

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

**DIVISION 7**  
**CRIMINAL HISTORY CHECKS**

**407-007-0200**

**Statement of Purpose and Statutory Authority**

- (1) Purpose. The purpose of these rules is to provide for the reasonable screening of subject individuals in order to determine if they have a history of criminal behavior such that they should not be allowed to oversee, live or work closely with, or provide services to vulnerable people.
- (2) Authority. These rules are authorized under ORS 181.537, 409.010, 409.050, 410.020(3)(d), 418.016, 418.640, 441.022, 441.055, 443.730, 443.735(3), 688.655 and 688.660.
- (3) When Rules Apply. These rules are to be applied when evaluating criminal history of a subject individual and conducting fitness determinations based upon such history. The fact that a subject individual is approved does not guarantee employment or placement.

Stat. Auth.: ORS 181.537, 409.010, 409.050

Stats. Implemented: ORS 181.537

**407-007-0210**

**Definitions**

As used in OAR chapter 407, division 007, unless the context of the rule requires otherwise, the following definitions apply:

- (1) "Adult Foster Home" has the same definition as is provided in ORS 443.705.
- (2) "Approved" means that a subject individual has completed the criminal history check process, including any required fitness determination, and is eligible to provide care or reside in an environment covered by these rules.
- (3) "Authorized Designee" means a person who is designated by an approved qualified entity and authorized by the Department to receive and process criminal history check request forms from subject individuals and criminal history information from the Department. The authorized designee conducts fitness determinations under the authority of the Department.

- (4) "Care" means the provision of care, treatment, education, training, instruction, supervision, placement services, transportation, recreation or support to children, the elderly or persons with disabilities.
- (5) "Client" means any person who receives care, or funding for care, through the Department.
- (6) "Contact Person" means a person who is designated by an approved qualified entity to receive and process criminal history check request forms from subject individuals, but who is not authorized to receive criminal history information from the Department. The contact person is not allowed to make final fitness determinations. The contact person is allowed to make the preliminary fitness determinations under the authority of the Department only if there is no indication of potentially disqualifying crimes or conditions.
- (7) "Conviction" means that the subject individual was convicted in a court of law, or was adjudicated in a juvenile court and found responsible for the crime. "Conviction" as used in these rules includes a finding of "guilty except by reason of insanity," "guilty except for insanity," "not guilty by reason of insanity," or similarly worded findings. Entering a plea of "guilty" or "no contest" is also considered a conviction for the purpose of these rules unless a subsequent court decision has dismissed the charges.
- (8) "Criminal History Check Rules" or "These Rules" means OAR chapter 407, division 007.
- (9) "Criminal History Check" or "CHC" means the Oregon Criminal History Check and when required, a National Criminal History Check and/or a State-Specific Criminal History Check, and the processes and procedures required by these rules.
- (10) "Criminal History Information" means criminal justice records, fingerprints, court records, sexual offender registration records, warrants, DMV information, information provided on the Department's criminal history check forms, and any other information obtained by or provided to the Department pursuant to these rules for the purpose of conducting a fitness determination. "Criminal history information" does not include violations or infractions (See ORS 161.505-161.585).
- (11) "Denied" means that a subject individual following a fitness determination, including a weighing test, has been found to be not eligible to hold the position, be employed, certified, licensed, registered or otherwise authorized by the Department to provide care or to reside in an environment covered by these rules.
- (12) "Department" means the Oregon Department of Human Services or any subdivision thereof.
- (13) "Employer," if the qualified entity is a corporation, means the corporation or parent corporation.

- (14) "Facility" means any entity that is licensed or certified by the Department and which provides care.
- (15) "Homecare Worker" or "Home Care Worker" means a provider who is enrolled in the Department's client-employed provider program and who provides either hourly or live-in services, as defined in ORS 410.600.
- (16) "Independent Provider" means a person who meets the qualifications described in OAR 411-305-0020, 411-330-0020 or 411-340-0020.
- (17) "National Criminal History Check" means obtaining and reviewing criminal history outside Oregon's borders. This information may be obtained from the Federal Bureau of Investigation through the use of fingerprint cards and from other criminal information resources.
- (18) "Oregon Criminal History Check" means obtaining and reviewing information from the Oregon State Police's Law Enforcement Data System (LEDS). The Oregon Criminal History Check may also include a review of information from the Oregon Judicial Information Network (OJIN), Oregon Department of Corrections records, Motor Vehicles Division, local or regional criminal history information systems, or other official law enforcement agency or court records in Oregon.
- (19) "Personal Care Services Provider" means a person who is directly employed by a client of the Department to provide assistance with activities of daily living and other activities as described in OAR chapter 411, division 34.
- (20) "Potentially Disqualifying Crime" means a crime listed in OAR 407-007-0280.
- (21) "Probationary Status" means a condition in which a subject individual may be allowed by the authorized designee to work, volunteer, be trained or reside in an environment covered by these rules following submission of a completed DHS Criminal History Request form. The term "probationary status" is applicable only during the timeframe prior to a final fitness determination.
- (22) "Qualified Entity" means the Department; local government agency; community mental health or developmental disability program, local health department or an individual or 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.
- (23) "Qualified Vendor" means a supplier of criminal history information who is approved by the Department of Human Services as having access to substantially the same criminal offender information as the Law Enforcement Data System.

- (24) "Related" means spouse, domestic partner, natural parent, child, sibling, adopted child, adopted parent, stepparent, stepchild, stepbrother, stepsister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, grandchild, aunt, uncle, niece, nephew or first cousin.
- (25) "Service Provider" means a person or entity that is licensed, certified, registered, or otherwise regulated or authorized for payment by the Department and that provides care.
- (26) "State-Specific Criminal History Check" means obtaining and reviewing information from law enforcement agencies, courts or other criminal history information resources located in a state or jurisdiction outside Oregon.
- (27) "Subject Individual" means a person who is required to complete a criminal history check pursuant to these rules.
- (a) "Subject individual" includes:
- (A) An employee of the Department, person who has been offered employment by the Department, volunteer or student over whom the Department has direction and control.
  - (B) A person who is licensed, certified, registered or otherwise regulated or authorized for payment by the Department and who provides care.
  - (C) An employee or volunteer who provides care within any entity or agency licensed, certified, registered or otherwise regulated by the Department.
  - (D) A direct care staff person secured through the services of a personnel services or staffing agency who works in any long term care facility licensed by the Department pursuant to ORS chapter 441.
  - (E) Except as provided in paragraphs (27)(b)(C) and (D) of this rule, a person who lives in a facility that is licensed, certified, registered or otherwise regulated by the Department to provide care.
  - (F) An individual working for a private, licensed child caring agency or system of care contractors providing child welfare services pursuant to ORS chapter 418.
  - (G) A homecare worker, personal care services provider or an independent provider employed by a Department client and who provides services to the client if the Department helps to pay for the services.
  - (H) A child care provider reimbursed through the Department's child care program, and employees and other persons in child care facilities that are exempt from certification or registration by the Child Care Division of the

Employment Department. This includes all persons who reside in or who are frequent visitors to the residence or facility where the child care services are provided and who may have unsupervised access to the children. (REF: OAR chapter 461, division 165.)

- (I) A contact person or authorized designee as defined in OAR 407-007-0210.
  - (J) A person providing training to staff within a long term care facility.
  - (K) Any person serving as an owner, operator or manager of a room and board facility pursuant to OAR chapter 411, division 68.
  - (L) Any person applying for a paid or volunteer position, any employee, any volunteer, any contractor, or any employee of any contractor of a State-operated group home within the Department's State-Operated Community Programs, Blue Mountain Recovery Center, Eastern Oregon Training Center, and Oregon State Hospital.
  - (M) Notwithstanding subsection (27)(b) of this rule, any person who is required to complete a criminal history check pursuant to a contract or written agreement with the Department or by other Oregon Administrative Rules of the Department, if the requirement is within the statutory authority granted to the Department. Specific statutory authority must be specified in the contract.
- (b) "Subject Individual" does not include:
- (A) Any person under 16 years of age.
  - (B) A person receiving training in a DHS-licensed facility as a part of the required curriculum through any college, university or other training program and who is not an employee in the facility in which training is provided. Facilities must ensure that all such students have passed a substantially equivalent background check process through the training program or are:
    - (i) Actively supervised at all times as defined in OAR 407-007-0310, and
    - (ii) Not allowed to have unsupervised access to vulnerable people.
  - (C) Residents of facilities licensed, certified or registered by the Department who are receiving care or treatment, unless specific, written permission to conduct a criminal history check is received from the Department. The only circumstance in which the Department will 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 subsection (27)(a) of this rule.

- (D) Persons who live in or visit relative adult foster homes. This exemption does not apply to the licensee.
- (E) Individuals working in child care facilities certified or registered by the Employment Department.
- (F) Individuals receiving spousal pay from the Department for care of a spouse.
- (G) Individuals employed by a private business that provides services to clients and the general public and that is not regulated by the Department.
- (H) Individuals employed by a business that provides appliance repair or structural repair to clients and the general public, and who are temporarily providing such services in an environment regulated by the Department. This exclusion does not apply to a business that receives funds from the Department for care provided by an employee of the business.
- (I) Individuals employed by a private business in which a client of the Department is working as part of an employment service program sponsored by the Department. This exclusion does not apply to an employee of a business that receives funds from the Department for care provided by the employee.
- (J) Employees and volunteers working in hospitals, ambulatory surgical centers, special inpatient care facilities, outpatient renal dialysis facilities, and freestanding birthing centers as defined in ORS 442.015, in-home care agencies as defined on ORS 443.305, and home health agencies as defined in ORS 443.005. This exclusion does not apply to subject individuals in State-operated group homes within the Department's State-Operated Community Programs, Blue Mountain Recovery Center, Eastern Oregon Training Center, or Oregon State Hospital as defined in subsection (27)(a) of this rule.
- (K) Volunteers who are not under the direction and control of the Department or any entity licensed, certified, registered or otherwise regulated by the Department.
- (L) Individuals employed or volunteering in a Medicare-certified health care business which is not subject to licensure or certification by the State of Oregon.
- (M) People working in restaurants or at public swimming pools.

