

**CHAPTER 407  
DEPARTMENT OF HUMAN SERVICES,  
ADMINISTRATIVE SERVICES DIVISION AND DIRECTOR'S OFFICE**

**DIVISION 7  
CRIMINAL RECORDS AND ABUSE CHECKS**

**Abuse Checks for Department Employees and Volunteers**

**407-007-0400**

**Purpose**

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

Stat. Auth.: ORS 409.027 & 409.050

Stats. Implemented: ORS 409.027 & 409.050

**407-007-0410**

**Definitions**

As used in OAR 407-007-400 to 407-007-0460, unless the context of the rule requires otherwise, the following definitions apply:

- (1) "Abuse" has the meaning given in the Department's administrative rules 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 screening subject individuals as allowed by ORS 409.027.
- (3) "Abuse investigation report" means a written report completed after an investigation into suspected abuse and retained by the Department pursuant to ORS 124.085, 419B.030, or 430.757, or a similar report filed in another state.
- (4) "Approved" means that a subject individual, following a fitness determination, is fit to work, volunteer, be employed, or otherwise perform in a position where the subject individual may provide care.

- (5) “Care” means the treatment, education, training, instruction, placement services, recreational opportunities, case management, supervision of these services for clients of the Department, or Department administration and support services for Department clients.
- (6) “Closed case” means an abuse check that has been closed without a fitness determination.
- (7) “Denied” means that a subject individual, following a fitness determination including a weighing test, is not fit to work, volunteer, be employed, or otherwise perform services in positions covered by these rules.
- (8) “Department” means the Department of Human Services.
- (9) “Director” means the Department’s Director or designee.
- (10) “Fitness determination” means the outcome of an abuse check and, if necessary, a weighing test.
- (11) “Founded or substantiated” has the meanings given in the Department’s administrative rules corresponding to the setting in which the abuse was alleged or investigated.
- (12) “Office of Human Resources” means the Department’s Office of Human Resources.
- (13) “Potentially disqualifying abuse” means:
  - (a) The finding of an abuse investigation report is founded or substantiated; and
  - (b) The subject individual is determined to have been responsible for the abuse.
- (14) “Subject individual,” means an individual who is:
  - (a) An employee, which includes:
    - (A) An individual who seeks to be employed by the Department to provide care or a Department Jobs Plus client who seeks placement at a Department site; or
    - (B) An individual who is currently employed by the Department to provide care or a current Department Jobs Plus client who is placed at a Department site.
  - (b) A volunteer, which includes:
    - (A) An individual or student, who seeks to be a volunteer to provide care on behalf of the Department;

- (B) A Department Work Experience client who seeks placement as a volunteer at a Department site;
- (C) An individual or student currently volunteering to provide care on behalf of the Department, over whom the Department has direction and control; or
- (D) A Department Work Experience client who is placed at a Department site.

(15) “Weighing test” means a process carried out by the Department in which available information is considered in making a fitness determination.

Stat. Auth.: ORS 409.027 & 409.050

Stats. Implemented: ORS 409.025, 409.027 & 409.050

**407-007-0420**

**Reporting Abuse Allegations Required**

- (1) This rule applies to any subject individual who is:
  - (a) A current Department employee;
  - (b) A current Department volunteer; or
  - (c) An individual seeking Department employment or volunteer placement, who has been offered Department employment or volunteer placement, pending the completion of the abuse check process.
- (2) Subject individuals shall notify the Office of Human Resources within five calendar days of being notified that he or she has been identified as an alleged perpetrator, reported perpetrator, or accused person in an abuse investigation.

Stat. Auth.: ORS 409.027 & 409.050

Stats. Implemented: ORS 409.027 & 409.050

**407-007-0430**

**Applicants to the Department for Employment or Volunteer Position**

- (1) Subject to any applicable collective bargaining agreements, this rule applies to any subject individual who is:
  - (a) Offered employment or volunteer placement with the Department;
  - (b) Offered a change in employment or volunteer placement within the Department.

