CHAPTER 407
DEPARTMENT OF HUMAN SERVICES

DIVISION 7
CRIMINAL RECORDS AND ABUSE CHECK RULES

Criminal Records Checks and Abuse Checks on Providers

Effective 8/1/2015

Table of Contents

407-007-0200 Purpose and Scope 1

407-007-0210 Definitions 1

407-007-0220 Background Check Required 11

407-007-0230 Qualified Entities 14

407-007-0240 QE Designees and QE Initiators 15

407-007-0250 Background Check Process 19

407-007-0275 Convictions Under ORS 443.004 Resulting in Ineligibility for Aging and People with Disabilities Program and Developmental Disabilities Program SIs 24

407-007-0277 Convictions Under ORS 443.004 Resulting in Ineligibility for Mental Health or Alcohol and Drug Program SIs 26

407-007-0280 Potentially Disqualifying Convictions 26

407-007-0290 Other Potentially Disqualifying Conditions *(Effective 2/3/2015)* 45

407-007-0300 Weighing Test 48

407-007-0315 Hired on a Preliminary Basis 51

407-007-0320 Final Fitness Determinations 55

407-007-0325 Closed Case 57

407-007-0330 Contesting a Fitness Determination 58

407-007-0335 Decision and Hearing Rights for Potentially Disqualifying Abuse 62

407-007-0340 Record Keeping, Confidentiality 66

407-007-0350 Immunity from Liability 67

407-007-0370 Variances 68

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407-007-0200 Purpose and Scope

(1) The purpose of these rules, OAR 407-007-0200 to 407-007-0370, is to provide for the reasonable screening under ORS 181.534, 181.537, and 409.027 of subject individuals (SIs) to determine if they have a history of criminal or abusive behavior 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 criminal records and potentially disqualifying 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 or 407-007-0400 to 407-007-0460.

(3) Providers for the Department of Human Services (Department) and the Oregon Health Authority (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.

Stat. Auth.: ORS 181.534, 181.537, 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

Stats. Implemented: ORS 181.534, 181.537, 183.459, 409.010, 409.025, 409.027, 411.060, 411.122 & 443.004

407-007-0210 Definitions

As used in OAR 407-007-0200 to 407-007-0370 the following definitions apply:

(1) "Abuse" has the meaning given in the administrative rules 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 a history as a perpetrator of potentially disqualifying abuse (a potentially disqualifying condition) as described in OAR 407-007-0290(11).

(3) "Abuse investigation report" means a written report completed after an investigation into suspected abuse and retained by the Department or the Authority pursuant to ORS 124.085, 419B.030, or 430.757, or a similar report filed in another state agency or by another state.

(4) "Appointing authority" means an individual designated by the qualified entity (QE) who is responsible for appointing QE designees (QEDs). Examples include but are not limited to human resources staff with the authority to offer and terminate employment, a business owner, a member of the board of directors, a director, or a program administrator.

(5) "Approved" means that an SI, following a final fitness determination, is fit to work, volunteer, be employed, or otherwise perform in the position listed in the background check request.

(6) "Approved with restrictions" means an approval in which some restriction is made including but not limited to an SI, an SI's environment, the type or number of clients for whom an SI may provide care, or the information to which an SI has access.

(7) "Authority" means the Oregon Health Authority.

(8) "Background check" means a criminal records check and an abuse check under these rules.

(9) "Background Check Unit (BCU)" means the Background Check Unit conducting background checks for the Department and the Authority.

(10) "Care" means the provision of care, treatment, education, training, instruction, supervision, placement services, recreation, or support to children, the elderly, or individuals with disabilities (see ORS 181.537).

(11) "Client" means any individual who receives services, care, or funding for care through the Department, Authority, or qualified entities.

(12) "Closed case" means a background check request that has been closed without a final fitness determination.

(13) "Criminal records check" means obtaining and reviewing criminal records as required by these rules and includes any or all of the following:

(a) An Oregon criminal records check where criminal offender information is obtained from the Oregon State Police (OSP) using the Law Enforcement Data System (LEDS). The Oregon criminal records check may also include a review of other criminal records information.

(b) A national criminal records check where records are obtained from the Federal Bureau of Investigation (FBI) through the use of fingerprint capture sent to OSP and other identifying information. The national criminal records check may also include a review of other criminal records information.

(c) A state-specific criminal records check where records are obtained from law enforcement agencies, courts, or other criminal records information resources located in, or regarding, a state or jurisdiction outside Oregon.

(14) "Criminal Information Management System (CRIMS)" means the electronic records system used to process and maintain background check records under these rules.

(15) "Criminal offender information" means records, including fingerprints and photographs, received, compiled, and disseminated by OSP for purposes of identifying criminal offenders and alleged offenders and maintained as part of an individual's records of arrest, the nature and disposition of criminal charges, sentencing, confinement, and release, but does not include the retention by OSP of records of transfer of inmates between penal institutions or other correctional facilities. It also includes the OSP Computerized Criminal History System (see OAR 257-010-0015).

(16) "Denied" means that an SI, following a fitness determination including a weighing test, is not fit to work, volunteer, be employed, reside, or otherwise hold the position listed on the background check request.

(17) "Department" means the Oregon Department of Human Services.

(18) "Fingerprint capture" means the taking of an SI's fingerprints for a national criminal records check in a manner that meets current Oregon statutes and OSP's capacity for receiving fingerprints.

(19) "Fitness determination" means the decision in a case that is not closed and includes:

(a) The decision regarding a background check request and preliminary review (a preliminary fitness determination); or

(b) The decision regarding a background check request, completed background check, including gathering other information as necessary, and a final review by BCU (a final fitness determination).

(20) "Founded or substantiated" has the meaning given in the Department or Authority's administrative rules corresponding to the setting in which the abuse was alleged or investigated.

(21) "Good cause" means a valid and sufficient reason for not complying with established time frames during the background check process or contested case hearing process that includes but is not limited to an explanation of circumstances beyond a SI's reasonable control.

(22) "Hearing representative" means a Department employee representing the Department in a contested case hearing.

(23) "Hired on a preliminary basis" means a condition in which a QE allows an SI to work, volunteer, be trained, or reside in an environment following the submission of a background check request. Hired on a preliminary basis may also be called probationary status.

(24) "Ineligible due to ORS 443.004" means BCU has determined that an SI, subject to ORS 443.004 and either OAR 407-007-0275 or 407-007-0277, has one or more convictions that prohibits the SI from holding the position listed in the background check request.

(25) "Office of Adult Abuse Prevention and Investigations (OAAPI)" means the Office of Adult Abuse Prevention and Investigations, formerly the Office of Investigation and Training, a shared service of the Department and Authority.

(26) "Other criminal records information" means information obtained and used in the criminal records check process that is not criminal offender information from OSP. Other criminal records information includes but is not limited to police investigations and records, information from local or regional criminal records information systems, justice records, court records, information from the Oregon Judicial Information Network, sexual offender registration records, warrants, Oregon Department of Corrections records, Oregon Department of Transportation's Driver and Motor Vehicle Services Division information, information provided on the background check requests, disclosures by a SI, and any other information from any jurisdiction obtained by or provided to the Department for the purpose of conducting a fitness determination.

(27) "Position" means the position listed in the background check request which determines whether the individual is a SI under these rules, Department program rules, or Authority program rules.

(28) "Qualified entity (QE)" means a community mental health or developmental disability program, local health department, or an individual, business, or organization, whether public, private, for-profit, nonprofit, or voluntary, that provides care, including a business or organization that licenses, certifies, or registers others to provide care (see ORS 181.537).

(29) "QE designee (QED)" means an individual appointed by the QE's appointing authority to handle background checks on behalf of the QE.

(30) "QE Initiator (QEI)" means an approved SI who BCU has granted access to CRIMS for one QE for the purpose of entering background check request data.

(31) "Subject individual (SI)" means an individual on whom BCU conducts a criminal records check and an abuse check, and from whom BCU may require fingerprints for the purpose of conducting a national criminal records check.

(a) An SI includes any of the following:

(A) An individual who is licensed, certified, registered, or otherwise regulated or authorized for payment by the Department or Authority and who provides care.

(B) An employee, contractor, temporary worker, or volunteer who provides care or has access to clients, client information, or client funds within or on behalf of any entity or agency licensed, certified, registered, or otherwise regulated by the Department or Authority.

(C) Any individual who is paid directly or indirectly with public funds who has or will have contact with recipients of:

(i) Services within an adult foster home (defined in ORS 443.705); or

(ii) Services within a residential facility (defined in ORS 443.400).

(D) Any individual who works in a facility and provides care or has access to clients, client information, or client funds secured by any residential care or assisted living facility through the services of a personnel services or staffing agency.

(E) Any individual who works in a facility and provides care, or has access to clients, client information, or client funds secured by any nursing facility through the services of a personnel services or staffing agency.

(F) Except as excluded in section (31)(b)(C) and (D) of this rule, an individual who lives in a facility that is licensed, certified, registered, or otherwise regulated by the Department to provide care. The position of this SI includes but is not limited to resident manager, household member, or boarder.