- (N) Hemodialysis technicians.
- (O) Individuals employed by Alcohol and Drug Programs that are certified, licensed, or approved by the Office of Mental Health and Addictions Services to provide Prevention, Evaluation or Treatment Services. This exclusion does not apply to programs specifically required by other Department rules to conduct criminal history checks in accordance with these rules.
- (P) Persons working for a transit service provider which conducts background checks pursuant to ORS 267.237.
- (Q) Persons being certified by the Department as interpreters pursuant to ORS 409.623. This paragraph is not intended to exempt a Department-certified interpreter from a criminal history check when being considered for a specific position.
- (R) Provider group categories that were authorized for payment by the Department for care if such provider group categories were not covered by a Department criminal record check process prior to 2004.
- (S) Foster and adoptive parents providing care for children pursuant to ORS chapter 418.
- (T) Emergency Medical Technicians and First Responders certified by the Department of Human Services Emergency Medical Services and Trauma Systems program.
- (U) A person employed by an entity that provides services solely contracted under ORS 414.022.

(28) "Weighing Test" means a process carried out by one or more authorized designees in which known negative and positive information is considered to determine if a subject individual is approved or denied. See OAR 407-007-0320(5)(c).

Stat. Auth.: ORS 181.537, 409.010 & 409.050

Stats. Implemented: ORS 181.537

#### **407-007-0220**

#### **Criminal History Check Required**

- (1) Who Conducts Check. The Department, or a qualified entity authorized by the Department, conducts criminal history checks on all subject individuals.

(2) When Check is Required (New Checks and Re-checks). A subject individual is required to have a check in the following circumstances:

- (a) A person who becomes a subject individual on or after the effective date of these rules is required to have a criminal history check in accordance with these rules.
- (b) The subject individual changes employers. If the subject individual's employer merges with another agency or changes names, this would not be considered a change of employers.
- (c) The subject individual changes positions, licenses, certifications or registrations.

NOTE: "Licenses," "certifications" and "registrations" refers only to licenses, certifications and registration issued by the Department.

- (d) A check is required by federal or state laws or regulations, other rules adopted by the Department, or by contract or written agreement with the Department.
- (e) The Department or the authorized designee has reason, such as any indication of possible criminal behavior, to believe that a check is justified.

(3) When a Check is Not Required. A new check is not required only under the following circumstances:

- (a) A personal care services provider, respite care provider or an independent provider who is paid with funds received from the Department changes clients or adds another client, and the prior, documented criminal history check conducted within the previous twenty-four (24) months through the Department has been approved without a restriction as described in OAR 407-007-0320(5)(c)(C).
- (b) The subject individual is a child care provider as described in OAR 461-165-0180 who changes clients or begins providing services to another client.
- (c) There is no change of employer, there are no new potentially disqualifying crimes or conditions, and at least one of the following is true:
  - (A) The previous fitness determination identified no potentially disqualifying history and the authorized designee determines that the previous fitness determination is sufficient for the new position.
  - (B) The authorized designee determines that the new position requires the same or less contact with vulnerable persons, personal information, financial information, or client funds.

Stat. Auth.: ORS 181.537, 409.010 & 409.050

Stats. Implemented: ORS 181.537



**407-007-0230**  
**Qualified Entity**

- (1) Approval Required. A qualified entity must be approved in writing by the Department pursuant to these rules in order to appoint an authorized designee or contact person. Unless specifically indicated in these rules, all qualified entities discussed are considered approved.
- (2) Appointment of Authorized Designees and Contact People. Unless indicated under section (3) of this rule, all qualified entities are responsible for ensuring the completion of criminal history checks for subject individuals who are the qualified entity's employees, volunteers, or other subject individuals under the direction or control of the qualified entity. Qualified entities approved by the Department must appoint authorized designees or contact persons within 30 days of Department approval.
  - (a) Unless indicated under section (3) of this rule, all qualified entities must appoint one or more authorized designees, or have a written agreement with another qualified entity to handle the responsibilities of an authorized designee.
  - (b) All qualified entities may also appoint one or more contact persons, or have a written agreement with another qualified entity to handle the responsibilities of a contact person.
- (3) The Department Acts as Authorized Designee. The Department will handle the responsibilities of an authorized designee listed in OAR 407-007-0240(3)(c)(A) through 407-007-0240(3)(c)(C) in the following circumstances:
  - (a) Private qualified entity with fewer than 10 employees. These entities are not eligible to appoint authorized designees.
    - (A) The private qualified entity with fewer than 10 employees may use another qualified entity to handle the responsibilities of a authorized designee instead of using the Department. If another qualified entity is used, there must be a written agreement between the two qualified entities and the Department must be notified.
    - (B) The private qualified entity with fewer than 10 employees must appoint one or more contact persons, or must have a written agreement with another qualified entity to handle the responsibilities of a contact person and the Department must be notified.
  - (b) Qualified entities with subject individuals not under the direction and control of the qualified entity but who provide care under programs administered by the qualified entity.

- (A) For these subject individuals, the qualified entity must appoint one or more contact persons, or use an authorized designee or contact person appointed under section (2) of this rule to handle the responsibilities of a contact person.
  - (B) Notwithstanding section (3)(b), the qualified entity will appoint an authorized designee for these subject individuals if the qualified entity chooses to do so, or is required to do so under other DHS program administrative rules or contract with DHS. The qualified entity must notify the Department of which programs are affected and which qualified entity will handle the responsibilities of authorized designee for each program.
- (4) **Revocation of Approval.** Approval of the qualified entity may be revoked by the Department if the Department determines that the qualified entity, or a contact person or authorized designee appointed by the qualified entity, has failed to comply with these rules.
  - (5) **Managing CHC Process.** The qualified entity will appoint authorized designees and contact persons as needed to remain in compliance with these rules.
  - (6) **Training and Technical Assistance.** The Department will provide qualified entities with periodic training and on-going technical assistance for contact persons and authorized designees.

Stat. Auth.: ORS 181.537, 409.010, 409.050

Stats. Implemented: ORS 181.537

#### **407-007-0240**

##### **Contact Person and Authorized Designee**

- (1) **Requirements.** All requirements in this section must be completed within a 90-day time period. To be approved by the Department, all contact persons and authorized designees must:
  - (a) Be appointed by a qualified entity, and apply to and be registered by the Department. The application must be in writing on a form provided by the Department.
  - (b) Complete both an Oregon and a national criminal history check in accordance with these rules and must have:
    - (A) No conviction for a potentially disqualifying permanent review crime,
    - (B) No convictions for any other crime in the past fifteen years, and

- (C) No outstanding warrants, registration as a sex offender in Oregon or any other jurisdiction, or any other condition identified in OAR 407-007-0290.
- (c) Complete a training program and successfully pass any testing as required by the Department.
  - (2) Denial of Contact Person or Authorized Designee Status. A person's status as a contact person or authorized designee will be denied if the person does not meet the qualifications to be a contact person or authorized designee as listed in this rule. Once denied, the person can no longer perform the duties of a contact person or authorized designee for the qualified entity.
    - (a) If the Department denies the person to be an authorized designee or contact person, the qualified entity may request an exception under this rule in writing. If an exception is requested, the Department will review the qualified entity's exception request, the person's application, criminal history, and any supplemental information as listed in OAR 407-007-0300, to determine if the appointment of the person would pose a significant risk to the physical, emotional or financial well-being of children, the elderly or persons with disabilities.
    - (b) Denial or termination of contact person or authorized designee status under OAR 407-007-0240(4)(a) is not subject to hearing rights under these rules unless the denial or termination results in loss of employment or position. Persons losing employment or position have the same hearing rights as other subject individuals under these rules.
- (3) Responsibilities.
  - (a) A contact person must:
    - (A) Ensure that adequate measures are taken to protect the confidentiality of the records required by these rules.
    - (B) Take reasonable measures to verify the identity of a subject individual. When the application is submitted in person, these measures include asking the subject individual for government-issued photo identification (example: driver's license) and confirming information written on the DHS Criminal History Request form with information on the photo identification.
    - (C) Ensure that when a subject individual must be on probationary status, the need for active supervision pursuant to OAR 407-007-0310 is understood by each person responsible for ensuring that active supervision is provided.

