE be required to place an SI in  
12 any position, nor must the Department or the QE be required to accept services or enter  
13 into a contractual agreement with an SI.
- 14 (12) The result of an appeal is a final order.
- 15 (a) In the following situations, the notice of final fitness determination becomes the final  
16 order by default as if the SI never requested a hearing:
- 17 (A) The SI failed to request a contested case hearing in the time allotted in this rule.  
18 No other document will be issued after the notice of final fitness determination.
- 19 (B) The SI withdraws the request for contested case hearing at any time during the  
20 appeal process.
- 21 (b) The Department must issue an order dismissing the appeal (a “dismissal order”) in the  
22 following circumstances:
- 23 (A) The Department must dismiss a contested case hearing request if the  
24 administrative review results in a positive outcome. The only exception to the  
25 Department issuing a dismissal order is when the SI proceeds to contested case  
26 hearing because the administrative review changed fitness determination from  
27 denial to approval with restrictions.
- 28 (B) The SI may withdraw a hearing request verbally or in writing at any time before  
29 the issuance of a final order. A dismissal order due to the withdrawal is effective  
30 the date the withdrawal is received by the Department or OAH. The SI may  
31 cancel the withdrawal in writing within 14 calendar days after the date of  
32 withdrawal.
- 33 (C) The Department must dismiss a hearing request when the SI fails to participate  
34 in the administrative review. Failure to participate as defined in (8)(f) of this rule  
35 shall result in termination of hearing rights through a dismissal order.
- 36 (i) The dismissal order is effective on the date the Department mails the  
37 dismissal order.



- (ii) The Department must review a good cause request from the SI to reinstate hearing rights if received in writing by the Department within 14 calendar days from the date of the dismissal order.
- (c) After a contested case hearing, the administrative law judge must issue a proposed and final order.
  - (A) If no written exceptions are received by the Department within 14 calendar days after the service of the proposed and final order, the proposed and final order becomes the final order.
  - (B) If timely written exceptions to the proposed and final order are received by the Department, the Department's Director or designee must consider the exceptions and serve a final order, or request a written response or a revised proposed and final order from the administrative law judge.
- (13) Final orders, including dismissal and default orders, are subject to reconsideration or rehearing petitions within 60 calendar days after the order is served, pursuant to OAR 137-003-0675.
- (14) All final orders are subject to judicial review under ORS 183.482 in the Court of Appeals.
- (15) BCU may provide the QED with the results of the appeal.

**Statutory/Other Authority:** ORS 181A.200, 183.459, 409.027, 409.050; 443.008

**Statutes/Other Implemented:** ORS 181A.200, 183.459, 409.027, ORS 181A.195, 409.010, 443.004; & 443.008

#### **407-007-0340 Record Keeping, Confidentiality (Permanent 2/10/2020)**

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

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

19 **Statutory/Other Authority:** ORS 181.516, 181.537, 409.027 & 409.050

20 **Statutes/Other Implemented:** ORS 181.516, 181.534, 181.537, 409.010, 409.027 & 443.004

### 23 **407-007-0350 Immunity from Liability (Permanent 6/15/2016)**

- 24 (1) The Department, the Authority, and the QE, acting within the course and scope of employment,  
25 have immunity from any civil liability that might otherwise be incurred or imposed for  
26 determining, in accordance with ORS 181A.200, that an SI is fit or not fit to hold a position,  
27 provide services, or be employed, licensed, certified, or registered.
- 28 (2) The Department, and Authority, and the QE, acting within the course and scope of  
29 employment, and an employer or employer's agent are not liable for the failure to hire a  
30 prospective employee or the decision to discharge an employee on the basis of a fitness  
31 determination or closed case if they in good faith comply with:
  - 32 (a) ORS 181A.200 and ORS 409.027; and
  - 33 (b) The decision of the QE or employee of the QE acting within the course and scope of  
34 employment.
- 35 (3) No employee of the state, a business, or an organization, acting within the course or scope of  
36 employment, is liable for defamation, invasion of privacy, negligence, or any other civil claim in  
37 connection with the lawful dissemination of information lawfully obtained under ORS  
38 181A.200.

1 **Statutory/Other Authority:** ORS 181A.200, 409.027 & 409.050

2 **Statutes/Other Implemented:** ORS 181A.195, 181A.200, 409.010, 409.027 & 443.004

3  
4  
5 **407-007-0370 Variances (Permanent 6/15/2016)**

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

33 **Statutory/Other Authority:** ORS 181A.200 & 409.050

34 **Statutes/Other Implemented:** ORS 181A.195, 181A.200 & 409.010