

Secretary of State  
Certificate and Order for Filing  
**TEMPORARY ADMINISTRATIVE RULES**  
A Statement of Need and Justification accompanies this form..

I certify that the attached copies\* are true, full and correct copies of the TEMPORARY Rule(s) adopted [ upon filing ] by the  
Date prior to or same as filing date

Department of Human Services, Administrative Services Division and Director's Office 407  
Agency and Division Administrative Rules Chapter Number

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Rules Coordinator Address Telephone

to become effective [ October 1, 2009 ] through [ March 29, 2010 ].  
Date upon filing or later A maximum of 180 days including the effective date

**RULE CAPTION**

**Abuse Check Rules for Department Employees and Volunteers**

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

List each rule number separately, 000-000-0000.

Secure approval of new rule numbers (Adopted rules) with the Administrative Rules Unit prior to filing

**ADOPT:** ORS 407-007-0400, 407-007-0410, 407-007-0420, 407-007-0430, 407-007-0440, 407-007-0450, 407-007-0460

Stat. Auth.: **ORS 409.027 & 409.050**

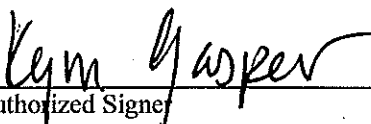
Other Auth.:

Stats. Implemented: **ORS 409.010, 409.025, 409.027 & 409.050**

**RULE SUMMARY**

The Department of Human Services is implementing ORS 409.027 to conduct abuse checks on employees and volunteers. The Department shall conduct an abuse check on subject individuals who are offered employment or volunteer placement with the Department. If the individual has potentially disqualifying abuse (a finding in an abuse investigation of founded or substantiated, with the subject individual having been determined responsible for the abuse), the Department shall conduct a weighing test to determine fitness for the position being sought. Subject individuals denied employment have contested case hearing rights. Subject individuals currently employed or in volunteer placement, or those offered employment or placement, are required to notify the Department's Office of Human Resources within 5 calendar days of being notified of being an alleged perpetrator, reported perpetrator, or accused person in an abuse investigation. The Office of Human Resources may remove an employee or volunteer from placement and duties during or following an abuse investigation. The Office of Human Resources may investigate during or following an abuse investigation to determine whether to take any action, up to and including dismissal or removal from employment.

Temporary rules are available on the DHS Website: <http://www.oregon.gov/DHS/admin/dwssrules/index.shtml>.  
For hardcopy requests, call: (503) 947-5250.

  
Authorized Signer

Kym Gasper, Authorized Signer  
Printed name

10/1/09  
Date

\*With this original and Statement of Need, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules. ARC 940-2005

**STATEMENT OF NEED AND JUSTIFICATION**

A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Department of Human Services, Administrative Services Division and Director's Office

407

Agency and Division

Administrative Rules Chapter Number

In the Matter of:

The temporary adoption of ORS 407-007-0400, 407-007-0410, 407-007-0420, 407-007-0430, 407-007-0440, 407-007-0450, and 407-007-0460.

Rule Caption: (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

Abuse Check Rules for Department Employees and Volunteers

Statutory Authority: ORS 409.027 & 409.050

Other Authority:

Stats. Implemented: ORS 409.010, 409.025, 409.027 & 409.050

Need for the Temporary Rule(s):

ORS 409.027 became law after the 2007 legislative session. These rules are needed to set forth an implementation plan for the use of abuse information in determining the fitness of Department employees and individuals providing care on behalf of the Department. The first phase of implementation is the establishment of administrative rules for abuse checks on Department employees and volunteers. Based on the complexity of the task and the urgent need to implement ORS 409.027, the Department is filing these temporary rules. The Department will closely monitor the implementation to determine appropriate practices needed for permanent rule filing for Department employees and volunteers, and for the eventual implementation of abuse checks on Department providers throughout Oregon.

Documents Relied Upon, and where they are available:

ORS 409.027 – available from [http://www.leg.state.or.us/bills\\_laws/](http://www.leg.state.or.us/bills_laws/); and OAR 407-007-0000 to 407-007-0100 and associated forms (due to the similarity of the abuse check process and the criminal records check process) – available from <http://www.oregon.gov/DHS/admin/dwssrules/index.shtml>.

Justification of Temporary Rule(s):

Failure to immediately adopt these rules will prevent the Department from implementing ORS 409.027 as directed by the Legislative Assembly. Failure to act promptly will result in prejudice to the public interest and safety of Department clients and vulnerable persons. Immediate adoption of these rules will ensure the consideration of founded or substantiated abuse when determining the fitness of Department employees and volunteers and will substantially reduce the risk of potential harm and injury to the Department, its clients, and vulnerable individuals.