(G) An individual working or volunteering for a private licensed child caring agency; an In-Home Safety and Reunification Services (ISRS) program, a Strengthening, Preserving and Reunifying Families (SPRF) provider, or system of care contractor providing child welfare services pursuant to ORS chapter 418.

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

(I) A child care provider and their employees reimbursed through the Department's child care program and other individuals in child care facilities that are exempt from certification or registration by the Office of Child Care of the Oregon Department of Education. This includes all individuals listed in OAR 461-165-0180(4).

(J) 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.

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

(L) 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.

(M) Except for those excluded under OAR 407-007-0210(31)(b)(B), a student or intern who provides care or has access to clients, client information, or client funds within or on behalf of a QE.

(N) Any individual serving as an owner, operator, or manager of a room and board facility pursuant to OAR chapter 411, division 68.

(O) 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 a contract with the Department's APD programs.

(P) Any individual who is required to complete a background check pursuant to Department or Authority program rules or a contract with the Department or Authority, if the requirement is within the Department or Authority's statutory authority. Specific statutory authority or reference to these rules and the positions under the contract subject to a background check must be specified in the contract. The exceptions in section (31)(b) do not apply to these SIs.

(b) An SI does not include:

(A) Any individual under 16 years of age.

(B) A student or intern in a clinical placement at a clinical training setting subject to administrative rules implemented under ORS 413.435.

(C) Department, Authority, or QE clients. The only circumstance in which BCU shall allow a check to be performed on a client pursuant to this paragraph is if the client falls within the definition of "subject individual" as listed in sections (31)(a)(A)-(E) and (31)(a)(G)-(P) of this rule, or if the facility is dually licensed for different populations of vulnerable individuals.

(D) Individuals working in child care facilities certified or registered by OED.

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

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

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

(H) Employees, contractors, students, interns, and volunteers working in hospitals, ambulatory surgical centers, outpatient renal dialysis facilities, and freestanding birthing centers, as defined in ORS 442.015, and special inpatient care facilities as defined by the Authority in administrative rule.

(I) Volunteers, who are not under the direction and control of a licensed, certified, registered, or otherwise regulated QE.

(J) Individuals employed or volunteering in a Medicare-certified health care business which is not subject to licensure or certification by the State of Oregon.

(K) Individuals working in restaurants or at public swimming pools.

(L) Hemodialysis technicians.

(M) Employees, contractors, temporary workers, or volunteers who provide care, or have access to clients, client information, or client funds of an alcohol and drug program that is certified, licensed, or approved by the Authority's Addictions and Mental Health Division to provide prevention, evaluation, or treatment services. This exclusion does not apply to programs specifically required by other Authority program rules to conduct criminal records checks in accordance with these rules.

(N) Individuals working for a transit service provider which conducts background checks pursuant to ORS 267.237.

(O) Individuals being certified by the Department as interpreters pursuant to ORS 409.623. This exclusion does not apply to Department-certified interpreters when being considered for a specific position.

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

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

(R) Individuals hired by or on behalf of a resident in a QE to provide care privately to the resident.

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

(32) "Weighing test" means a process in which BCU considers available information to make a fitness determination when an SI has potentially disqualifying convictions or conditions.

Stat. Auth.: ORS 181.537, 409.027 & 409.050

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

407-007-0220 Background Check Required

(1) BCU shall conduct criminal records checks on all SIs through LEDS maintained by OSP in accordance with ORS chapter 181 and the rules adopted thereto (see OAR chapter 257, division 15).

(2) If a national criminal records check is necessary, OSP shall provide BCU results of national criminal records checks conducted pursuant to ORS 181.534, including fingerprint identification, through the FBI.

(3) BCU shall conduct abuse checks using available abuse investigation reports and associated documents.

(4) Unless an SI meets a criterion under (7) of this rule, 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) Except as provided in section (7) of this rule, 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 long term care facility nursing assistant training program for employment at the facility, a new background check is required when the student becomes an employee at the facility. A new background check is not required by the Department or the Authority at graduation from the training program or at the granting of certification by the Board of Nursing unless the Department, the Authority, or the QE have reason to believe that a background check is justified.

(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. Examples include but are not limited to:

(A) Any indication of possible criminal or abusive behavior by an SI.

(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.

(5) 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.

(6) If QEs, Department program rules, or Authority program rules require an SI to report any new arrests, charges, or convictions, the QE may determine if personnel action is required if the SI does not report. Personnel action may include a new background check.

(7) A background check is not required under the following circumstances:

(a) A homecare worker or personal support worker, as defined in ORS 410.600, has a Department background check notice of final fitness determination dated within the recheck period according to Department program rules showing that the homecare worker or personal support worker has been approved or approved with restrictions, and listing a worksite of “various,” “various clients,” “statewide,” or similar wording.

(b) A personal care services provider, Lifespan Respite or other respite care provider, or an independent provider paid with Department or Authority funds who changes or adds clients within the same QE, Department, or Authority district, and the prior, documented criminal records check or abuse check conducted within the previous 24 months through the Department or Authority has been approved without restrictions.

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

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

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

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

Stat. Auth.: ORS 181.537, 409.027 & 409.050
Stats. Implemented: ORS 181.534, 181.537, 409.010, 409.027 & 443.004

407-007-0230 Qualified Entities

(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 QED to appoint one or more QEIs 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 QEIs to BCU.

(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.

Stat. Auth.: ORS 181.537, 409.027 & 409.050
Stats. Implemented: ORS 181.534, 181.537, 409.010, 409.027 & 443.004

407-007-0240 QE Designees and QE Initiators

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

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

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

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

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

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

(c) A QED must have:

(A) Competency in computer skills for accessing CRIMS online and managing background check records in CRIMS;

(B) Work-related access to the internet; and

(C) A work-related email account.

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

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

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

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

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

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

(c) Ensure that adequate measures are taken to protect the confidentiality of the records and documents required by these rules. A QED may not view criminal offender information. A QED may not view abuse investigation reports and associated abuse investigation exhibits or documents as part of the background check process.

(d) A QED shall verify the SI's identity or ensure that the same verification requirements are understood by each individual responsible for verifying identity. The QE may verify identity at any time during the hiring or placement process up to the submission of the background check request.

(A) If conducting a background check on the SI for the first time or at rehire of the SI, a QED shall verify identity or ensure identity is verified by using methods which include but are not limited to reviewing the SI's current and valid government-issued photo identification and confirming the information on the photo identification with the SI, the information included in the background check request, and the information written on the fingerprint card if a national criminal records check is conducted.

(B) If an SI is being rechecked for the same QE without any break in placement, service, or employment, review of government-issued photo identification may not be necessary. The QED shall verify the SI's name, current address, and any aliases or previous names, or ensure this information is verified.

(e) Ensure that an SI is not permitted to work, volunteer, reside, or otherwise hold any position covered by these rules before the submission of the background check request to BCU.

(f) Ensure that the result of the preliminary fitness determination granting the QE to hire the SI on a preliminary basis, or prohibiting the QE from hiring the SI on a preliminary basis, is followed.

(g) Ensure that when an SI is hired on a preliminary basis, the need for active supervision is understood by each individual responsible for providing active supervision.

(h) Ensure that if an SI is removed from working on a preliminary basis, the SI is immediately removed from the position and remains removed until BCU reinstates hired on a preliminary basis or the completion of a final fitness determination allowing the SI to resume the position.

(i) Ensure that the SI has directions to complete a fingerprint capture.

(j) Notify BCU of any changes regarding an SI who still has a background check in process, including but not limited to address or employment status changes.

(k) Monitor the status of background check applications and investigate any delays in processing.

(L) Ensure that documentation required by these rules is processed and maintained in accordance with these rules.

(m) Notify BCU immediately if arrested, charged, or convicted of any crime, or if found responsible for abuse by the Department or Authority.

(4) A QED may make preliminary fitness determinations:

(a) A QED shall review the SI's completed background check request to ensure completeness of the information, verify identity, and to determine if the SI has any disclosed criminal history.

(b) A QED shall adhere to OAR 407-007-0315(4) when making a preliminary fitness determination.

(c) If the SI has adverse criminal history within the five year period from the date the SI manually or electronically signed the background check request, the QED may request in writing that BCU make a preliminary fitness determination requiring a weighing test.

(5) BCU may change QED status in the following circumstances which include but are not limited to:

(a) When the position with the QE ends or when the QE terminates the appointment. The QE shall notify BCU immediately upon the end of the position or termination of the appointment and BCU shall inactivate QED status.

(b) If a QED fails to comply with responsibilities or fails to continue to meet the requirements for QED status, as applicable. After suspending or revoking the appointment, the QE must immediately notify the BCU in writing. If BCU takes the action to suspend or revoke the appointment, it must immediately notify the QE in writing.

(c) If a QED fails to recertify, BCU shall revoke QED status.

(6) Any changes to QED status are not subject to appeal rights unless the denial or termination results in immediate loss of employment or position. A QED losing employment or position has the same hearing rights as other SIs under these rules.

(7) If a QED leaves employment or position with the QE for any reason, BCU shall inactivate QED status. If the individual finds employment with another QE, BCU shall determine the requirement for reactivation of QED status.