- (D) Ensure that the subject individual receives a timely, written notice of the final fitness determination. When the decision results in denial or a restriction, the notice must include information regarding how to appeal the decision.
  - (E) Monitor status of criminal history check applications and investigate any delays in processing.
  - (F) Ensure that documentation required by these rules is processed and maintained in accordance with these rules.
- (b) The contact person may review the DHS Criminal History Request form completed by the subject individual to determine if the subject individual has any potentially disqualifying history.
- (A) The contact person may allow a subject individual to work or function on probationary status only after the contact person has reviewed the DHS Criminal History Request form and determined there is no indication that the subject individual has any potentially disqualifying history or condition.
  - (B) The contact person must not allow a subject individual who discloses any potentially disqualifying history to work or function on probationary status.
- (c) An authorized designee has all the responsibilities of a contact person as listed in (3)(a)(A) through (3)(a)(F) of this rule, and in addition must:
- (A) Review the DHS Criminal History Request form completed by the subject individual (if not already done so by a contact person) and conduct a preliminary fitness determination under the authority of the Department in accordance with OAR 407-007-0320 prior to forwarding the DHS Criminal History Request form to the Department to determine eligibility for probationary status.
  - (B) Conduct a final fitness determination under the authority of the Department in accordance with OAR 407-007-0320.
  - (C) Participate in the appeal process if requested by the Department.
- (4) Conflict of Interest (Authorized Designee). An authorized designee must not have access to LEADS information, or make a fitness determination, if there is a conflict of interest between the authorized designee and the subject individual.
- (a) A conflict of interest exists when one or more of the following circumstances is true:

- (A) The authorized designee is related to the subject individual.
  - (B) The authorized designee has a close personal or financial relationship, other than an employee-employer relationship, with the subject individual.
- (b) When there is a conflict of interest, and the qualified entity has no other authorized designees available to conduct the fitness determination, the qualified entity must submit the application to the Department and the Department will complete the determination.
- (5) Termination of Contact Person or Authorized Designee Status.
- (a) When the authorized designee's or contact person's position with the qualified entity ends, or when the qualified entity terminates the appointment, the Department's registration of a contact person or authorized designee is revoked. The qualified entity must notify the Department immediately upon the termination of the appointment.
  - (b) The Department or the qualified entity must suspend or revoke the appointment if a contact person or authorized designee fails to comply with the rules of the Department or fails to continue to meet the qualifications for the position of authorized designee or contact person, as applicable. After suspending or revoking the appointment, the qualified entity taking the action must notify the Department's Criminal Records Unit in writing immediately. If the Department takes the action, it must notify the qualified entity in writing immediately.
- (6) Not Transferable. If the person holding the status of a contact person or authorized designee leaves employment of the qualified entity for any reason, the person will no longer be considered a contact person or authorized designee. If the person finds employment with another qualified entity, a new appointment, application and registration must be conducted under these rules.
- (7) Review of Appointment. The Department will develop a procedure to review and update appointments of contact persons and authorized designees, up to and including a new application and criminal history check, to assure that all requirements of this rule are met:
- (a) Every three years; or
  - (b) If the Department has reason to believe the person no longer meets the qualifications to be a contact person or authorized designee, such as but not limited to, indication of criminal behavior.

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

**407-007-0250**

**Oregon Criminal History Check Process**

- (1) Forms Required. A qualified entity, authorized designee and subject individual must use the Department's form to request the criminal history check. The Department will make the DHS Criminal History Request form and other forms required under these rules available for use or reproduction to all qualified entities.
- (2) Processing.
  - (a) The Department obtains criminal history information from the Oregon State Police Law Enforcement Data System and from what other sources of criminal, judicial and motor vehicle information as the Department determines necessary to complete the check.
  - (b) Only an approved qualified entity, working through an authorized designee, may:
    - (A) Receive and evaluate Oregon criminal history information from the Department as allowed by applicable statutes.
    - (B) Conduct fitness determinations.
  - (c) The Department or the authorized designee may require that a subject individual obtain and provide additional criminal, judicial or other background information.
  - (d) Criminal history information obtained from the Law Enforcement Data System must be handled in accordance with applicable Oregon State Police requirements in ORS chapter 181 and the rules adopted pursuant thereto. (NOTE: See OAR chapter 257, division 15)
- (3) Additional Information Required. In order to conduct an Oregon check and fitness determination, the Department may require additional information from the subject individual as necessary, such as but not limited to proof of identity; or additional criminal, judicial, or other background information.
- (4) Imminent Danger.
  - (a) If the Department determines there is indication of criminal behavior that could pose a potential immediate risk to vulnerable persons, the Department will authorize a new criminal history check without the completion of a new DHS Criminal History Request form. This applies to a subject individual who:
    - (A) Has been previously approved under these rules or prior DHS criminal history check rules.

- (B) Has been previously approved with restrictions under these rules or prior DHS criminal history check rules, or
  - (C) Has a criminal history check pending a final fitness determination or the outcome of an appeal under these rules.
- (b) If the Department determines that a fitness determination based on the new criminal history check would be adverse to the subject individual, the Department will provide the subject individual the opportunity to disclose criminal history and other information as indicated in OAR 407-007-0300 before completing the fitness determination.

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

**407-007-0260**  
**State-Specific Criminal History Check Process**

- (1) State-Specific Check. Notwithstanding the provisions of OAR 407-007-0270, the Department may conduct a state-specific criminal history check in lieu of a national check when the Department has reason to believe that out-of-state history may exist and that a nationwide criminal history check is not warranted.
- (2) Supplement to National Check. The Department may conduct a state-specific check in addition to a national check in order to clarify incomplete or conflicting information.
- (3) Additional Information Required. In order to conduct a state-specific check and complete a fitness determination, the Department or the authorized designee may require additional information from the subject individual as necessary, such as but not limited to proof of identity; residential history; names used while living at each residence; or additional criminal, judicial, or other background information
- (4) Imminent Danger.
  - (a) If the Department determines there is indication of criminal behavior that could pose a potential immediate risk to vulnerable persons, the Department will authorize a new criminal history check without the completion of a new DHS Criminal History Request form. This applies to a subject individual who:
    - (A) Has been previously approved under these rules or prior DHS criminal history check rules.
    - (B) Has been previously approved with restrictions under these rules or prior DHS criminal history check rules, or

- (C) Has a criminal history check pending a final fitness determination or the outcome of an appeal under these rules.
- (b) If the Department determines that a fitness determination based on the new criminal history check would be adverse to the subject individual, the Department will provide the subject individual the opportunity to disclose criminal history and other information as indicated in OAR 407-007-0300 before completing the fitness determination.
- (5) Department Makes Final Fitness Determination. When a subject individual has a potentially disqualifying national criminal history or discloses out of state criminal history, the Department makes the final fitness determination.

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

#### **407-007-0270**

#### **National Criminal History Check Process**

- (1) National Criminal History Check. In addition to an Oregon check (OAR 407-007-0250), a national criminal history check may be required by the Department under any of the following circumstances:
  - (a) Out-of-State Residency. The subject individual has lived outside Oregon for 60 or more consecutive days during the previous three (3) years with the following exceptions:
    - (A) Child Care Providers (18 months). The subject individual is a child care provider or other person included in OAR 407-007-0210(27)(a)(H) who has lived outside Oregon for 60 or more consecutive days during the previous eighteen months.
    - (B) Child Welfare System (5 years). The subject individual is working for private, licensed child caring agencies and system of care contractors providing child care pursuant to ORS chapter 418 and has lived outside Oregon for 60 or more consecutive days during the previous five years.
  - (b) Criminal History Outside Oregon. The LEDS check, or any other information obtained by the Department, indicates there may be criminal history outside of Oregon, or the subject individual self-discloses criminal history outside of Oregon.
  - (c) Identity or History Questioned. The social security number appears not to be valid or is not provided to the Department on the DHS Criminal History Request form, the subject individual has no Oregon driver's license or Oregon identification



card, or the Department has other reason to question the identity or history of the subject individual.

- (d) Oregon State Institutions. The subject individual meets the definition under OAR 407-007-0210(27)(a)(L).
- (2) Fingerprinting a Juvenile. Consent of the parent or guardian is required to obtain fingerprints from a child under the age of 18 years.
- (3) Processing. The subject individual must complete and submit a fingerprint card when requested by the Department.
  - (a) Fingerprint Cards. The subject individual must use a fingerprint card (Example: FBI Form FD 258) provided by the Department.
  - (b) Time Frame for Return. The card must be submitted within 21 days of the request to the Department's Criminal Records Unit to avoid closure of application pursuant to OAR 407-007-0320(5)(e).
  - (c) Extension. The Department may extend the time allowed for good cause.
- (4) Additional Information Required. In order to conduct a national check and complete a fitness determination, the Department or the authorized designee may require additional information from the subject individual as necessary, such as but not limited to proof of identity; residential history; names used while living at each residence; or additional criminal, judicial, or other background information.
- (5) Department Makes Final Fitness Determination. When a subject individual has a potentially disqualifying national criminal history or discloses potentially disqualifying out of state criminal history, the Department makes the final fitness determination.

Stat. Auth.: ORS 181.537, 409.010 & 409.050

Stats. Implemented: ORS 181.537

#### **407-007-0280** **Potentially Disqualifying Crimes**

A conviction of any of the following crimes is potentially disqualifying. The lists include offenses that are crimes and are not intended to include offenses that are classified as violations (See ORS 161.505 through 161.565).