The Department's efforts to confer with stakeholders and legal counsel regarding the need to protect Department clients and vulnerable persons from abusive behavior have resulted in an urgent need to proceed with a temporary rule at this time. The Department will begin the permanent rulemaking process for these rules with the express intent to continue the opportunity for public input while avoiding further delay in implementation.

  
Authorized Signer

Kym Gasper, Authorized Signer

Printed name

10/1/09

Date

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

**DIVISION 7  
CRIMINAL RECORDS AND ABUSE CHECKS**

**Abuse Check Rules for Department Employees and Volunteers**

**407-007-0400**

**Definitions**

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

- (1) "Abuse" has the meaning given it in the Department administrative rules corresponding to the setting in which the abuse was alleged or investigated.
- (2) "Abuse check" means obtaining and reviewing abuse allegations, abuse investigation reports, and associated exhibits and documents for the purpose of screening subject individuals as allowed by ORS 409.027.
- (3) "Abuse investigation report" means a written report completed after an investigation into suspected abuse and retained by the Department pursuant to ORS 124.085, 419B.030 or 430.757, or a similar report filed in another state.
- (4) "Approved" means that a subject individual, following a fitness determination, is fit to work, volunteer, be employed, or otherwise perform in a position where the subject individual may provide care.
- (5) "Care" is defined as treatment, education, training, instruction, placement services, recreational opportunities or case management, supervision of such services for clients of the Department, or Department administration and support services for clients of the Department.
- (6) "Closed case" means an abuse check that has been closed without a fitness determination.
- (7) "Denied" means that a subject individual, following a fitness determination including a weighing test, is not fit to work, volunteer, be employed, or otherwise perform services in positions covered by these rules.
- (8) "Department" means the Department of Human Services (DHS).
- (9) "Director" means the Director of the Department or the Director's designee.

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- (10) “Fitness determination” means the outcome of an abuse check and, if necessary, a weighing test. Outcomes are approved or denied.
- (11) “Founded or substantiated” has the meanings given these terms in the Department administrative rules corresponding to the setting in which the abuse was alleged or investigated.
- (12) “Office of Human Resources” means the Department’s Office of Human Resources in the Department’s Administrative Services Division.
- (13) “Potentially disqualifying abuse” means:
  - (a) The finding of an abuse investigation report is founded or substantiated; and
  - (b) The subject individual is determined to have been responsible for the abuse.
- (14) “Subject individual,” means an individual who is:
  - (a) An employee. Employees include:
    - (A) An individual who seeks to be employed by the Department to provide care or a Department Jobs Plus client who seeks placement at a Department site; or
    - (B) An individual who is currently employed by the Department to provide care or a Department Jobs Plus client who is currently placed at a Department site.
  - (b) A volunteer. Volunteers include:
    - (A) An individual or student, who seeks to be a volunteer to provide care on behalf of the Department;
    - (B) A Department Work Experience client who seeks placement as a volunteer at a Department site;
    - (C) An individual or student currently volunteering to provide care on behalf of the Department, over whom the Department has direction and control; or
    - (D) A Department Work Experience client who is placed at a Department site.
- (15) “Weighing test” means a process carried out by the Department in which available information is considered in making a fitness determination. A weighing test is only conducted under these rules when a subject individual has potentially disqualifying abuse.

Stat. Auth.: ORS 409.027 & 409.050

Stats. Implemented: ORS 409.025, 409.027 & 409.050

**407-007-0410**

**Purpose**

- (1) Abuse check of department employees and volunteers. The purpose of these rules, OAR 407-007-0400 to 407-007-0460, is to provide for the abuse check of Department employees, Department volunteers, or persons offered employment or placement by the Department to determine if they are fit to provide care.
- (2) Confidentiality. To protect the confidentiality of information contained in abuse investigation reports otherwise protected under these rules, abuse investigation reports may be used jointly among the organizational units under the guidance of the Director for screening subject individuals pursuant to ORS 409.027 and OAR 407-007-0400 to 407-007-0460. Such reports shall be maintained as confidential pursuant to ORS 409.027 and other applicable state and federal laws.
  - (a) Abuse investigation reports used for screening subject individuals must be used as such for the purpose of protecting vulnerable children and adults served by the Department from abuse, but may not be used for decisions directly affecting vulnerable individuals unless the vulnerable individual is also a subject individual under these rules.
  - (b) Abuse investigation reports used for screening subject individuals may not be disclosed to any other person or entity outside of the Department without a protective order limiting further disclosure of the confidential information.
- (3) Rule applicability. Although criminal records checks may occur concurrently with abuse checks performed under these rules and may share similar processes, the abuse check process is separate and distinct from the criminal records checks that may be performed under OAR 407-007-0000 to 407-007-0100.