(8) BCU shall review and recertify appointments of QEDs, up to and including a new application, background check, and additional training under the following circumstances:

(a) Every three years; or

(b) At any time BCU has reason to believe the individual no longer meets QED requirements including but not limited to indication of criminal or abusive behavior or noncompliance with these rules.

(9) With BCU approval, QEs may appoint QEIs to enter background check request into CRIMS. QEIs must:

(a) Be currently approved SIs for the QE;

(b) Possess competency in computer skills for accessing CRIMS online and entering background check records into CRIMS;

(c) Maintain internet access and working email accounts to access CRIMS; and

(d) Meet other criteria as determined by BCU and the QE.

Stat. Auth.: ORS 181.537, 409.027 & 409.050
Stats. Implemented: ORS 181.534, 181.537, 409.010, 409.027 & 443.004

407-007-0250 Background Check Process

(1) A QE and SI shall use CRIMS to request a background check which shall include the following information regarding an SI:

(a) Name and aliases;

(b) Date of birth;

(c) Address and recent residency information;

(d) Driver license or identification card information;

(e) Position for which the SI is completing the background check request;

(f) Worksite location or locations where the SI will be working;

(g) Disclosure of all criminal history;

(A) The SI must disclose all arrests, charges, and convictions regardless of outcome or when the arrests, charges, or convictions occurred.

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

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

(2) The background check request shall 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 solely 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 shall conduct an abuse check on the SI. Unless required by program rule, an SI is not required to disclose any history of potentially disqualifying abuse, but may provide BCU with mitigating or other information.

(3) Using identifying information submitted in a background check request, BCU shall conduct an abuse check to determine if the subject individual has potentially disqualifying abuse.

(4) BCU shall conduct 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 records information as needed.

(5) BCU shall handle criminal offender information in accordance with applicable OSP requirements in ORS chapter 181 and the rules adopted pursuant thereto (see OAR chapter 257, division 15).

(6) 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:

(i) For 60 or more consecutive days during the previous 18 months and the SI is a child care provider or other individual included in OAR 461-165-0180(4).

(ii) For 60 or more consecutive days during the previous five years for all other SIs.

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

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

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

(E) A fingerprint-based criminal records check is required by federal or state laws or regulations, other Department or Authority rules, or by contract with the Department or Authority.

(F) Any SI applying to be or renewing the position with regard to child adoption or children in foster care licensed by the Department or private licensed child caring agencies. Renewing SIs do not need a fingerprint-based criminal records check if BCU has a record of a previous fingerprint-based criminal records checks that is within BCU's retention schedule. Applicable SI positions include:

(i) A relative caregiver, foster parent, or adoptive parent in Oregon;

(ii) An adult household member in an adoptive or child foster home 18 years of age and over;

(iii) A household member in an adoptive or child foster home under 18 years of age if there is reason to believe that the household member may pose a risk to children placed in the home; or

(iv) A respite care provider in an adoptive or child foster home.

(G) BCU has reason to believe that fingerprints are needed to make a final fitness determination.

(b) BCU must receive consent from the parent or guardian to obtain fingerprints from an SI under 18 years of age.

(c) The SI shall complete and submit a fingerprint capture when requested by BCU. BCU shall send the request to the QE and the QED shall notify the SI.

(A) BCU shall give the SI notice regarding the Social Security number as set forth in section (2)(a) of this rule.

(B) The SI shall submit the fingerprint capture within 21 calendar days of the request.

(i) BCU may close the application, making it a closed case, if the fingerprint capture is not received by BCU or OSP within 21 calendar days. When a case is closed, the SI may not be allowed to work, volunteer, be employed, or otherwise perform in positions covered by these rules, and shall be immediately terminated and removed from the position.

(ii) BCU may extend the time allowed due to processing requirements or for good cause provided by the SI or QE.

(C) BCU may require new fingerprint capture and its submission if previous fingerprint captures results in a rejection by OSP or the FBI.

(7) BCU may also conduct a state-specific criminal records check instead of or in addition to a national criminal records check. Reasons for a state-specific criminal records check 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 a state-specific criminal records check is necessary.

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

(9) BCU may conduct a background check in situations of imminent danger.

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

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

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

Stat. Auth.: ORS 181.537, 409.027 & 409.050
Stats. Implemented: ORS 181.534, 181.537, 409.010

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

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

(a) Works with clients of the Developmental Disabilities (DD) program.

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

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

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

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

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

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

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

(E) An individual in a position specified as being subject in relevant Oregon statutes or Oregon Administrative Rules.

(2) If BCU determines that an individual subject to this rule has a conviction listed in ORS 443.004, BCU shall make the determination of "ineligible due to ORS 443.004." A fitness determination with a weighing test is not required regardless of any other potentially disqualifying convictions and conditions the SI has.

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

(4) A determination of "ineligible due to ORS 443.004" is not subject to appeal rights under OAR 407-007-0330, 407-007-0335, 943-007-0335, or 943-007-0501.

Stat. Auth.: ORS 181.534 & 409.050
Stats. Implemented: ORS 181.534 & ORS 443.004

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

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

(2) If BCU determines that an individual is subject to this rule and has a conviction listed in ORS 443.004(5), BCU shall make the determination of "ineligible due to ORS 443.004." A fitness determination with a weighing test is not required regardless of any other potentially disqualifying convictions and conditions the SI has.

(3) A determination of "ineligible due to ORS 443.004" is not subject to appeal rights under OAR 943-007-0335 or 943-007-0501.

Stat. Auth.: ORS 181.534 & 409.050
Stats. Implemented: ORS 181.534 & ORS 443.004

407-007-0280 Potentially Disqualifying Convictions

A conviction of any of the following crimes is potentially disqualifying. Offenses or convictions that are classified as less than a misdemeanor, such as violations or infractions, are not potentially disqualifying (see ORS 161.505 to 161.565).

(1) The crimes listed in this section are permanent review crimes which require that a fitness determination with a weighing test be completed regardless of date of conviction.

(a) ORS 162.155, Escape II

(b) ORS 162.165, Escape I

(c) ORS 162.285, Tampering with a witness

(d) ORS 162.325, Hindering prosecution

(e) ORS 163.005, Criminal homicide

(f) ORS 163.095, Aggravated murder

(g) ORS 163.115, Murder

(h) ORS 163.118, Manslaughter I

(i) ORS 163.125, Manslaughter II

(j) ORS 163.145, Criminally negligent homicide

(k) ORS 163.149, Aggravated vehicular homicide

(L) ORS 163.160, Assault IV

(m) ORS 163.165, Assault III

(n) ORS 163.175, Assault II

(o) ORS 163.185, Assault I

(p) ORS 163.187, Strangulation

(q) ORS 163.190, Menacing

(r) ORS 163.200, Criminal mistreatment II

(s) ORS 163.205, Criminal mistreatment I

(t) ORS 163.207, Female genital mutilation

(u) ORS 163.208, Assault of public safety officer

(v) ORS 163.213, Unlawful use of an electrical stun gun, tear gas, or mace I

(w) ORS 163.225, Kidnapping II

(x) ORS 163.235, Kidnapping I

(y) ORS 163.245, Custodial interference II

(z) ORS 163.257, Custodial interference I

(aa) ORS 163.263, Subjecting another person to involuntary servitude in the second degree

(bb) ORS 163.264, Subjecting another person to involuntary servitude in the first degree

(cc) ORS 163.266, Trafficking in persons

(dd) ORS 163.275, Coercion

(ee) ORS 163.355, Rape III

(ff) ORS 163.365, Rape II

(gg) ORS 163.375, Rape I

(hh) ORS 163.385, Sodomy III

(ii) ORS 163.395, Sodomy II

(jj) ORS 163.405, Sodomy I

(kk) ORS 163.408, Unlawful sexual penetration II

(LL) ORS 163.411, Unlawful sexual penetration I

(mm) ORS 163.415, Sexual abuse III

(nn) ORS 163.425, Sexual abuse II

(oo) ORS 163.427, Sexual abuse I

(pp) ORS 163.432, Online sexual corruption of a child in the second degree

(qq) ORS 163.433, Online sexual corruption of a child in the first degree

(rr) ORS 163.435, Contributing to the sexual delinquency of a minor

(ss) ORS 163.445, Sexual misconduct

(tt) ORS 163.452, Custodial sexual misconduct I

(uu) ORS 163.454, Custodial sexual misconduct II

(vv) ORS 163.465, Public indecency

(ww) ORS 163.467, Private indecency

(xx) ORS 163.476, Unlawfully being in a location where children regularly congregate

(yy) ORS163.479, Unlawful contact with a child

(zz) ORS 163.515, Bigamy

(aaa) ORS 163.525, Incest

(bbb) ORS 163.535, Abandonment of a child

(ccc) ORS 163.537, Buying or selling a person under 18 years of age

(ddd) ORS 163.545, Child neglect II

(eee) ORS 163.547, Child neglect I

(fff) ORS 163.555, Criminal nonsupport

(ggg) ORS 163.575, Endangering the welfare of a minor

(hhh) ORS 163.670, Using child in display of sexually explicit conduct

(iii) ORS 163.680, Paying for viewing a child's sexually explicit conduct

(jjj) ORS 163.684, Encouraging child sexual abuse I

(kkk) ORS 163.686, Encouraging child sexual abuse II

(LLL) ORS 163.687, Encouraging child sexual abuse III

(mmm) ORS 163.688, Possession of materials depicting sexually explicit conduct of a child I