- (1) Permanent Review. The crimes listed in this section are crimes which require that a fitness determination be completed regardless of date of conviction.
  - (a) ORS 162.155, Escape II;

- (b) ORS 162.165, Escape I;
- (c) ORS 162.325, Hindering prosecution;
- (d) ORS 163.005, Criminal homicide;
- (e) ORS 163.095, Aggravated murder;
- (f) ORS 163.115, Murder;
- (g) ORS 163.118, Manslaughter I;
- (h) ORS 163.125, Manslaughter II;
- (i) ORS 163.145, Criminally negligent homicide;
- (j) ORS 163.160, Assault IV;
- (k) ORS 163.165, Assault III;
- (l) ORS 163.175, Assault II;
- (m) ORS 163.185, Assault I;
- (n) ORS 163.187, Strangulation;
- (o) ORS 163.200, Criminal mistreatment II;
- (p) ORS 163.205, Criminal mistreatment I;
- (q) ORS 163-205, Female genital mutilation;
- (r) ORS 163.208, Assault of Public Safety Officer;
- (s) ORS 163.213, Unlawful use of an electrical stun gun, tear gas, or mace I;
- (t) ORS 163.225, Kidnapping II;
- (u) ORS 163.235, Kidnapping I;
- (v) ORS 163.257, Custodial interference I;
- (w) ORS 163.355, Rape III;
- (x) ORS 163.365, Rape II;

- (y) ORS 163.375, Rape I;
- (z) ORS 163.385, Sodomy III;
- (aa) ORS 163.395, Sodomy II;
- (bb) ORS 163.405, Sodomy I;
- (cc) ORS 163.408, Unlawful Sexual penetration II;
- (dd) ORS 163.411, Unlawful Sexual penetration I;
- (ee) ORS 163.415, Sexual abuse III;
- (ff) ORS 163.425, Sexual abuse II;
- (gg) ORS 163.427, Sexual abuse I;
- (hh) ORS 163.515, Bigamy;
- (ii) ORS 163.525, Incest;
- (jj) ORS 163.535, Abandonment of a child;
- (kk) ORS 163.537, Buying or selling a person under 18 years of age;
- (ll) ORS 163.545, Child neglect II;
- (mm) ORS 163.547, Child neglect I;
- (nn) ORS 163.555, Criminal nonsupport;
- (oo) ORS 163.575, Endangering the welfare of a minor;
- (pp) ORS 163.670, Using child in display of sexually explicit conduct;
- (qq) ORS 163.673, Dealing sexual condition of children;
- (rr) ORS 163.675, Sale sexual condition of children;
- (ss) ORS 163.680, Paying for sexual view of children;
- (tt) ORS 163.684, Encouraging child sexual abuse I;
- (uu) ORS 163.686, Encouraging child sexual abuse II;

- (vv) ORS 163.687, Encouraging child sexual abuse III;
- (ww) ORS 163.688, Possession of materials depicting sexually explicit conduct of a child I;
- (xx) ORS 163.689, Possession of materials depicting sexually explicit conduct of a child II;
- (yy) ORS 163.693, Failure to report child pornography;
- (zz) ORS 163.732, Stalking;
- (aaa) ORS 164.057, Aggravated theft I;
- (bbb) ORS 164.075, Theft by extortion;
- (ccc) ORS 164.125, Theft of services;
- (ddd) ORS 164.225, Burglary I;
- (eee) ORS 164.325, Arson I;
- (fff) ORS 164.395, Robbery III;
- (ggg) ORS 164.405, Robbery II;
- (hhh) ORS 164.415, Robbery I;
- (iii) ORS 165.581, Cellular counterfeiting I;
- (jjj) ORS 166.005, Treason;
- (kkk) ORS 166.015, Riot;
- (lll) ORS 166.085, Abuse of corpse II;
- (mmm) ORS 166.087, Abuse of corpse I;
- (nnn) ORS 166.155, Intimidation II;
- (ooo) ORS 166.165, Intimidation I;
- (ppp) ORS 166.220, Unlawful use of weapon;
- (qqq) ORS 166.270, Possession of weapons by certain felons;

- (rrr) ORS 166.272, Unlawful possession of machine guns, certain short-barreled firearms and firearm silencers;
- (sss) ORS 166.275, Possession of weapons by inmates of institutions;
- (ttt) ORS 166.429, Firearms used in felony;
- (uuu) ORS 166.720, Racketeering activity unlawful;
- (vvv) ORS 167.012, Promoting prostitution;
- (www) ORS 167.017, Compelling prostitution;
- (xxx) ORS 167.062, Sadomasochistic abuse or sexual conduct in live show;
- (yyy) ORS 167.065, Furnishing obscene materials to minors;
- (zzz) ORS 167.070, Sending obscene materials to minors;
- (aaaa) ORS 167.075, Exhibiting an obscene performance to a minor;
- (bbbb) ORS 167.080, Displaying obscene materials to minors;
- (cccc) ORS 167.087, Disseminating obscene material;
- (dddd) ORS 167.262, Adult using minor in commission of controlled substance offense;
- (eeee) ORS 167.315, Animal abuse II;
- (ffff) ORS 167.320, Animal abuse I;
- (gggg) ORS 167.322, Aggravated animal abuse I;
- (hhhh) ORS 167.333, Sexual assault of animal;
- (iiii) ORS 181.599, Failure to report as sex offender;
- (jjjj) ORS 475.525, Sale of drug paraphernalia prohibited;
- (kkkk) ORS 475.805, Providing hypodermic device to minor prohibited;
- (llll) ORS 475.967, Possession of precursor substance with intent to manufacture controlled substance;

- (mmmm) ORS 475.986, Application of controlled substance to the body of another person;
  - (nnnn) ORS 475.992, Prohibited acts generally (regarding drug crimes);
  - (oooo) ORS 475.993, Prohibited acts for registrants (with the State Board of Pharmacy; regarding felony crimes);
  - (pppp) ORS 475.995, Distribution to minors;
  - (qqqq) ORS 475.999, Penalty for manufacture or delivery of controlled substance within 1000 feet of school;
  - (rrrr) ORS 677.080, Prohibited acts (regarding the practice of medicine);
  - (ssss) Any federal crime.
  - (tttt) Any unclassified felony defined in Oregon Revised Statutes not listed elsewhere in this rule.
  - (uuuu) Any other felony in Oregon Revised Statutes not listed elsewhere in this rule that is serious and indicates behavior that poses a threat or jeopardizes the safety of vulnerable persons, as determined by the authorized designee.
  - (vvvv) 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.
  - (wwww) Any crime in any other jurisdiction that is the substantial equivalent of any of the Oregon crimes listed in this section (section (1)) as determined by the authorized designee.
  - (xxxx) 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 this section (section (1)) as determined by the authorized designee.
  - (yyyy) A new crime, adopted by the Legislature following the most recent amendment of these rules, that is the substantial equivalent of any of the crimes listed in this section (section (1)) as determined by the authorized designee.
- (2) Ten-Year Review. The crimes listed in this section are crimes that require that a fitness determination be completed if the date of conviction is within ten years of the date the DHS Criminal History Request form was signed.

- (a) ORS 162.015, Bribe giving;
- (b) ORS 162.025, Bribe receiving;
- (c) ORS 162.065, Perjury;
- (d) ORS 162.075, False swearing;
- (e) ORS 162.117, Public investment fraud;
- (f) ORS 162.145, Escape III;
- (g) ORS 162.175, Unauthorized departure;
- (h) ORS 162.185, Supplying contraband;
- (i) ORS 162.195, Failure to appear II;
- (j) ORS 162.205, Failure to appear I;
- (k) ORS 162.247, Interfering with a peace officer;
- (l) ORS 162.265, Bribing a witness;
- (m) ORS 162.275, Bribe receiving by a witness;
- (n) ORS 162.285, Tampering with a witness;
- (o) ORS 162.295, Tampering with physical evidence;
- (p) ORS 162.305, Tampering with public records;
- (q) ORS 162.335, Compounding;
- (r) ORS 162.355, Simulating legal process;
- (s) ORS 162.365, Criminal impersonation;
- (t) ORS 162.367, Criminal impersonation of peace officer;
- (u) ORS 162.369, Possession of false law enforcement identification card;
- (v) ORS 162.375, Initiating a false report;
- (w) ORS 162.385, Giving false information to police officer for a citation;

- (x) ORS 162.405, Official misconduct II;
- (y) ORS 162.415, Official misconduct I;
- (z) ORS 162.425, Misuse of confidential information;
- (aa) ORS 163.190, Menacing;
- (bb) ORS 163.195, Recklessly endangering another person;
- (cc) ORS 163.212, Unlawful use of an electrical stun gun, tear gas, or mace II;
- (dd) ORS 163.245, Custodial interference II;
- (ee) ORS 163.275, Coercion;
- (ff) ORS 163.435, Contributing to the sexual delinquency of a minor;
- (gg) ORS 163.445, Sexual misconduct;
- (hh) ORS 163.465, Public indecency;
- (ii) ORS 163.467, Private indecency;
- (jj) ORS 163.700, Invasion of personal privacy;
- (kk) ORS 163.750, Violating court's stalking protective order;
- (ll) ORS 164.043, Theft III;
- (mm) ORS 164.045, Theft II;
- (nn) ORS 164.055, Theft I;
- (oo) ORS 164.085, Theft by deception;
- (pp) ORS 164.095, Theft by receiving;
- (qq) ORS 164.135, Unauthorized use of a vehicle;
- (rr) ORS 164.140, Criminal possession of rented or leased personal property;
- (ss) ORS 164.162, Mail theft or receipt of stolen mail;
- (tt) ORS 164.215, Burglary II;