- (2) The Department may require a subject individual to have an abuse check in the following circumstances:
  - (a) A subject individual is offered employment or a volunteer placement with the Department.
  - (b) A subject individual is currently employed by or volunteering with the Department and is offered a new position within the Department. A change in a position requiring an abuse check may be due to but not limited to promotion, transfer, demotion, re-employment, job rotation, developmental assignment, restoration, bumping, or recall. For the abuse check to be required, there must be, as determined by the Office of Human Resources:
    - (A) A significant change in position duties or responsibilities; or
    - (B) A change in position classification.
- (3) Using identifying information submitted on the Department's Background Check Request form, the Department may conduct an abuse check to determine if the subject individual has potentially disqualifying abuse.
  - (a) In order to complete an abuse check and fitness determination, the Department may require additional information from the subject individual including but not limited to additional background information or documentation regarding circumstances since the abuse occurred.
  - (b) If a subject individual is a represented Department employee, the process for obtaining additional information through investigatory interviews shall adhere to collective bargaining agreements on investigatory interviews.
- (4) The Department may not determine a start date for a subject individual until the completion of an abuse check and a fitness determination of approval.
- (5) If a subject individual has potentially disqualifying abuse, the Department shall conduct a weighing test in order to make a fitness determination. Factors to consider in a weighing test include but are not limited to:
  - (a) The details regarding the abuse including but not limited to:
    - (A) Circumstances leading to the incident of abuse;
    - (B) The nature or type of abuse; and
    - (C) Other information gathered during the scope of the abuse investigation.

- (b) The date of abuse incident and abuse investigation, and the age of the subject individual at the time of the abuse.
  - (c) The quality of the abuse investigation including, if applicable, any exhibits and related documents with consideration to completeness, objectivity, and sufficiency.
  - (d) Due process provided to the subject individual after the abuse investigation.
  - (e) Required action resulting from the founded or substantiated abuse including but not limited to training, counseling, corrective or disciplinary action, and the subject individual's compliance.
  - (f) Circumstances related to the subject individual including but not limited to work history, education history, and other personal information provided by the subject individual.
  - (g) Changes in circumstances subsequent to the potentially disqualifying abuse.
  - (h) The relevancy of the abuse to the position the subject individual is seeking.
- (6) Following an abuse check, the Department shall complete the fitness determination.
- (a) The Department may approve a subject individual if:
    - (A) The subject individual has no potentially disqualifying abuse; or
    - (B) The subject individual has potentially disqualifying abuse but, after a weighing test, the Department determines that more likely than not the subject individual poses no risk to the Department, its clients, or vulnerable persons.
  - (b) The Department shall deny a subject individual who has potentially disqualifying abuse and, after a weighing test, the Department determines that more likely than not the subject individual poses a risk to the Department, its clients, or vulnerable individuals.
- (7) The Department shall close the case if the subject individual discontinues the application or fails to cooperate with the abuse check process. When the application is closed without a final fitness determination, the subject individual does not have a right to contest the closure.
- (8) Upon completion of a fitness determination or in a closed case, the Department shall provide written notice to the subject individual. The notice shall:
- (a) Be in a Department approved format; and

- (b) Include an effective date of action.
- (c) For an outcome of denied:
  - (A) Include the reasons for the denial;
  - (B) Include information regarding appeal rights; and
  - (C) Include a statement that the notice becomes a final order in the event of a withdrawal during the contested case hearing process or a failure to appear at the contested case hearing.
- (9) When a subject individual is denied or a case is closed, the individual may not work, volunteer, be employed, or otherwise perform in the position that the subject individual is seeking. If a current Department employee or volunteer is denied, the Office of Human Resources shall determine if the subject individual may continue in the current position that the subject individual is seeking to change.
  - (a) For Department employees, if disciplinary action up to and including dismissal is appropriate, the action shall be taken in accordance with:
    - (A) Relevant collective bargaining contractual provisions;
    - (B) Statutory provisions for unrepresented or management services employees; or
    - (C) Relevant Department or statewide policies or procedures.
  - (b) For subject individuals who are current volunteers or Work Experience clients, a denial or closed case shall result in immediate dismissal.
- (10) The Department shall document fitness determinations in writing and include all necessary details including but not limited to the potentially disqualifying abuse, the weighing test, or the reasons for a closed case.
- (11) The Department shall make new fitness determinations for each application. The outcome of previous fitness determinations does not ensure the same outcome of a new fitness determination.
- (12) Only subject individuals not offered employment or a Jobs Plus position may contest the fitness determination.
  - (a) The contested case hearing process, pursuant to ORS chapter 183 and OAR 407-007-0080, shall proceed if the subject individual requests a contested case

hearing. Subject individuals must request a hearing within 15 calendar days after the effective date of action listed on the notice of fitness determination.