(nnn) ORS 163.689, Possession of materials depicting sexually explicit conduct of a child II

(ooo) ORS 163.693, Failure to report child pornography

1 (ppp) ORS 163.700, Invasion of personal privacy

2 (qqq) ORS 163.732, Stalking

3 (rrr) ORS 163.750, Violating court's stalking protective order

4 (sss) ORS 164.055, Theft I

5 (ttt) ORS 164.057, Aggravated theft I

6 (uuu) ORS 164.075, Theft by extortion

7 (vvv) ORS 164.085, Theft by deception

8 (www) ORS 164.098, Organized retail theft

9 (xxx) ORS 164.125, Theft of services

10 (yyy) ORS 164.135, Unauthorized use of a vehicle

11 (zzz) ORS 164.170, Laundering a monetary instrument

12 (aaaa) ORS 164.215, Burglary II

13 (bbbb) ORS 164.225, Burglary I

14 (cccc) ORS 164.315, Arson II

15 (dddd) ORS 164.325, Arson I

16 (eeee) ORS 164.365, Criminal mischief I

17 (ffff) ORS 164.377, Computer crime

18 (gggg) ORS 164.395, Robbery III

19 (hhhh) ORS 164.405, Robbery II

20 (iiii) ORS 164.415, Robbery I

21 (jjjj) ORS 165.013, Forgery I

22 (kkkk) ORS 165.022, Criminal possession of a forged instrument I

(LLLL) ORS 165.032, Criminal possession of a forgery device

(mmmm) ORS 165.055, Fraudulent use of a credit card

(nnnn) ORS 165.065, Negotiating a bad check

(oooo) ORS 165.581, Cellular counterfeiting I

(pppp) ORS 165.800, Identity theft

(qqqq) ORS 165.803, Aggravated identity theft

(rrrr) ORS 165.810, Unlawful possession of a personal identification device

(ssss) ORS 166.005, Treason

(tttt) ORS 166.070 Aggravated harassment

(uuuu) ORS 166.085, Abuse of corpse II

(vvvv) ORS 166.087, Abuse of corpse I

(wwww) ORS 166.155, Intimidation II

(xxxx) ORS 166.165, Intimidation I

(yyyy) ORS 166.220, Unlawful use of weapon

(zzzz) ORS 166.270, Possession of weapons by certain felons

(aaaaa) ORS 166.272, Unlawful possession of machine guns, certain short-barreled firearms and firearm silencers

(bbbbb) ORS 166.275, Possession of weapons by inmates of institutions

(ccccc) ORS 166.370, Possession of firearm or dangerous weapon in public building or court facility; exceptions; discharging firearm at school

(ddddd) ORS 166.382, Possession of destructive device prohibited

(eeeee) ORS 166.384, Unlawful manufacture of destructive device

(fffff)	ORS 166.429, Firearms used in felony
(ggggg)	ORS 166.450, Obliteration or change of identification number on firearms
(hhhhh)	ORS 166.720, Racketeering activity unlawful
(iiiii)	ORS 167.012, Promoting prostitution
(jjjjj)	ORS 167.017, Compelling prostitution
(kkkkk)	ORS 167.054, Furnishing sexually explicit material to a child
(LLLLL)	ORS 167.057, Luring a minor
(mmmmm)	ORS 167.062, Sadomasochistic abuse or sexual conduct in live show
(nnnnn)	ORS 167.075, Exhibiting an obscene performance to a minor
(ooooo)	ORS 167.080, Displaying obscene materials to minors
(ppppp)	ORS 167.212, Tampering with drug records
(qqqqq)	ORS 167.262, Adult using minor in commission of controlled substance offense
(rrrrr)	ORS 167.315, Animal abuse II
(sssss)	ORS 167.320, Animal abuse I
(ttttt)	ORS 167.322, Aggravated animal abuse I
(uuuuu)	ORS 167.333, Sexual assault of animal
(vvvvv)	ORS 167.339, Assaulting law enforcement animal
(wwwww)	ORS 181.594, Sex crimes including transporting child pornography into the state
(xxxxx)	ORS 181.599, Failure to report as sex offender
(yyyyy)	ORS 433.010, Spreading disease (willfully) prohibited

(zzzzz) ORS 475.525, Sale of drug paraphernalia prohibited

(aaaaaa) ORS 475.752, Prohibited acts generally (regarding drug crimes; formerly ORS 475.840, 2005-2011; formerly ORS 475.992, 1977-2005)

(bbbbbb) ORS 475.805, Providing hypodermic device to minor prohibited

(cccccc) ORS 475.840, Prohibited acts generally (regarding drug crimes formerly ORS 475.992; renumbered to ORS 475.752 in 2011)

(dddddd) ORS 475.846, Unlawful manufacture of heroin

(eeeeee) ORS 475.848, Unlawful manufacture of heroin within 1,000 feet of school

(ffffff) ORS 475.850, Unlawful delivery of heroin

(gggggg) ORS 475.852, Unlawful delivery of heroin within 1,000 feet of school

(hhhhhh) ORS 475.854, Unlawful possession of heroin

(iiiiii) ORS 475.856, Unlawful manufacture of marijuana

(jjjjjj) ORS 475.858, Unlawful manufacture of marijuana within 1,000 feet of school

(kkkkkk) ORS 475.860, Unlawful delivery of marijuana

(LLLLLL) ORS 475.862, Unlawful delivery of marijuana within 1,000 feet of school

(mmmmmm) ORS 475.864, Unlawful possession of marijuana

(nnnnnn) ORS 475.866, Unlawful manufacture of 3,4-methylenedioxymethamphetamine

(oooooo) ORS 475.868, Unlawful manufacture of 3,4-methylenedioxymethamphetamine within 1,000 feet of school

(pppppp) ORS 475.870, Unlawful delivery of 3,4-methylenedioxymethamphetamine

(qqqqqq) ORS 475.872, Unlawful delivery of 3,4-methylenedioxymethamphetamine within 1,000 feet of school

(rrrrrr) ORS 475.874, Unlawful possession of 3,4-methylenedioxymethamphetamine

(ssssss) ORS 475.876, Unlawful manufacture of cocaine

(tttttt) ORS 475.878, Unlawful manufacture of cocaine within 1,000 feet of school

(uuuuuu) ORS 475.880, Unlawful delivery of cocaine

(vvvvvv) ORS 475.882, Unlawful delivery of cocaine within 1,000 feet of school

(wwwwww) ORS 475.884, Unlawful possession of cocaine

(xxxxxx) ORS 475.886, Unlawful manufacture of methamphetamine

(yyyyyy) ORS 475.888, Unlawful manufacture of methamphetamine within 1,000 feet of school

(zzzzzz) ORS 475.890, Unlawful delivery of methamphetamine

(aaaaaaa) ORS 475.892, Unlawful delivery of methamphetamine within 1,000 feet of school

(bbbbbbb) ORS 475.894, Unlawful possession of methamphetamine

(ccccccc) ORS 475.904, Unlawful delivery of controlled substance within 1,000 feet of school

(ddddddd) ORS 475.906, Penalties for distribution to minors

(eeeeeee) ORS 475.908, Causing another person to ingest a controlled substance

(fffffff) ORS 475.910, Application of controlled substance to the body of another person

(ggggggg) ORS 475.914, Prohibited acts for registrants (with the Oregon State Board of Pharmacy)

(hhhhhhh) ORS 475.967, Possession of precursor substance with intent to manufacture controlled substance

(iiiiiii) ORS 475.990, Commercial drug offense

(jjjjjjj) ORS 677.080, Prohibited acts (regarding the practice of medicine)

(kkkkkkk) ORS 685.990, Penalties (pertaining to naturopathic medicine)

(LLLLLLL) ORS 689.527 Prohibited practices; rules (pertaining to pharmacy technicians and practitioners)

(mmmmmmm) Any federal crime

(nnnnnnn) Any U.S. military crime

(ooooooo) Any unclassified felony defined in Oregon Revised Statutes not listed in this rule

(ppppppp) Any other felony in Oregon Revised Statutes not listed in this rule that is serious and indicates behavior that poses a threat or jeopardizes the safety of vulnerable individuals, as determined by BCU

(qqqqqqq) Any felony in a jurisdiction outside Oregon that is not the substantial equivalent of any of the Oregon crimes listed in this section but that is serious and indicates behavior that poses a threat or jeopardizes the safety of vulnerable individuals, as determined by BCU

(rrrrrrr) Any crime of attempt, solicitation, or conspiracy to commit a crime listed in this section pursuant to ORS 161.405, 161.435, or 161.450, including any crime based on criminal liability for conduct of another pursuant to ORS 161.155

(sssssss) Any crime in any other jurisdiction that is the substantial equivalent of any of the Oregon crimes listed in section (1) of this rule, as determined by BCU

(ttttttt) Any crime that is no longer codified in Oregon or other jurisdiction but that is the substantial equivalent of any of the crimes listed in section (1) of this rule, as determined by BCU

(2) The crimes listed in this section are ten-year review crimes which require that a fitness determination with a weighing test be completed if the date of conviction is within ten years of the date the background check request was electronically submitted to BCU through CRIMS or the date BCU conducted a criminal records check due to imminent risk.