- (uu) ORS 164.235, Possession of burglar's tools;
- (vv) ORS 164.255, Criminal trespass I;
- (ww) ORS 164.265, Criminal trespass while in possession of firearm;
- (xx) ORS 164.272, Unlawful entry into motor vehicle;
- (yy) ORS 164.315, Arson II;
- (zz) ORS 164.335, Reckless burning;
- (aaa) ORS 164.354, Criminal Mischief II;
- (bbb) ORS 164.365, Criminal Mischief I;
- (ccc) ORS 164.369, Interfering with police animal;
- (ddd) ORS 164.377, Computer crime;
- (eee) ORS 165.007, Forgery II;
- (fff) ORS 165.013, Forgery I;
- (ggg) ORS 165.017, Criminal possession of a forged instrument II;
- (hhh) ORS 165.022, Criminal possession of a forged instrument I;
- (iii) ORS 165.032, Criminal possession of a forgery device;
- (jjj) ORS 165.037, Criminal simulation;
- (kkk) ORS 165.042, Fraudulently obtaining a signature;
- (lll) ORS 165.055, Fraudulent use of a credit card;
- (mmm) ORS 165.065, Negotiating a bad check;
- (nnn) ORS 165.070, Possessing fraudulent communications device;
- (ooo) ORS 165.074, Unlawful factoring of credit card transaction;
- (ppp) ORS 165.080, Falsifying business records;
- (qqq) ORS 165.085, Sports bribery;

- (rrr) ORS 165.090, Sports bribe receiving;
- (sss) ORS 165.095, Misapplication of entrusted property;
- (ttt) ORS 165.100, Issuing a false financial statement;
- (uuu) ORS 165.102, Obtaining execution of documents by deception;
- (vvv) ORS 165.540, Obtaining contents of communication;
- (www) ORS 165.543, Interception of communications;
- (xxx) ORS 165.570, Improper use of 9-1-1 emergency reporting system;
- (yyy) ORS 165.572, Interference with making a report;
- (zzz) ORS 165.577, Cellular counterfeiting III;
- (aaaa) ORS 165.579, Cellular counterfeiting II;
- (bbbb) ORS 165.692, Making false claim for health care payment;
- (cccc) ORS 165.800, Identity theft;
- (dddd) ORS 166.025, Disorderly conduct;
- (eeee) ORS 166.065, Harassment;
- (ffff) ORS 166.076, Abuse of a memorial to the dead;
- (gggg) ORS 166.115, Interfering with public transportation;
- (hhhh) ORS 166.180, Negligently wounding another;
- (iiii) ORS 166.190, Pointing firearm at another;
- (jjjj) ORS 166.240, Carrying of concealed weapon;
- (kkkk) ORS 166.250, Unlawful possession of firearms;
- (llll) ORS 166.370, Possession of firearm or dangerous weapon in public building or court facility; exceptions; discharging firearm at school;
- (mmmm) ORS 166.382, Possession of destructive device prohibited;
- (nnnn) ORS 166.384, Unlawful manufacture of destructive device;

- (oooo) ORS 166.470, Limitations and conditions for sales of firearms;
- (pppp) ORS 166.480, Sale or gift of explosives to children;
- (qqqq) ORS 166.649, Throwing an object off an overpass II;
- (rrrr) ORS 166.651, Throwing an object off an overpass I;
- (ssss) ORS 166.660, Unlawful paramilitary activity;
- (tttt) ORS 167.007, Prostitution;
- (uuuu) ORS 167.090, Publicly displaying nudity or sex for advertising purposes;
- (vvvv) ORS 167.212, Tampering with drug records;
- (wwww) ORS 167.222, Frequenting a place where controlled substances are used;
- (xxxx) ORS 167.325, Animal neglect II;
- (yyyy) ORS 167.330, Animal neglect I;
- (zzzz) ORS 167.355, Involvement in animal fighting;
- (aaaa) ORS 167.365, Dogfighting;
- (bbbb) ORS 167.370, Participation in dogfighting;
- (cccc) ORS 167.820, Concealing the birth of an infant;
- (dddd) ORS 411.630, Unlawfully obtaining public assistance;
- (eeee) ORS 411.675, Submitting wrongful claim or payment (e.g., public assistance);
- (ffff) ORS 411.840, Unlawfully obtaining or disposing of food stamp benefits;
- (gggg) ORS 417.990, Penalty for placement of children in violation of compact;
- (hhhh) ORS 418.130, Unauthorized use and custody of records of temporary assistance for needy families program;
- (iiii) ORS 418.140, Sharing assistance prohibited;
- (jjjj) ORS 418.250, Supervision of child-caring agencies;

- (kkkkk) ORS 418.327, Licensing of certain schools and organizations offering residential programs;
- (lllll) ORS 433.010, Spreading disease (willfully) prohibited;
- (mmmmm) ORS 471.410, Providing liquor to person under 21 or to intoxicated person; allowing consumption by minor on property;
- (nnnnn) ORS 475.950, Failure to report precursor substance;
- (ooooo) ORS 475.955, Failure to report missing precursor substances;
- (ppppp) ORS 475.960, Illegally selling drug equipment;
- (qqqqq) ORS 475.965, Providing false information on precursor substances report;
- (rrrrr) ORS 474.991, Unlawful delivery of imitation controlled substance;
- (sssss) ORS 475.992, Prohibited acts generally (regarding misdemeanor drug crimes);
- (ttttt) ORS 475.993, Prohibited acts for registrants (with the State Board of Pharmacy; regarding misdemeanor crimes);
- (uuuuu) ORS 475.994, Prohibited acts involving records and fraud;
- (vvvvv) ORS 475.996, Commercial drug offense;
- (wwwww) ORS 657A.280, Failure to certify child care facility
- (xxxxx) ORS 803.230, Forging, altering or unlawfully producing or using title or registration
- (yyyyy) ORS 807.620, Giving false information to police officer
- (zzzzz) ORS 811.140, Reckless driving
- (aaaaa) ORS 811.540, Fleeing or attempting to elude police officer;
- (bbbbb) ORS 811.700, Failure to perform duties of driver when property is damaged;
- (ccccc) ORS 811.705, Failure to perform duties of driver to injured persons;
- (dddddd) ORS 819.300, Possession of a stolen vehicle;
- (eeeeee) ORS 830-475, Failure to perform the duties of an operator (boat);

- (ffffff) Any unclassified misdemeanor defined in Oregon Revised Statutes not listed elsewhere in this rule.
  - (gggggg) Any other misdemeanor in Oregon Revised Statutes not listed elsewhere in this rule that is serious and indicates behavior that poses a threat or jeopardizes the safety of vulnerable persons, as determined by the authorized designee.
  - (hhhhh) 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.
  - (iiiiii) Any crime in any other jurisdiction which is the substantial equivalent of any of the Oregon crimes listed in this section (section (2)) as determined by the authorized designee.
  - (jjjjj) Any crime which is no longer codified in Oregon, but which is the substantial equivalent of any of the crimes listed in this section (section (2)) as determined by the authorized designee.
  - (kkkkk) A new crime, adopted by the Legislature following the most recent amendment of these rules, which is the substantial equivalent of any of the crimes listed in this section (section (2)) as determined by the authorized designee.
- (3) Five-Year Review. The crimes listed in this section are crimes which require that a fitness determination be completed if the date of conviction is within five years of the date the DHS Criminal History Request form was signed.
- (a) ORS 162.085, Unsworn falsification;
  - (b) ORS 162.235, Obstructing governmental or judicial administration;
  - (c) ORS 162.315, Resisting arrest;
  - (d) ORS 164.245, Criminal trespass II;
  - (e) ORS 164.345, Criminal mischief III;
  - (f) ORS 165.555, Unlawful telephone solicitation of contributions for charitable purposes;
  - (g) ORS 166.075, Abuse of venerated objects;
  - (h) ORS 166.090, Telephonic harassment;

- (i) ORS 166.095, Misconduct with emergency telephone calls;
  - (j) ORS 167.340, Animal abandonment;
  - (k) ORS 418.630, Operate uncertified foster home;
  - (l) ORS 811.182, Criminal driving while suspended or revoked;
  - (m) ORS 813.010, Driving under the influence of intoxicants (DUII);
  - (n) ORS 830.325, Operating boat while under influence of intoxicating liquor or controlled substance;
  - (o) 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.
  - (p) Any crime in any other jurisdiction which is the substantial equivalent of any of the Oregon crimes listed in this section (section (3)) as determined by the authorized designee.
  - (q) A combination of any three crimes not listed in these rules which were committed on three different dates within the previous five years.
  - (r) Any crime which is no longer codified in Oregon, but which is the substantial equivalent of any of the crimes listed in this section (section (3)) as determined by the authorized designee.
  - (s) A new crime, adopted by the Legislature following the most recent amendment of these rules, which is the substantial equivalent of any of the crimes listed in this section (section (3)) as determined by the authorized designee.
- (4) Evaluation Based on Oregon Laws. Evaluations of crimes shall 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) Expunged Juvenile Record. Under no circumstances shall a subject individual be denied under these rules because of the existence or contents of a juvenile record that has been expunged pursuant to ORS 419A.260 through 419A.262.