- (b) The subject individual's hearing rights pertain to the action of denial of employment or placement, not the outcome of the abuse investigation.
  - (c) The only remedy that may be awarded is a fitness determination that the subject individual is approved or denied. Under no circumstances shall the Department be required to place a subject individual in any position, nor shall the Department be required to accept services or enter into a contractual agreement with a subject individual.
  - (d) Subject individuals 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.
    - (A) A protective order issued pursuant to this section must be issued by an administrative law judge as provided in OAR 137-003-0570(8) or by a court of law.
    - (B) In conjunction with a protective order issued pursuant to this section, individually identifying information relating to clients, witnesses, and other persons identified in abuse investigation reports or other records collected, or developed during the abuse check process shall be redacted prior to disclosure, except for the information identifying the subject individual.
- (13) Subject individuals in volunteer or Work Experience placements must have a new abuse check every three years from the date of placement.

Stat. Auth.: ORS 409.027 & 409.050

Stats. Implemented: ORS 409.010 & 409.027

#### **407-007-0440**

##### **Current Employees of the Department**

- (1) This rule applies to any subject individual who is a current Department employee.
- (2) If a subject individual is identified as an alleged perpetrator, reported perpetrator, or accused person in an abuse investigation, all relevant abuse investigation and licensing rules shall apply.
- (3) The Department shall apply relevant program administrative due process policies if the subject individual is identified as responsible in a founded or substantiated abuse investigation.

- (4) If a current subject individual is identified as an alleged perpetrator, reported perpetrator, or accused person in an abuse investigation, the Office of Human Resources may initiate an investigation during or following the investigation of the alleged abuse to determine whether to take any action, up to and including dismissal from employment.
  - (a) If the abuse investigation results in potentially disqualifying abuse, the Office of Human Resources shall initiate an investigation which may include conducting a weighing test as described in OAR 407-007-0430(5). The purpose of the investigation is to determine whether any action, up to and including dismissal, is justified.
  - (b) If the Office of Human Resources learns of potentially disqualifying abuse from previous investigations, the Office of Human Resources may initiate an investigation, to determine fitness for the position, which may include conducting a weighing test as described in OAR 407-007-0430(5). The purpose of the investigation is to determine whether any action, up to and including dismissal is justified.
  - (c) For Department employees, if disciplinary action up to and including dismissal, is appropriate, the action shall be taken in accordance with:
    - (A) Relevant collective bargaining agreements;
    - (B) Statutory provisions for unrepresented or management services employees; or
    - (C) Relevant Department or statewide policies or procedures.
- (5) A pending related action, such as a civil, criminal, juvenile, or administrative proceeding in which the allegations of abuse are at issue shall not automatically be grounds for the subject individual to seek to detain or stay either the review of the founded or substantiated disposition or any resulting disciplinary action. The Department may detain or stay either the review of the founded or substantiated abuse disposition or any resulting disciplinary action based on the pending related action such as a civil, criminal, juvenile, or administrative proceeding in which the allegations of abuse are at issue.

Stat. Auth.: ORS 409.027 & 409.050  
Stats. Implemented: ORS 409.027 & 409.050

**407-007-0450**  
**Current Volunteers of the Department**

- (1) This rule applies to any subject individual who is a current Department volunteer.

- (2) If a subject individual is identified as an alleged perpetrator, reported perpetrator, or accused person in an abuse investigation, the Office of Human Resources may remove the subject individual from placement and duties at any time during the investigation or any subsequent review.
- (3) If removed from the placement, the subject individual may reapply for a placement under OAR 407-007-0430.

Stat. Auth.: ORS 409.027, 409.050

Stats. Implemented: ORS 409.027 & 409.050

**407-007-0460**  
**Confidentiality**

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

Stat. Auth.: ORS 409.027 & 409.050

Stats. Implemented: ORS 409.027 & 409.050