Stat. Auth.: ORS 409.027 & 409.050

Stats. Implemented: ORS 409.027 & 409.050

**407-007-0420**

**Reporting Abuse Allegations Required**

- (1) Subject individuals covered by this rule. This rule applies to any subject individual who is:
  - (a) A current Department employee;
  - (b) A current Department volunteer; or

- (c) An individual seeking Department employment or volunteer placement who has been offered Department employment or volunteer placement pending the completion of the abuse check process.
- (2) Report required. A subject individual shall notify the Office of Human Resources within five calendar days of being notified that he or she has been identified as an alleged perpetrator, reported perpetrator, or accused person in an abuse investigation.

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

**407-007-0430**

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

- (1) Subject individuals covered by this rule. Subject to any applicable collective bargaining agreements, this rule applies to any subject individual who is:
  - (a) Offered employment or volunteer placement with the Department;
  - (b) Offered a change in employment or volunteer placement within the Department.
- (2) When abuse check is required. The Department may require a subject individual to have an abuse check in the following circumstances:
  - (a) A subject individual is offered employment or a volunteer placement with the Department.
  - (b) A subject individual is currently employed by or volunteering with the Department and is offered a new position within the Department. A change in a position requiring an abuse check may be due but not limited to promotion, transfer, demotion, re-employment, job rotation, developmental assignment, restoration, bumping, or recall. In order for the check to be required, there must be, as determined by the Office of Human Resources, either:
    - (A) A significant change in position duties or responsibilities; or
    - (B) A change in position classification.
- (3) Obtaining information.
  - (a) Using identifying information submitted on the Department's Background Check Request form (DHS 301HR), the Department may conduct an abuse check to determine if the subject individual has potentially disqualifying abuse.

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- (b) In order to complete an abuse check and fitness determination, the Department may require additional information from the subject individual including but not limited to additional background information or documentation regarding circumstances since the abuse occurred.
- (c) If a subject individual is a represented Department employee, the process for obtaining additional information through investigatory interviews shall adhere to collective bargaining agreements on investigatory interviews.
- (4) Start date for employment or placement. The Department may not determine a start date for a subject individual until the completion of an abuse check and a fitness determination of approval.
- (5) Weighing test. If a subject individual has potentially disqualifying abuse, the Department shall conduct a weighing test in order to make a fitness determination. Factors to consider in a weighing test include but are not limited to:
  - (a) The details regarding the abuse including but not limited to:
    - (A) Circumstances leading to the incident of abuse;
    - (B) The nature or type of abuse; and
    - (C) Other information gathered during the scope of the abuse investigation.
  - (b) The date of abuse incident and abuse investigation, and the age of the subject individual at the time of the abuse.
  - (c) The quality of the abuse investigation including, if applicable, any exhibits and related documents with consideration to completeness, objectivity, and sufficiency.
  - (d) Due process provided to the subject individual after the abuse investigation.
  - (e) Required action resulting from the founded or substantiated abuse, including but not limited to training, counseling, corrective or disciplinary action, and the subject individual's compliance.
  - (f) Circumstances related to the subject individual including but not limited to work history, education history, and other personal information provided by the subject individual.
  - (g) Changes in circumstances subsequent to the potentially disqualifying abuse.
  - (h) The relevancy of the abuse to the position the subject individual is seeking.

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- (6) Fitness determination. After an abuse check, the Department shall complete the fitness determination.
- (a) Approved. The Department may approve a subject individual if:
    - (A) The subject individual has no potentially disqualifying abuse; or
    - (B) The subject individual has potentially disqualifying abuse but, after a weighing test, the Department determines that more likely than not the subject individual poses no risk to the Department, its clients, or vulnerable persons.
  - (b) Denied. The Department shall deny a subject individual who has potentially disqualifying abuse and, after a weighing test, the Department determines that more likely than not the subject individual poses a risk to the Department, its clients, or vulnerable individuals.
- (7) Closed case.
- (a) If the subject individual discontinues the application or fails to cooperate with the abuse check process, the application is considered incomplete and shall be closed.
  - (b) When the application is closed without a final fitness determination, the subject individual does not have a right to contest the closure.
- (8) Notice to subject individual. Upon completion of a fitness determination or in a closed case, the Department shall provide written notice to the subject individual. The notice shall:
- (a) Be in a Department approved format;
  - (b) Include an effective date of action on the notice; and
  - (c) For an outcome of denied:
    - (A) Include the reasons for the denial; and
    - (B) Include information regarding appeal rights. A statement shall be included that indicates that the notice becomes a final order in the event of a withdrawal during the contested case hearing process or a failure to appear at the contested case hearing.
- (9) Termination following denial or closed case. When a subject individual is denied or a case is closed, the individual may not work, volunteer, be employed, or otherwise perform in the position for which the subject individual is seeking. If a current Department employee or volunteer is denied, the Office of Human Resources shall

determine if the subject individual may be able to continue in the current position from which the subject individual is seeking to change.