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

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

The following are potentially disqualifying conditions:

- (1) **False Statement.** A "false statement" by the subject individual to the qualified entity, authorized designee or Department, including provision of materially false information, false information regarding criminal history, or failure to disclose information regarding criminal history.
- (2) **Sex Offender.** The subject individual is a registered sex offender in Oregon or any other jurisdiction.
- (3) **Warrants.** An outstanding warrant against the subject individual for any crime in any jurisdiction.
- (4) **Deferred Sentence, Diversion Program, Parole or Probation.** The subject individual has a deferred sentence, conditional discharge, is participating in a diversion program, or has not completed a required diversion program or any condition of post-prison supervision, parole or probation, for any potentially disqualifying crime listed in OAR 407-007-0280.
- (5) **Parole or Probation Violation.** A post-prison supervision, parole or probation violation during the previous five years for any potentially disqualifying crime listed in OAR 407-007-0280.
- (6) **Unresolved Arrests, Charges or Indictments.** An unresolved arrest, charge, or a pending indictment, for a potentially disqualifying crime. (Example: An unresolved arrest for a ten-year review crime during the previous ten years).

Stat. Auth.: ORS 181.537, 409.010 & 409.050

Stats. Implemented: ORS 181.537

#### **407-007-0300**

##### **Other Information Considered**

- (1) **Consideration of Other Information.** When other information is disclosed by the subject individual, or is otherwise known by the authorized designee, the authorized designee must consider such information in addition to potentially disqualifying crimes and conditions when making the fitness determination, including but not limited to:
  - (a) **Potentially disqualifying crimes or conditions.** Circumstances regarding the nature of potentially disqualifying crimes and conditions. These may include, but are not limited to:
    - (A) Age of the subject individual at time of the crime.
    - (B) Domestic relationships or situations, when applicable.

- (C) Details of incidents leading to the charges of potentially disqualifying crimes or resulting in potentially disqualifying conditions.
  - (D) Facts that support the conviction, pending indictment, the making of a false statement, or other potentially disqualifying condition.
  - (E) Consideration of Oregon or federal laws, regulations, or rules covering the position, facility, employer, qualified entity or service provider, in regard to the potentially disqualifying crimes or conditions.
- (b) Other Circumstances. The authorized designee must also consider factors when relevant information is provided by the Department or the subject individual including, but not limited to:
- (A) Other information related to criminal activity including charges, arrests, and convictions.
  - (B) Periods of incarceration of the subject individual.
  - (C) Passage of time since commission of the crime.
  - (D) Parole or probation status.
  - (E) Evidence of drug or alcohol issues, including history of use, manufacturing, delivery, treatment, and rehabilitation.
  - (F) Evidence of other treatment or rehabilitation related to criminal activity or other factors listed in this rule.
  - (G) Likelihood of repetition of criminal behavior, including, but not limited to, the subject individual's acknowledgment and honesty relative to past behavior, patterns of criminal activity, and whether the subject individual appears to accept responsibility for past actions, as determined by the authorized designee.
  - (H) Changes in circumstances subsequent to the criminal activity or disqualifying condition.
  - (I) Information from Department protective services investigations and other investigations.
  - (J) Education.
  - (K) Work history (employee or volunteer).



- (L) Written recommendations from current or past employer(s), including DHS client employers.
  - (M) Indication that criminal history or protective services history has been disclosed to employer, DHS client, or qualified entity.
  - (N) Indication of the subject individual's cooperation and honesty during the criminal history check process as described in these rules.
- (c) Relevancy of History to Position. The relevancy of the subject individual's criminal history to the paid or volunteer position, or to the environment in which the subject individual will reside or work, must be considered.
- (2) Fitness Information with Available Information. If the authorized designee requests other information for the purpose of conducting a weighing test under OAR 407-007-0320(5)(c), and the subject individual does not respond in a stated time period, the authorized designee will make a fitness determination based on the potentially disqualifying crimes or conditions, and the available information.

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

**407-007-0310**  
**Probationary Status**

A subject individual may work, volunteer, reside, or be trained in a facility or other environment identified in these rules prior to a final fitness determination only under the following conditions and will be considered to be on probationary status:

- (1) DHS Criminal History Request Form Completed. A DHS Criminal History Request form must have been completed by the subject individual and reviewed by the contact person or authorized designee.
- (2) Preliminary Fitness Determination Required. A preliminary fitness determination must have been completed pursuant to OAR 407-007-0320.
- (3) Active Supervision. A subject individual who is on probationary status must be actively supervised at all times by someone who completes a history check and is approved pursuant to these rules.
  - (a) Duties. The person providing active supervision at all times must meet all of the following conditions:
    - (A) Be in the same building as the subject individual or be within line-of-sight, except as provided in subsection (5)(b) of this rule,

- (B) Know where the person on probationary status is and what the person is doing, and
  - (C) Periodically observe the actions of the person on probationary status.
- (b) Supervision by Exempt Person. A client of the Department, an adult client's related adult family member, or a child's parent or guardian, may provide active supervision if authorized in section (5)(b) or (5)(c) of this rule without a history check.
  - (c) Exemption from Active Supervision. A subject individual who was approved without restrictions within the previous 24 months through a documented criminal history check pursuant to these rules or prior DHS criminal history check rules may function on probationary status without active supervision. The qualified entity must maintain the documentation.

NOTE: Time frame (24 months) is based on length of time between date of previous approval and date starting new position. This exemption is not allowed:

- (A) If the subject individual discloses criminal history that occurred within the previous 24 months.
  - (B) If the subject individual is currently involved in an appeal under these rules.
  - (C) If, as determined by the authorized designee or the Department, 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.
- (4) Status Prior to Final Fitness Determination. Nothing in this rule is intended to require that a subject individual who is eligible for probationary status be allowed to work, volunteer, reside, or be trained in a facility prior to a final fitness determination.
  - (5) Criteria for Specific Provider Types.
    - (a) Adult Foster Homes (AFH).
      - (A) Before a new license or a license renewal is issued, the AFH provider and all subject individuals living or working in the AFH must complete the final fitness determination and be approved by the Department.
      - (B) Substitute caregivers in AFHs must complete the Oregon criminal history check and, when required, have submitted fingerprint cards, before being allowed to work in an AFH. An expedited review process is available when requested by an AFH because of an immediate staffing need.

- (b) Child Care Providers. Responsibility for providing active supervision in the case of child care providers is with the child's parent or guardian, but the supervision is not required to be performed by someone in the building.
  - (c) Homecare Worker, Personal Care Services Provider and Independent Provider.
    - (A) A homecare worker, personal care services provider, or independent provider may be actively supervised by the client if the client makes an informed decision to employ the provider.
    - (B) The Department may allow a homecare worker, personal care services provider, Department volunteer or an independent provider to be actively supervised by someone related to the client.
  - (d) Child Foster Care. Probationary status is not allowed in child foster care.
- (6) Termination of Probationary Status.
- (a) Probationary status may be terminated by the qualified entity or the Department immediately for the following reasons:
    - (A) There is any indication of falsification of application.
    - (B) The criminal history check reveals a conviction for any potentially disqualifying crime not disclosed by the subject individual.
    - (C) The LEDS check identifies the subject individual as a "multi-state offender" and the subject individual did not disclose an out-of-state conviction or arrest.
    - (D) The subject individual failed to disclose an arrest that did not result in a conviction.
    - (E) The qualified entity or Department determines that probationary status is not appropriate, based on the application, criminal history, position duties, or Oregon Administrative Rules regarding the program.
  - (b) Termination of probationary status is not subject to appeal under these rules.

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

**407-007-0320**  
**Fitness Determinations**

- (1) **Fitness Determination Before Work or Placement.** The qualified entity must not allow a subject individual to be certified or licensed, or to work, volunteer, reside or be trained in a facility or other environment, prior to a fitness determination.
- (2) **Termination Following Denial.** When a subject individual is denied, the individual must not be allowed to provide care, work, volunteer, reside or be trained in an environment covered by these rules and must be terminated immediately. A denial applies only to the position and application in question.
- (3) **Preliminary Fitness Determination.** A preliminary fitness determination must be completed prior to allowing a subject individual to be on probationary status. The preliminary fitness determination must be made by an authorized designee, or when allowed by subsection (3)(a) of this rule, by a contact person. A person on probationary status must meet all the criteria in either subsection (a) or (b) as listed below:
  - (a) **No Indication of Potentially Disqualifying Crime.** If there is no indication of a potentially disqualifying crime or condition on the DHS Criminal History Request form and the authorized designee or contact person has no reason to believe the subject individual has potentially disqualifying history, the subject individual may be placed on probationary status.
  - (b) **Self-Disclosed Criminal History.** When a subject individual discloses a conviction or arrest for a potentially disqualifying crime, or any other potentially disqualifying condition, the individual may be on probationary status only after a preliminary fitness determination using a weighing test is completed by an authorized designee. An authorized designee may complete a preliminary fitness determination regardless of whether the disclosed information occurred in Oregon or outside Oregon.
- (4) **Final Fitness Determination.** Upon receipt of the criminal history, the authorized designee must complete the fitness determination on a timely basis. The fitness determination must be completed within 21 days after receiving the history.
  - (a) The deadline may be extended by the authorized designee when a criminal history check generates a need to obtain or consider additional information.
  - (b) The deadline may be extended by the authorized designee when the decision is based on a pending charge for a potentially disqualifying crime.
- (5) **Potential Outcomes.**
  - (a) **Probationary Status.** A subject individual may be placed on probationary status following a preliminary fitness determination as described in section (3) of this rule.

- (b) Automatic Approval. A subject individual is approved in a final fitness determination without a weighing test if after all required criminal history information is received the subject individual meets all of the following conditions:
  - (A) No potentially disqualifying crimes, warrants, sex offender registration, or probation or parole status,
  - (B) No unresolved arrests for potentially disqualifying crimes within the previous five years; and
  - (C) No discrepancies, and no failure to disclose conviction history or out-of-state arrests.
  