(a) ORS 033.045, Contempt of court

(b) ORS 109.311, Prohibited fees-adoption

(c) ORS 133.076, Failure to appear on criminal citation

(d) ORS 133.310(3), Violation of restraining order

(e) ORS 135.290, Punishment by contempt of court (violation of release agreement)

(f) ORS 162.015, Bribe giving

(g) ORS 162.025, Bribe receiving

(h) ORS 162.065, Perjury

(i) ORS 162.075, False swearing

(j) ORS 162.117, Public investment fraud

(k) ORS 162.145, Escape III

(L) ORS 162.175, Unauthorized departure

(m) ORS 162.185, Supplying contraband

(n) ORS 162.195, Failure to appear II

(o) ORS 162.205, Failure to appear I

(p) ORS 162.247, Interfering with a peace officer

(q) ORS 162.257, Interfering with a firefighter or emergency medical technician

(r) ORS 162.265, Bribing a witness

(s) ORS 162.275, Bribe receiving by a witness

(t) ORS 162.295, Tampering with physical evidence

(u) ORS 162.305, Tampering with public records

(v) ORS 162.315, Resisting arrest

(w) ORS 162.335, Compounding

(x) ORS 162.355, Simulating legal process

(y) ORS 162.365, Criminal impersonation

(z) ORS 162.367, Criminal impersonation of peace officer

(aa) ORS 162.369, Possession of false law enforcement identification card

(bb) ORS 162.375, Initiating a false report

(cc) ORS 162.385, Giving false information to police officer for a citation

(dd) ORS 162.405, Official misconduct II

(ee) ORS 162.415, Official misconduct I

(ff) ORS 162.425, Misuse of confidential information

(gg) ORS 163.195, Recklessly endangering another person

(hh) ORS 163.196, Aggravated driving while suspended or revoked

(ii) ORS 163.212, Unlawful use of an electrical stun gun, tear gas, or mace II

(jj) ORS 164.043, Theft III

(kk) ORS 164.045, Theft II

(LL) ORS 164.095, Theft by receiving

(mm) ORS 164.138, Criminal possession of a rented or leased motor vehicle

(nn) ORS 164.140, Criminal possession of rented or leased personal property

(oo) ORS 164.162, Mail theft or receipt of stolen mail

(pp) ORS 164.235, Possession of a burglary tool or theft device

(qq) ORS 164.255, Criminal trespass I

(rr) ORS 164.265, Criminal trespass while in possession of firearm

(ss) ORS 164.272, Unlawful entry into motor vehicle

(tt) ORS 164.354, Criminal mischief II

(uu) ORS 165.007, Forgery II

(vv) ORS 165.017, Criminal possession of a forged instrument II

(ww) ORS 165.037, Criminal simulation

(xx) ORS 165.042, Fraudulently obtaining a signature

(yy) ORS 165.070, Possessing fraudulent communications device

(zz) ORS 165.074, Unlawful factoring of credit card transaction

(aaa) ORS 165.080, Falsifying business records

(bbb) ORS 165.085, Sports bribery

(ccc) ORS 165.090, Sports bribe receiving

(ddd) ORS 165.095, Misapplication of entrusted property

(eee) ORS 165.100, Issuing a false financial statement

(fff) ORS 165.102, Obtaining execution of documents by deception

(ggg) ORS 165.540, Obtaining contents of communication

(hhh) ORS 165.543, Interception of communications

(iii) ORS 165.570, Improper use of 9-1-1 emergency reporting system

(jjj) ORS 165.572, Interference with making a report

(kkk) ORS 165.577, Cellular counterfeiting III

(LLL) ORS 165.579, Cellular counterfeiting II

(mmm) ORS 165.692, Making false claim for health care payment

(nnn) ORS 166.015, Riot

(ooo) ORS 166.023, Disorderly conduct I

(ppp) ORS 166.025, Disorderly conduct II

(qqq) ORS 166.065, Harassment

(rrr) ORS 166.076, Abuse of a memorial to the dead

(sss) ORS 166.090, Telephonic harassment

(ttt) ORS 166.116, Interfering with public transportation

(uuu) ORS 166.180, Negligently wounding another

(vvv) ORS 166.190, Pointing firearm at another

(www) ORS 166.240, Carrying of concealed weapon

(xxx) ORS 166.250, Unlawful possession of firearms

(yyy) ORS 166.470, Limitations and conditions for sales of firearms

(zzz) ORS 166.480, Sale or gift of explosives to children

(aaaa) ORS 166.649, Throwing an object off an overpass II

(bbbb) ORS 166.651, Throwing an object off an overpass I

(cccc) ORS 166.660, Unlawful paramilitary activity

(dddd) ORS 167.007, Prostitution

(eeee) ORS 167.008 Patronizing a prostitute

(ffff) ORS 167.090, Publicly displaying nudity or sex for advertising purposes

(gggg) ORS 167.122, Unlawful gambling in the second degree

(hhhh) ORS 167.127, Unlawful gambling in the first degree

(iiii) ORS 167.167, Cheating

(jjjj) ORS 167.222, Frequenting a place where controlled substances are used

(kkkk) ORS 167.325, Animal neglect II

(LLLL) ORS 167.330, Animal neglect I

(mmmm) ORS 167.337, Interfering with law enforcement animal

(nnnn) ORS 167.340, Animal abandonment

(oooo) ORS 167.352, Interfering with assistance, search and rescue or therapy animal

(pppp) ORS 167.355, Involvement in animal fighting

(qqqq) ORS 167.365, Dogfighting

(rrrr) ORS 167.370, Participation in dogfighting

(ssss) ORS 167.428, Cockfighting

(tttt) ORS 167.431, Participation in cockfighting

(uuuu) ORS 167.808(5)(b), Unlawful possession of inhalants, misdemeanor

(vvvv) ORS 167.820, Concealing the birth of an infant

(wwww) ORS 192.865, Criminal penalty (pertaining to Address Confidentiality Program)

(xxxx) ORS 314.075, Evading requirements of law prohibited (tax evasion)

(yyyy) ORS 411.630, Unlawfully obtaining public assistance

(zzzz) ORS 411.640, Unlawfully receiving public assistance

(aaaaa) ORS 411.675, Submitting wrongful claim or payment (e.g., public assistance)

(bbbbb) ORS 411.840, Unlawfully obtaining or disposing of food stamp benefits

(ccccc) ORS 412.074, Unauthorized use and custody of records of temporary assistance for needy families program

(ddddd) ORS 412.099, Sharing assistance prohibited

(eeeee) ORS 417.990, Penalty for placement of children in violation of compact

(fffff) ORS 471.410, Providing liquor to persons under 21 or to intoxicated persons; allowing consumption by minor on property

(ggggg) ORS 475.912, Unlawful delivery of imitation controlled substance

(hhhhh) ORS 475.916, Prohibited acts involving records and fraud

(iiiii) ORS 475.918, Falsifying drug test results

(jjjjj) ORS 475.950, Failure to report precursor substances transaction

(kkkkk) ORS 475.955, Failure to report missing precursor substances

(LLLLL) ORS 475.960, Illegally selling drug equipment

(mmmmm) ORS 475.965, Providing false information on precursor substances report

(nnnnn) ORS 803.230, Forging, altering or unlawfully producing or using title or registration

(ooooo) ORS 807.620, Giving false information to police officer

(ppppp) ORS 811.060, Vehicular assault of bicyclist or pedestrian

(qqqqq) ORS 811.140, Reckless driving

(rrrrr) ORS 811.540, Fleeing or attempting to elude police officer

(sssss) ORS 811.700, Failure to perform duties of driver when property is damaged

(ttttt) ORS 811.705, Failure to perform duties of driver to injured persons

(uuuuu) ORS 819.300, Possession of a stolen vehicle

(vvvvv) ORS 830.475, Failure to perform the duties of an operator (boat)

(wwwww) Any unclassified misdemeanor defined in Oregon Revised Statutes not listed elsewhere in this rule

(xxxxx) Any other misdemeanor in Oregon Revised Statutes or a local Oregon jurisdiction not listed in this rule that is serious and indicates behavior that poses a threat or jeopardizes the safety of vulnerable individuals, as determined by BCU

(yyyyy) Any misdemeanor in a jurisdiction outside Oregon that is not the substantial equivalent of any of the Oregon crimes listed in section (2) of this rule but that is serious and indicates behavior that poses a threat or jeopardizes the safety of vulnerable individuals, as determined by BCU. If a misdemeanor in a jurisdiction outside Oregon is similar to a violation in Oregon, then it may not be considered potentially disqualifying under this section.