- (c) Weighing Test. Only authorized designees may conduct and participate in a weighing test. The weighing test must be used to assess fitness unless the subject individual receives automatic approval pursuant to subsection (5)(b) of this rule or the application is closed pursuant to subsection (5)(e) of this rule. In the weighing test, the authorized designee must consider the criminal history disclosed by the subject individual and other information as described in OAR 407-007-0280, 407-007-0290 and 407-007-0300 in order to assess fitness. When the weighing test is used in a final fitness determination, criminal history discovered during the criminal history check must also be considered. The authorized designee may rely on official written communications and records from law enforcement agencies and judicial systems, and on criminal history provided by the subject individual. Possible outcomes of a weighing test are as follows:
  - (A) Probationary Status. In a weighing test for a preliminary fitness determination, the outcome is either to allow, or to disallow, probationary status. Probationary status is not a possible outcome in a final fitness determination.
  - (B) Approval. A subject individual may be approved by one or more authorized designees after a weighing test.
  - (C) Restricted Approval. If the subject individual has potentially disqualifying history, the authorized designee:
    - (i) May restrict the approval to specific client(s), job duties, or environment(s).
    - (ii) Must complete a new criminal history check and fitness determination on the subject individual before removing a restriction.

- (D) Denial. A subject individual who, following such consideration, is determined to pose a significant risk to physical, emotional or financial well-being of children, the elderly or persons with disabilities, must be denied by the authorized designee.
  - (i) Volunteered History. A subject individual may be denied following a weighing test based upon potentially disqualifying history disclosed by the subject individual without conducting an Oregon, state-specific, or national criminal history check.
  - (ii) Discovered History. A subject individual may be denied following a weighing test based upon potentially disqualifying history discovered by the authorized designee or the Department following an Oregon, state-specific, or national criminal history check.
- (d) Fitness Determination by the Department. In addition to situations in which the Department will act as authorized designee as listed in OAR 407-007-0230(3), the Department will conduct the fitness determination in the following circumstances:
  - (A) A qualified entity must request that the Department conduct the fitness determination when the qualified entity is temporarily unable to provide an authorized designee qualified to conduct a fitness determination as required under OAR 407-007-0230.
  - (B) If the Department has reason to believe a fitness determination has not been conducted in compliance with these rules, the Department may repeat the criminal history check and conduct a fitness determination.
  - (C) The Department may review fitness determinations made by local authorized designees and make a new fitness determination at its discretion.
  - (D) If a national or state-specific check identifies potentially disqualifying history, the final fitness determination must be made by the Department. When the Department obtains criminal history information through the Federal Bureau of Investigation that is not in itself potentially disqualifying, but which is related to potentially disqualifying Oregon history, the Department may assess fitness.

NOTE: The Department may not disseminate information obtained through the Federal Bureau of Investigation.
- (e) Closed Case.
  - (A) If the subject individual discontinues the application or fails to cooperate with the criminal history check process then the application is considered

incomplete. Discontinuance or failure to cooperate includes, but is not limited to, the following circumstances, and will result in a closed case:

- (i) The subject individual refuses to be fingerprinted when required by these rules.
  - (ii) The subject individual fails to respond within a stated period of time to a request from the authorized designee or the Department for corrections to the application, fingerprints, any other information necessary to conduct a criminal history check under these rules, or any information described in OAR 407-007-0300.
  - (iii) The subject individual withdraws the application, leaves the position prior to completion of the check, or cannot be located or contacted by the authorized designee.
  - (iv) The subject individual is determined to not be eligible for the position for reasons other than the criminal history check.
- (B) The incomplete application is closed without a final fitness determination and there is no right to a contested case hearing.
- (6) Independent Choices. Clients receiving services through the DHS Independent Choices program (OAR chapter 411, division 36) are not bound by the fitness determination conducted under these rules when selecting care providers.
- (7) Notice to Subject Individual. Upon completion of a final fitness determination resulting in a denial or restricted approval, the authorized designee must provide written notice to the subject individual. The notice must be:
- (a) In a format approved by the Department, and
  - (b) Mailed or hand-delivered to the subject individual as soon as possible, but in no case later than fourteen days after the decision. The date of the decision must be recorded on the form.
- (8) Documentation. Preliminary and final fitness determinations must be documented in writing.

Stat. Auth.: ORS 181.537, 409.010 & 409.050

Stats. Implemented: ORS 181.537

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

- (1) Work Pending Appeal Prohibited. If a subject individual is denied, then that person may not hold the position, provide services or be employed, licensed, certified or registered.
- (2) History Disputed.
  - (a) Correcting Disputed History. If a subject individual wishes to challenge the accuracy or completeness of information provided by the Oregon State Police, the Federal Bureau of Investigation or other agencies reporting information to the Department, the subject individual may appeal to the entity providing the information. Such challenges are not subject to the Department's appeal process described in this rule.
  - (b) Request for Re-Evaluation Following Correction. If the subject individual successfully contests the accuracy or completeness of information provided by the Oregon State Police, the Federal Bureau of Investigation or other agency reporting information to the Department, the Department will conduct a new criminal history check and re-evaluate the criminal history upon submission of a new criminal history request form.
- (3) Challenging the Fitness Determination. If a subject individual wishes to dispute an adverse fitness determination, the subject individual may appeal the determination by requesting a contested case hearing. The subject individual must be notified of the opportunity for appeal on a form available from the Department.
  - (a) Appeal. In order to request a contested case hearing the subject individual or the subject individual's legal representative must complete and sign the hearing request form. The form is available by contacting the DHS Criminal Records Unit.
  - (b) Deadline for Appeal. The completed and signed form must be received by the Department not later than:
    - (A) 10 days after the notice of the fitness determination is mailed for subject individuals who are employees, applicants, and volunteers of the Department (subject individuals under OAR 407-007-0210(27)(a)(A) and 407-007-0210(27)(a)(L)).
    - (B) 45 days after the notice of the fitness determination is mailed for all other subject individuals.
  - (c) Extension of Deadline. The Department may extend the time to appeal if the Department determines the delay was caused by factors beyond the reasonable control of the subject individual.
  - (d) Hearing on timeliness. The Department may refer an untimely request to the Office of Administrative Hearings for a hearing on the issue of timeliness.



- (4) Informal Administrative Review (Mandatory). When a subject individual is denied and the subject individual, or the subject individual's legal representative, requests a contested case hearing, the Department conducts an informal administrative review before referring the appeal to the Office of Administrative Hearings.
- (a) Participation by Subject Individual. The subject individual and, if applicable, the subject individual's legal representative, must participate in the informal administrative review.
- (A) Participation may include, but is not limited to:
- (i) Providing fingerprint cards, if not previously provided, for the purpose of a national check pursuant to OAR 407-007-0270 or to confirm identity.
- (ii) Providing additional information or additional documents.
- (iii) Participating in a telephone conference.
- (B) Failure to participate in the informal administrative review by the subject individual or the subject individual's representative may result in termination of hearing rights. The Department will review a request to reinstate hearing rights if received in writing by the Department within 14 days.
- (b) Criminal history check.
- (A) If the denial was based on disclosed criminal history, the Department will conduct a criminal history check during the informal administrative review.
- (B) The Department may conduct additional criminal history checks during the informal administrative review to update or verify the subject individual's criminal history.
- (c) Weighing Test Always Applied. The Department will use the weighing test as described in these rules during the administrative review.
- (d) Content of Administrative Review. The Department representative, the authorized designee, the subject individual and the subject individual's legal representative may discuss any of the matters listed in OAR 137-003-0575(3). The administrative review may also be used to:
- (A) Inform the subject individual of the rules that serve as the basis for the denial.

- (B) Ensure the subject individual understands the reason for the denial.
  - (C) Give the subject individual an opportunity to review the information that is the basis for the denial, except as prohibited by state or federal law (See OAR 407-007-0340(2)).
  - (D) Give the Department and subject individual an opportunity to research or provide additional information to consider as listed in OAR 407-007-0300.
  - (E) Give the Department and the subject individual the opportunity to correct any misunderstanding of the facts.
  - (F) Provide an opportunity for the Department and the subject individual to resolve the situation, including developing an agreement whereby the subject individual may be approved with restrictions.
  - (G) Determine if the subject individual wishes to have any witness subpoenas issued should a formal hearing be necessary.
- (e) Decision Following Administrative Review. Upon completion of the informal review, the subject individual or the subject individual's legal representative is advised by the Department in writing of the finding within 14 days.
  - (f) Hearing Following Administrative Review. If the informal administrative review reverses the denial, no hearing will be held and the appeal will not be forwarded to the Office of Administrative Hearings. If the informal administrative review upholds the denial, the appeal will be referred to the Office of Administrative Hearings and a hearing is held unless the subject individual or the subject individual's legal representative withdraws the request for a contested case hearing or the Department reverses the denial before the hearing is held.
- (5) Contested Case Hearing.
- (a) Format. The hearing is conducted in accordance with Attorney General's Uniform and Model Rules of Procedure, "Hearing Panel Rules," OAR 137-003-0501 and the rules that follow.
  - (b) Department Representation. Employees of the Department may in accordance with ORS 183.452 be authorized by the Department's Director to represent the Department for the contested case hearing. Authorization from the Office of Attorney General is also required. The Department retains the right to be represented by the Attorney General.
  - (c) Exhibits. The administrative law judge must be provided a complete copy of the criminal history check information as follows:

- (A) In the case of federal criminal history and criminal history from jurisdictions outside Oregon, the subject individual must obtain copies of the FBI criminal history report, or a copy of the state criminal history report from each state in which there was criminal or arrest history recorded. The subject individual or the subject individual's legal representative must provide copies of such documentation to the administrative law judge at least seven days prior to the scheduled hearing. The Department may also provide out-of-state information received from other official sources.
  - (B) In the case of Oregon criminal history, the Department may provide a copy of the LEDS print-out, OJIN records or other court records to the administrative law judge, unless to do so would result in ex parte communication.
  - (C) Criminal history information and correspondence regarding the subject individual's criminal history check are prima facie evidence if certified by the Department representative as a true copy.
- (d) Role of Administrative Law Judge. The Office of Administrative Hearings and the administrative law judge perform the following duties in the hearing process:
- (A) Provide the subject individual or the subject individual's legal representative with all of the information required under ORS 183.413(2) in writing before the hearing;
  - (B) Conduct the hearing;
  - (C) Issue a dismissal by order when neither the subject individual nor the subject individual's representative appears at the hearing; and
  - (D) Issue a proposed order.
- (e) Public Attendance. The informal conference and hearing are not open to the public.
- (f) Coordination with Licensure or Certification Hearing. A hearing pursuant to these rules may be conducted in conjunction with a licensure or certification hearing for the subject individual.
- (6) Withdrawal. The subject individual or the subject individual's legal representative may withdraw a hearing request orally or in writing at any time. The withdrawal is effective the date it is received by the Department or the Office of Administrative Hearings. A dismissal order will be issued by the Department or the Office of Administrative

Hearings. The subject individual may cancel the withdrawal up to 14 days after the date the order is served.

- (7) Proposed and Final Order.
  - (a) Informal Disposition. When an appeal is resolved before being referred to the Office of Administrative Hearings due to an administrative review or withdrawal, the Department will serve a final order confirming the resolution.
  - (b) Failure to Appear. A hearing request is dismissed by order when neither the subject individual nor the subject individual's legal representative appears at the time and place specified for the hearing. The order is effective on the date scheduled for the hearing and is served by the Office of Administrative Hearings. The Department will cancel the dismissal order on request of the subject individual or the subject individual's legal representative on a showing that the subject individual and the subject individual's legal representative were unable to attend the hearing and unable to request a postponement for reasons beyond their control.
  - (c) Proposed Order. After a hearing, the administrative law judge issues a proposed order. If no written exceptions are received by the Department within 14 days after the service of the proposed order, the proposed order becomes the final order.
  - (d) Exceptions. If timely written exceptions to the proposed order are received by the Department, the Department Director or the Director's designee will consider the exceptions and serve a final order, or request a revised proposed order from the administrative law judge.
  - (e) Results to qualified entity. The Department may provide the qualified entity with the results of the appeal after the informal administrative review or contested case hearing.

Stat. Auth.: ORS 181.537, 409.010 & 409.050

Stats. Implemented: ORS 181.537, 183.341

#### **407-007-0340**

#### **Record Keeping, Confidentiality**

- (1) LEDS Reports.
  - (a) Confidentiality. All LEDS reports are confidential and must be maintained by the authorized designee in accordance with applicable Oregon State Police requirements in ORS chapter 181 and the rules adopted pursuant thereto. (NOTE: See OAR chapter 257, division 15).

- (A) Authorized Designee Access. LEDS reports are confidential and may only be shared with another authorized designee if there is a need to know consistent with these rules.
- (B) Subject Individual Access. The subject individual may not inspect or receive copies of the LEDS report.

NOTE: Photocopies of the LEDS report should not be made under any circumstances.

- (b) Retention. LEDS reports must be retained and destroyed in accordance with records retention schedules published by Oregon State Archives.

(2) National (FBI) Information.

- (a) Confidentiality and Dissemination. National criminal information provided by the FBI is confidential and may not be disseminated by the Department with following exceptions:

- (A) If a fingerprint-based criminal history check was conducted on the subject individual, the subject individual will be provided a copy of the records if requested.
- (B) If requested by the subject individual, the state and national criminal offender information shall be provided as exhibits during the contested case hearing.

- (b) Retention. FBI reports must be retained and destroyed in accordance with records retention schedules published by Oregon State Archives and in accordance with federal law.

(3) DHS Forms and Other Documentation.

- (a) Confidentiality. All completed DHS Criminal History Request forms must be kept confidential and disseminated only on a need-to-know basis.

- (b) Retention.

- (A) DHS forms and other records documenting the criminal history check and used in the fitness determination must be retained and destroyed in accordance with records retention schedules published by Oregon State Archives.
- (B) Documentation must be retained by the qualified entity to demonstrate that the fitness determination was completed pursuant to these rules.

- (4) DHS Criminal History Database. The Department maintains a database regarding criminal history checks.
  - (a) Data. The Department will develop a system that maintains information regarding criminal history checks and minimizes the administrative burden that these rules impose upon subject individuals and providers.
  - (b) Confidentiality. Records maintained under section (4) of this rule are confidential and are not disseminated by the Department except for the purpose of this section and in accordance with the rules of the Department and the Department of State Police (Oregon State Police).
  - (c) Retention. Information maintained in the database must be retained and destroyed in accordance with records retention schedules published by Oregon State Archives and in accordance with federal law.

Stat. Auth.: ORS 181.537, 409.010 & 409.050

Stats. Implemented: ORS 181.537

#### **407-007-0350**

##### **Immunity from Liability**

The qualified entity has immunity from any civil liability that might otherwise be incurred or imposed for determining, in accordance with ORS 181.537(7) that a subject individual is not fit to hold a position, provide services, or be employed, licensed, certified or registered. A qualified entity and an employer or employer's agent who in good faith comply with ORS 181.537(7) and with the decision of the qualified entity are not liable for the failure to hire a prospective employee or the decision to discharge an employee on the basis of the qualified entity's decision. No employee of the state, a business or an organization 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(7).

Stat. Auth.: ORS 181.537, 409.010 & 409.050

Stats. Implemented: ORS 181.537

#### **407-007-0360**

##### **Alternate Qualified Vendors**

- (1) Alternate Vendors Allowed. The criminal history check required by these rules may be conducted by an alternate qualified vendor of criminal history information if the vendor is approved by the Department of Human Services to provide such information pursuant to ORS 181.537.
- (2) Access to Information. In order to be approved by the Department, the vendor must demonstrate to the satisfaction of the Department that it has access to substantially the same information that is available to the Department, including, but not limited to the

Law Enforcement Data System, the Oregon Judicial Information Network, and the Federal Bureau of Investigation.

- (3) Compliance. The qualified vendor must comply with these rules.
- (4) Re-Approval. The period of approval is one year. The alternate qualified vendor may request re-approval 90 days prior to the end of the approval period.
- (5) Revocation of Approval. The Department may immediately revoke approval of the vendor if the vendor provides incorrect or incomplete information or fails to adhere to these rules.
  - (a) A vendor whose approval is revoked may request a contested case hearing in accordance with ORS Chapter 183.
  - (b) A vendor that has had approval by the Department revoked is not eligible to reapply for 180 days following revocation.
- (6) Qualified Entity Serving as Vendor. A qualified entity may serve as a qualified vendor in order to process the qualified entity's own criminal history checks as provided by this rule.

Stat. Auth.: ORS 181.537, 409.010 & 409.050

Stats. Implemented: ORS 181.537

#### **407-007-0370**

##### **VariANCES**

- (1) Criteria for a Variance. The Department may grant a variance to any section of these rules based upon a demonstration by the qualified entity that the variance would not pose a significant risk to physical, emotional or financial well-being of children, the elderly or persons with disabilities.
- (2) Variance Application. The qualified entity requesting a variance must submit in writing, an application to the Department that contains the following:
  - (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; and
  - (d) A plan and timetable for compliance with the section of the rule from which the variance is sought.

- (e) An explanation on how the welfare, health, or safety of individuals receiving care will be ensured during the time the variance period is in effect.
- (3) Department Review. The Administrator for the Department or designee may approve or deny the request for a variance.
- (4) Notification. The Department must notify the qualified entity of the decision. This notice must be sent within 60 calendar days of the receipt of the request by the Department with a copy to other relevant sections of the Department.
- (5) Appeal Application. Appeal of the denial of a variance request must be made in writing to the Administrator of the Department, whose decision is final.
- (6) Duration of Variance. The duration of the variance must be determined by the Department. All variances must be reapplied for before the duration of the variance expires.
- (7) Implementation. The provider may implement a variance only after written approval from the Department is received.
- (8) No Precedent. Granting a variance does not set a precedent that must be followed by the Department when evaluating subsequent requests for variances.

Stat. Auth.: ORS 181.537, 409.010 & 409.050

Stats. Implemented: ORS 181.537

#### **407-007-0380**

##### **Fees**

- (1) National Check. The fingerprint processing fee for nursing facilities, assisted living facilities, and residential care facilities and adult foster homes licensed under OAR chapter 411 is \$12 per check.
- (2) Fees Established by Contract. The Department may establish fees by contract or written agreement with a qualified entity. Fees may not exceed the cost of providing the service.

Stat. Auth.: ORS 181.537, 409.010 & 409.050

Stats. Implemented: ORS 181.537