(zzzzz) Any crime of attempt, solicitation, or conspiracy to commit a crime listed in this section pursuant to ORS 161.405 or 161.435, including any conviction based on criminal liability for conduct of another pursuant to ORS 161.155

(aaaaaa) Any crime in any other jurisdiction which is the substantial equivalent of any of the Oregon crimes listed in section (2) of this rule, as determined by BCU

(bbbbbb) Any crime which is no longer codified in Oregon, but which is the substantial equivalent of any of the crimes listed in section (2) of this rule, as determined by BCU

(3) The crimes listed in this section are five-year review crimes which require that a fitness determination with a weighing test be completed if the date of conviction is within five years of the date the background check request was electronically submitted to BCU through CRIMS or the date BCU conducted a criminal records check due to imminent risk.

(a) ORS 162.085, Unsworn falsification

(b) ORS 162.235, Obstructing governmental or judicial administration

(c) ORS 164.245, Criminal trespass II

(d) ORS 164.335, Reckless burning

(e) ORS 164.345, Criminal mischief III

(f) ORS 165.813, Unlawful possession of fictitious identification

(g) ORS 166.075, Abuse of venerated objects

(h) ORS 166.095, Misconduct with emergency telephone calls

(i) ORS 811.182, Criminal driving while suspended or revoked

(j) ORS 813.010, Driving under the influence of intoxicants (DUII)

(k) ORS 830.315, Reckless operation of a boat

(l) ORS 830.325, Operating boat while under influence of intoxicating liquor or controlled substance

(m) ORS 830.730, False information to peace officer or Oregon State Marine Board

(n) Any conviction for attempt, solicitation or conspiracy to commit a crime listed in this section pursuant to ORS 161.405 or 161.435, including any conviction based on criminal liability for conduct of another pursuant to ORS 161.155

(o) Any crime in any other jurisdiction which is the substantial equivalent of any of the Oregon crimes listed in section (3) of this rule, as determined by BCU

(p) Any crime which is no longer codified in Oregon, but which is the substantial equivalent of any of the crimes listed in section (3) of this rule, as determined by BCU

(4) Evaluations of crimes may be based on Oregon laws and laws in other jurisdictions in effect at the time of the fitness determination, regardless of the jurisdiction in which the conviction occurred.

(5) An SI may not be denied under these rules due to the existence or contents of a juvenile record that has been expunged pursuant to ORS 419A.260 to 419A.262.

(6) An SI may not be denied under these rules due to the existence or contents of an adult record that has been set aside pursuant to ORS 137.225.

Stat. Auth.: ORS 181.537 & 409.050
Stats. Implemented: ORS 181.534, 181.537 & 409.010

407-007-0290 Other Potentially Disqualifying Conditions *(Effective 2/3/2015)*

The following are potentially disqualifying conditions, if they exist on the date the Department receives the background check request:

(1) The SI makes a false statement to the QE, Department, or Authority, including the provision of materially false information, false information regarding criminal records, or failure to disclose information regarding criminal records. Nondisclosure of violation or infraction charges may not be considered a false statement.

(2) The SI is a registered sex offender in any jurisdiction. There is a rebuttable presumption that an SI is likely to engage in conduct that would pose a significant risk to vulnerable individuals if the SI has been designated a predatory sex offender in any jurisdiction under ORS 181.585 or found to be a sexually violent dangerous offender under ORS 144.635 (or similar statutes in other jurisdictions).

(3) The SI has an outstanding warrant for any crime in any jurisdiction.

(4) The SI has a deferred sentence, conditional discharge, or is participating in a diversion program for any crime in any jurisdiction.

(5) The SI is currently on probation, parole, or post-prison supervision for any crime in any jurisdiction, regardless of the original conviction date (or date of guilty or no contest plea if there is no conviction date).

(6) The SI has been found in violation of post-prison supervision, parole, or probation for any crime in any jurisdiction, regardless of the original conviction date (or date of guilty or no contest plea if there is no conviction date) within five years from the date the background check request was electronically submitted to BCU through CRIMS or the date BCU conducted a criminal records check due to imminent danger.

(7) The SI has an unresolved arrest, charge, or a pending indictment for any crime in any jurisdiction.

(8) The SI has been arrested in any jurisdiction as a fugitive from another state or a fugitive from justice, regardless of the date of arrest.

(9) The SI has an adjudication in a juvenile court in any jurisdiction, finding that the SI was responsible for a potentially disqualifying crime that would result in a conviction if committed by an adult. Subsequent adverse rulings from a juvenile court, such as probation violations, shall also be considered potentially disqualifying if within five years from the date the background check request was signed or the date BCU conducted a criminal records check due to imminent danger.

(10) The SI has a finding of "guilty except for insanity," "guilty except by reason of insanity," "not guilty by reason of insanity," "responsible except for insanity," "not responsible by reason of mental disease or defect," or similarly worded disposition in any jurisdiction regarding a potentially disqualifying crime, unless the local statutes indicate that such an outcome is considered an acquittal.

(11) Potentially disqualifying abuse as determined from abuse investigation reports which have an outcome of founded, substantiated, or valid and in which the SI is determined to have been responsible for the abuse.

(a) For SIs associated with child foster homes licensed by the Department's DD programs, child foster homes licensed through the Department's Child Welfare Division, child foster homes licensed through a private licensed child caring agency, adoptive families through a private licensed child caring agency, or adoptive families through the Department's Child Welfare Division, potentially disqualifying abuse includes:

(A) Child protective services history held by the Department or OAAPI regardless of the date of initial report;

(B) Child protective services history reviewed pursuant to the federal Adam Walsh Act requirements, determined by BCU ADs to be potentially disqualifying; and

(C) Adult protective services investigations of physical abuse, sexual abuse, or financial exploitation initiated on or after

January 1, 2010, as provided to BCU by OAAPI and APD programs based on severity.

(b) For staff, volunteers, or contractors of a private licensed child caring agency, an ISRS program, a SPRF provider, or a System of Care contractor providing child welfare services pursuant to ORS chapter 418 potentially disqualifying abuse includes:

(A) Child protective services history held by the Department or OAAPI regardless of the date of initial report; and

(B) Adult protective services investigations of physical abuse, sexual abuse, or financial exploitation initiated on or after January 1, 2010, as provided to BCU by OAPPI and APD based on severity.

(c) For child care providers and associated subject individuals defined in OAR 407-007-0210(30)(a)(I):

(A) Child protective services history held by the Department or OAAPI regardless of the date of initial report, date of outcome, and considered potentially disqualifying pursuant to OAR 461-165-0420; and

(B) Adult protective services investigations of physical abuse, sexual abuse, or financial exploitation initiated on or after January 1, 2010, as provided to BCU by the OAAPI and APD programs based on severity.

(d) For all other SIs, potentially disqualifying abuse includes founded or substantiated adult protective services investigations of physical abuse, sexual abuse, or financial exploitation initiated on or after January 1, 2010, as provided to the BCU by OAAPI and APD programs based on severity.

(12) Child protective services investigations open or pending through the Department or OAAPI as of the date the background check request was electronically submitted to BCU through CRIMS or the date BCU conducted a criminal records check due to imminent danger. This potentially disqualifying condition only applies to:

(a) SIs associated with child foster homes licensed by the Department's DD programs, child foster homes licensed through the Department's Child Welfare Division, child foster homes licensed through a private licensed child caring agency, adoptive families through a private licensed child caring agency, or adoptive families through the Department's Child Welfare Division;

(b) Staff, volunteers or contractors of a private licensed child caring agency, an ISRS program, a SPRF provider, or a System of Care contractor, providing child welfare services pursuant to ORS chapter 418; or

(c) Child care providers and associated subject individuals defined in OAR 407-007-0210(30)(a)(I).

Stat. Auth.: ORS 181.537, 409.027 & 409.050
Stats. Implemented: ORS 181.534, 181.537, 409.010, 409.027 & 443.004

407-007-0300 Weighing Test

When making a fitness determination, BCU shall consider any of the following factors if an SI has potentially disqualifying convictions or conditions as disclosed by the SI or which is otherwise known:

(1) Circumstances regarding the nature of potentially disqualifying convictions and conditions including but not limited to:

(a) The details of incidents leading to the charges of potentially disqualifying convictions or resulting in potentially disqualifying conditions.

(b) Age of the SI at time of the potentially disqualifying convictions or conditions.

(c) Facts that support the convictions or potentially disqualifying 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.

(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 provided to the SI after the abuse investigation.

(f) Required action resulting from the founded or substantiated abuse including but not limited to training, counseling, corrective or disciplinary action, and the SI's compliance.

(3) Other factors when available including but not limited to:

(a) Other information related to criminal activity including charges, arrests, pending indictments, and convictions. Other behavior involving contact with law enforcement may also be reviewed if information is relevant to other criminal records or shows a pattern relevant to criminal history.

(b) Periods of incarceration.

(c) Status of and compliance with parole, post-prison supervision, or probation.

(d) Evidence of alcohol or drug issues directly related to criminal activity or potentially disqualifying conditions.

(e) Evidence of other treatment or rehabilitation related to criminal activity or potentially disqualifying conditions.

(f) Likelihood of repetition of criminal behavior or behaviors leading to potentially disqualifying conditions including but not limited to patterns of criminal activity or behavior.

(g) Information from the Department's or Authority's protective services, abuse, or other investigations in which the investigator documented behavior or conduct by the SI that would pose a risk to or jeopardize the safety of vulnerable individuals.

(h) Changes in circumstances subsequent to the criminal activity or disqualifying conditions including but not limited to:

(A) History of high school, college, or other education related accomplishments

(B) Work history (employee or volunteer).

(C) History regarding licensure, certification, or training for licensure or certification.

(D) Written recommendations from current or past employers, including Department client employers.

(i) Indication of the SI's cooperation, honesty, or the making of a false statement during the criminal records check process, including acknowledgment and acceptance of responsibility of criminal activity and potentially disqualifying conditions.

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

Stat. Auth.: ORS 181.537, 409.027 & 409.050
Stats. Implemented: ORS 181.534, 181.537, 409.010, 409.027 & 443.004

407-007-0315 Hired on a Preliminary Basis

(1) A preliminary fitness determination is required to determine if an SI may 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 during the period of time prior to a final fitness determination and into the position listed on the background check request.

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

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

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

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

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

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

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

(5) The QED shall submit the background check request to BCU immediately upon verification of the SI's identity, the SI's completion of the background check request, and the QED's completion of the preliminary fitness determination.

(6) If requested by the QED, BCU may conduct a preliminary fitness determination with a weighing test. The SI may be hired on a preliminary basis only if, based on information available at the time, BCU determines that more likely than not, the SI poses no potential threat to vulnerable individuals.

(7) The QE may not hire a SI on a preliminary basis under any of the following circumstances:

(a) Being hired on a preliminary basis or probationary status is not allowed under program rules.

(b) The SI has disclosed criminal history occurring within the past five years that has an outcome of "pending outcome," "diversion or conditional discharge," "convicted," "on probation," "juvenile adjudication," "unknown" or other outcome BCU determines to be adverse and BCU has not completed a preliminary fitness determination 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.

(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 no hiring on a preliminary basis may only be overturned by the BCU.

(8) An SI hired on a preliminary basis shall be actively supervised at all times.

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

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

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

(C) Periodically observe the actions of the SI.

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

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

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

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

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

(9) An SI approved without restrictions within the previous 24 months through a documented criminal records check or abuse check pursuant to these rules or prior Department or Authority criminal records check rules or abuse check rules may be hired on a preliminary basis without active supervision. Twenty-four months is calculated from date of previous approval to the date of hire in the new position. This exemption from active supervision is not allowed in any of the following situations:

(a) If the SI cannot provide documented proof that he or she worked continuously under the previous approval for at least one year.

(b) If there is evidence of criminal activity or potentially disqualifying abuse within the previous 24 months.

(c) If, as determined by the QE or BCU, the job duties in the new position are so substantially different from the previous position that the previous fitness determination is inadequate for the current position.

(10) Revocation of hired on a preliminary basis is not subject to hearing or appeal. The QE or BCU may immediately revoke hired on a preliminary basis for any of the following reasons:

(a) There is any indication of falsification of application.

(b) The SI fails to disclose convictions for any potentially disqualifying crimes, any arrests that did not result in convictions or any out of state arrests or convictions.

(c) The QE or BCU determines that allowing the SI to be hired on a preliminary basis is not appropriate, based on the application, criminal record, position duties, or Department program rules.

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

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

Stat. Auth.: ORS 181.537, 409.027 & 409.050
Stats. Implemented: ORS 181.534, 181.537, 409.010, 409.027 & 443.004

407-007-0320 Final Fitness Determinations

BCU shall make a final fitness determination after all necessary background checks have been received and a weighing test, if necessary, has been completed. BCU may obtain and consider additional information as necessary to complete the final fitness determination.

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

(a) BCU may approve an SI if:

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

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

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

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

(2) 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 CRIMS. The QE shall provide the SI a copy of the notice or CRIMS documentation.

(b) If the final fitness determination is a denial based on potentially disqualifying abuse under OAR 407-007-0290(11)(d) and there are no other potentially disqualifying convictions or conditions, BCU shall issue a Notice of Intent to Deny and provide the SI hearing rights under OAR 407-007-0335.

(c) Except as required by section (4)(c) of this rule, 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.

(d) The effective date of action shall be recorded on the notice or CRIMS documentation.

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

(4) When an SI is denied, 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 shall result in immediate termination, dismissal, or removal of the SI.

(5) When an SI is approved with restrictions, the SI shall only be allowed to work, volunteer, be employed, or otherwise perform in the position listed on the background check request and only under the stated restrictions. A restricted approval applies only to the position and application in question. A restricted approval shall result in immediate implementation of the restrictions.

(6) BCU shall maintain any documents obtained or created during the background check process.

(7) BCU shall make new fitness determinations for each background check request. The outcome of previous fitness determinations does not set a precedent for subsequent fitness determinations.

Stat. Auth.: ORS 181.537, 409.027 & 409.050
Stats. Implemented: ORS 181.534, 181.537, 409.010, 409.027 & 443.004

407-007-0325 Closed Case

If the SI discontinues the application or fails to cooperate with the criminal records check or fitness determination process, the application is considered incomplete and may be closed.

(1) Discontinuance or failure to cooperate includes but is not limited to the following circumstances:

(a) The SI fails to disclose all criminal history on the background check request.

(b) The SI refuses to be fingerprinted when required by these rules.

(c) The SI fails to respond within a stated time period to a request for corrections to the application, fingerprints, or any other information necessary to conduct a criminal records check or an abuse check and there is not enough information available to make a fitness determination.

(d) The SI withdraws the application, leaves the position prior to completion of the background check, or the Department cannot locate or contact the subject individual.

(e) The SI is determined to be ineligible for the position by the QE for reasons other than the background check.

(2) When the application is closed without a final fitness determination, the SI does not have a right to contest the closure.

(3) When a case is closed, the SI shall not be allowed to work, volunteer, be employed, or otherwise perform in the position listed on the background check request. A closed case applies only to the position in question. A closed case shall result in immediate termination, dismissal, or removal of the SI.

(4) BCU or the QED shall document the reasons for a closed case.

Stat. Auth.: ORS 181.537, 409.027 & 409.050
Stats. Implemented: ORS 181.534, 181.537, 409.010, 409.027 & 443.004

407-007-0330 Contesting a Fitness Determination

(1) A final fitness determination of denied or restricted approval is considered an adverse outcome. An SI with an adverse outcome may contest that fitness determination unless already granted contested case hearing rights under OAR 407-007-0335.

(2) If an SI is denied, the SI may not hold the position, provide services or be employed, licensed, certified, or registered, or otherwise perform in positions covered by these rules. An SI appealing a restricted approval may only work under the terms of the restriction during the appeal.

(3) If an adverse outcome is changed at any time during the appeal process, the change does not guarantee employment or placement.

(4) An SI may challenge the accuracy or completeness of information provided by the OSP, the FBI, or other agencies reporting information to BCU, by appealing to the entity providing the information. These challenges are not subject to BCU's appeal process.

(5) An SI has the right to represent himself or herself or have legal representation during the appeal process. For the purpose of this rule, the term "SI" shall be considered to include the SI's legal representative.

(a) An SI who is appealing an adverse outcome regarding the position of homecare worker as defined in ORS 410.600 or personal support worker as defined in ORS 410.600 may be represented by a labor union representative pursuant to ORS 183.459.

(b) For all other SIs, the SI may not be represented by a lay person.

(6) An SI may contest an adverse fitness determination by requesting a contested case hearing. The contested case hearing process is conducted in accordance with ORS 183.411 to 183.497 and the Attorney General's Uniform and Model Rules of Procedure for the Office of Administrative Hearings (OAH), OAR 137-003-0501 to 137-003-0700.

(a) To request a contested case hearing, the SI shall complete and sign the Hearing Request form.

(b) The completed and signed form must be received by the Department within 45 calendar days after the effective date of action.

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

(d) In the event an appeal is not timely by the date of receipt or by the date of postmark, BCU shall 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 refer an untimely request to the OAH for a hearing on the issue of timeliness.

(7) BCU may conduct an administrative review before referring the appeal to OAH.

(a) The SI must participate in the administrative review. Participation may include but is not limited to providing additional information or additional documents requested by the BCU within a specified amount of time.

(b) The administrative review is not open to the public.

(8) BCU may conduct additional criminal records checks or abuse checks during the contested case hearing process to update or verify the SI's potentially disqualifying convictions or conditions and factors to consider in the weighing test. If needed, BCU shall amend the notice of fitness determination while still maintaining the original hearing rights and deadlines.

(9) The Department shall be represented by a hearing representative in contested case hearings. The Department may also be represented by the Office of the Attorney General.

(a) BCU shall provide the administrative law judge and the SI a complete copy of available information used during the background checks and fitness determinations. The notice of contested case and prehearing summary and other documents may be mailed by regular first class mail or provided electronically.

(b) An SI may not have access to confidential information contained in abuse investigation reports or other records collected or developed during the abuse check process without a protective order limiting further disclosure of the information.

(c) The contested case hearing is not open to the public.

(d) The administrative law judge shall make a new fitness determination based on evidence and the contested case hearing record.

(e) The only remedy an administrative law judge may grant is a fitness determination that the subject individual is approved, approved with restrictions, or denied. Under no circumstances shall the Department or the QE be required to place an SI in any position, nor shall the Department or the QE be required to accept services or enter into a contractual agreement with an SI.

(f) A hearing pursuant to these rules may be conducted in conjunction with a licensure or certification hearing for the SI.

(10) The notice of fitness determination issued is final as if the SI never requested a hearing in the following situations:

(a) The SI failed to request a hearing in the time allotted in this rule. No other document will be issued after the notice of fitness determination.

(b) The SI withdraws the request for hearing at any time during the appeal process.

(11) BCU may make an informal disposition based on the administrative review. The Department shall issue a final order and new notice of fitness determination. If the resulting fitness determination is an adverse outcome, the appeal shall proceed to a contested case hearing

(12) BCU shall issue a dismissal order in the following situations:

(a) The SI may withdraw a hearing request verbally or in writing at any time before the issuance of a final order. A dismissal order due to the withdrawal is effective the date the withdrawal is received by BCU or the OAH. The SI may cancel the withdrawal in writing within 14 calendar days after the date of withdrawal.

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

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

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

(a) If no written exceptions are received by BCU 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 BCU, the Department's Director or designee shall 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.

(14) 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.

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

Stat. Auth.: ORS 181.537, 183.459, 409.027 & 409.050
Stats. Implemented: ORS 181.534, 181.537, 183.459, 409.010, 409.027 & 443.004

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

(1) This rule applies only to:

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

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

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

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

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

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

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

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

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

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

(5) An SI has the right to represent him or herself or have legal representation during the expedited hearing process. For the purpose of this rule, the term "SI" shall be considered to include the SI's legal representative if the SI has provided BCU with such information.

(a) An SI who is appealing a Notice of Intent to Deny regarding the position of homecare worker as defined in ORS 410.600 or personal support worker as defined in ORS 410.600 may be represented by a labor union representative pursuant to ORS 183.459.

(b) For all other SIs, the SI may not be represented by a lay person.

(6) If the SI fails to request an expedited hearing under this rule within the allowed time, BCU shall issue a Notice of Denial to the SI and to the QE. The SI shall have no further hearing rights under OAR 407-007-0330.

(7) If the SI requests an expedited hearing in a timely manner, the SI shall remain in the same status made in a preliminary fitness determination under OAR 407-007-0315 until the date of a final order or the Notice of Denial.

(8) BCU may conduct an administrative review before referring the appeal to OAH.

(a) The SI must participate in the administrative review. Participation may include but is not limited to providing additional information or additional documents requested by BCU within a specified amount of time.

(b) The administrative review is not open to the public.

(c) BCU may make an informal disposition based on the administrative review. BCU shall issue a final order and a notice of fitness determination.

(9) The Department shall be represented by a hearing representative in expedited hearings. The Department may also be represented by the Office of the Attorney General.

(a) BCU shall provide the administrative law judge and the SI a complete copy of available information used during the background checks and fitness determinations. The claimant is entitled to reasonable notice of all hearing documents either through personal service, electronically, regular mail, or certified mail.

(b) An SI may not have access to confidential information contained in abuse investigation reports or other records collected or developed during the abuse check process without a protective order limiting further disclosure of the information.

(10) The expedited hearing shall be conducted by the OAH by telephone within 10 business days from the receipt of the completed and signed Expedited Hearing Request form.

(a) The expedited hearing is not open to the public.

(b) The administrative law judge shall make a new fitness determination based on evidence and the record.

(c) The only remedy an administrative law judge may grant is a fitness determination that the subject individual is approved, approved with restrictions, or denied. Under no circumstances shall the Department or the QE be required to place an SI in any position, nor shall the Department or the QE be required to accept services or enter into a contractual agreement with an SI.

(11) BCU shall issue a dismissal order in the following situations:

(a) The SI may withdraw an expedited hearing request verbally or in writing at any time before the issuance of a final order. A dismissal order due to the withdrawal is effective the date the withdrawal is received by BCU or the OAH. The SI may cancel the withdrawal in writing within four calendar days after the date of withdrawal.

(b) BCU shall dismiss a hearing request when the SI fails to participate in the administrative review. Failure to participate in the administrative review shall result in termination of hearing rights. The order is effective on the due date for participation in the administrative review.

(c) If the QE terminates employment or position of the SI for reasons unrelated to the potentially disqualifying abuse, BCU may close the application.

(d) BCU shall dismiss a hearing request when the SI fails to appear at the time specified for the expedited hearing. The order is effective on the date scheduled for the hearing.

(12) After an expedited hearing, the administrative law judge shall issue a final order within three business days.

(a) If the final order maintains BCU's intent to deny, BCU shall issue a Notice of Denial by the next business day after the date of the final order. The SI shall have no further hearing rights under OAR 407-007-0330.

(b) If the final order reverses BCU's intent to deny to an approval or a restricted approval, BCU shall issue a Notice of Fitness Determination by the next business day after the date of the final order unless BCU formally stays the final order. The SI shall have no further hearing rights under OAR 407-007-0330.

(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.

Stat. Auth.: ORS 181.537, 183.459, 409.027 & 409.050
Stats. Implemented: ORS 181.534, 181.537, 183.459, 409.010, 409.027 & 443.004

407-007-0340 Record Keeping, Confidentiality

(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.

(3) The results of an abuse check are confidential and may not be disseminated by the Department or the Authority except in compliance with confidentiality statutes and guidelines of the Department or the Authority. An SI may not have access to confidential information contained in abuse investigation reports or other records collected or developed during the abuse check process without an order of discovery limiting further disclosure of the information during the contested case hearing process.

(4) All completed background check requests, other criminal records information, and other records collected or developed during the background check or contested case process shall be kept confidential and disseminated only on a need-to-know basis.

(5) The Department and Authority shall retain and destroy all criminal records check documents pursuant to federal law and records retention schedules published by Oregon State Archives.

(6) Documents retained by a QE may only be viewed by an approved QED or licensing staff authorized by the Department or Authority as part of monitoring compliance with licensing and program administrative rules.

(7) Documents retained by a QE may be requested and reviewed by the Department and the OSP for the purposes of determining and ensuring compliance with these rules.

(8) If an error is discovered on a notice of fitness determination, BCU may correct it by issuing an amended notice of fitness determination.

Stat. Auth.: ORS 181.537, 409.027 & 409.050
Stats. Implemented: ORS 181.534, 181.537, 409.010, 409.027 & 443.004

407-007-0350 Immunity from Liability

(1) The Department, the Authority and the QE, acting within the course and scope of employment, have immunity from any civil liability that might

otherwise be incurred or imposed for determining, in accordance with ORS 181.537, that an SI is fit or not fit to hold a position, provide services, or be employed, licensed, certified, or registered.

(2) The Department, and Authority, and the QE, acting within the course and scope of employment, and an employer or employer's agent are not liable for the failure to hire a prospective employee or the decision to discharge an employee on the basis of a fitness determination or closed case if they in good faith comply with:

(a) ORS 181.537 and ORS 409.027; and

(b) The decision of the QE or employee of the QE acting within the course and scope of employment.

(3) No employee of the state, a business, or an organization, acting within the course or scope of employment, is liable for defamation, invasion of privacy, negligence, or any other civil claim in connection with the lawful dissemination of information lawfully obtained under ORS 181.537.

Stat. Auth.: ORS 181.537, 409.027 & 409.050
Stats. Implemented: ORS 181.534, 181.537, 409.010, 409.027 & 443.004

407-007-0370 Variances

(1) The Department and Authority may consider variance requests regarding these rules.

(a) The outcomes of a fitness determination made pursuant to these rules is not subject to variance. Challenges to fitness determinations may only be made by SIs through contested case hearing rights set forth in these rules.

(b) Neither the Department nor the Authority may grant variances to ORS 181.534 and 181.537.

(2) The Department or Authority may grant a variance to any section of these rules based upon a demonstration by the QE that the variance would not

pose a significant risk to physical, emotional, or financial well-being of vulnerable individuals.

(3) The QE requesting a variance must submit, in writing, an application to the BCU that contains:

(a) The section of the rule from which the variance is sought;

(b) The reason for the proposed variance;

(c) The alternative practice, service, method, concept, or procedure proposed;

(d) A plan and timetable for compliance with the section of the rule from which the variance is sought; and

(e) An explanation on how the welfare, health, or safety of individuals receiving care will be ensured during the time the variance is in effect.

(4) The Assistant Director or designee for the Department and Authority's Shared Services, Office of Human Resources shall approve or deny the request for a variance.

(5) BCU shall notify the QE of the decision within 60 calendar days of the receipt of the request and shall provide a copy to other relevant Department or Authority program offices.

(6) Appeal of the denial of a variance request must be made in writing to the Department or Authority's Director, whose decision is final.

(7) The Department or Authority shall determine the duration of the variance.

(8) The QE may implement a variance only after receipt of written approval from BCU.

(9) Granting a variance does not set a precedent that must be followed by the Department or Authority when evaluating subsequent variance requests.

Stat. Auth.: ORS 181.537 & 409.050
Stats. Implemented: ORS 181.534, 181.537 & 409.010