- (a) For Department employees, if disciplinary action up to and including dismissal, is appropriate, the action shall be taken in accordance with:
    - (A) Relevant collective bargaining contractual provisions;
    - (B) Statutory provisions for unrepresented or management services employees; or
    - (C) Relevant Department or statewide policies or procedures.
  - (b) For subject individuals who are current volunteers or current Work Experience clients, a denial or closed case shall result in immediate dismissal.
- (10) Documentation. Fitness determinations shall be documented in writing and include all necessary details including but not limited to the potentially disqualifying abuse, the weighing test, or the reasons for a closed case.
- (11) No binding precedent. The Department shall make new fitness determinations for each application. The outcome of previous fitness determinations does not ensure the same outcome of a new fitness determination.
- (12) Contesting a fitness determination. Only subject individuals offered employment or a Jobs Plus position may contest the fitness determination.
- (a) The contested case hearing process, pursuant to ORS chapter 183 and OAR 407-007-0080, shall proceed if the subject individual requests a contested case hearing. Subject individuals must request a hearing within 15 calendar days after the effective date of action listed on the notice of fitness determination.
  - (b) The subject individual's hearing rights pertain to the action of denial of employment or placement, not the outcome of the abuse investigation.
  - (c) The only remedy that may be awarded is a fitness determination that the subject individual is approved or denied. Under no circumstances shall the Department be required to place a subject individual in any position, nor shall the Department be required to accept services or enter into a contractual agreement with a subject individual.
  - (d) Subject individuals may not have access to confidential information contained in abuse investigation reports or other records collected or developed during the abuse check process without a protective order limiting further disclosure of the information.

- (A) A protective order issued pursuant to this section must be issued by an administrative law judge as provided for in OAR 137-003-0570(8) or by a court of law.
  - (B) In conjunction with a protective order issued pursuant to this section, individually identifying information relating to clients, witnesses, and other persons identified in abuse investigation reports or other records collected or developed during the abuse check process shall be redacted prior to disclosure, except for the information identifying the subject individual.
- (13) Rechecks on volunteers. Subject individuals in volunteer or Work Experience placements must have a new abuse check every three years from the date of placement.

Stat. Auth.: ORS 409.027 & 409.050  
Stats. Implemented: ORS 409.010 & 409.027

**407-007-0440**  
**Current Employees of the Department**

- (1) Subject individuals covered by this rule. This rule applies to any subject individual who is a current Department employee.
- (2) Abuse allegation during employment. If a subject individual is identified as an alleged perpetrator, reported perpetrator, or accused person in an abuse investigation, all relevant abuse investigation and licensing rules shall apply.
- (3) Office of Human Resources review of potentially disqualifying abuse.
  - (a) If a current subject individual is identified as an alleged perpetrator, reported perpetrator, or accused person in an abuse investigation, the Office of Human Resources may initiate an investigation during or following the investigation of the alleged abuse to determine whether to take any action, up to and including dismissal or removal from employment.
  - (b) If the abuse investigation results in potentially disqualifying abuse, the Office of Human Resources shall initiate an investigation which may include conducting a weighing test as described in OAR 407-007-0430(5). The purpose of the investigation is to determine whether any action, up to and including dismissal or removal from employment, is justified.
  - (c) If the Office of Human Resources learns of potentially disqualifying abuse from previous investigations that may be inconsistent with a subject individual's current position, the Office of Human Resources may initiate an investigation which may include conducting a weighing test as described in OAR 407-007-

0430(5). The purpose of the investigation is to determine whether any action, up to and including dismissal or removal from employment, is justified.

- (d) For Department employees, if disciplinary action up to and including dismissal, is appropriate, the action shall be taken in accordance with:
  - (A) Relevant collective bargaining agreements;
  - (B) Statutory provisions for unrepresented or management services employees; or
  - (C) Relevant Department or statewide policies or procedures.
- (4) Other related proceedings. A pending related action, such as a civil, criminal, juvenile, or administrative proceeding in which the allegations of abuse are at issue shall not automatically be grounds for the subject individual to seek to detain or stay either the review of the founded or substantiated disposition or any resulting disciplinary action. The Department may detain or stay either the review of the founded or substantiated abuse disposition or any resulting disciplinary action based on pending related action such as a civil, criminal, juvenile, or administrative proceeding in which the allegations of abuse are at issue.

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

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

- (1) Subject individuals covered by this rule. This rule applies to any subject individual who is a current volunteer.
- (2) Duties during abuse investigation and review. If a current subject individual is identified as an alleged perpetrator, reported perpetrator, or accused person in an abuse investigation, the Office of Human Resources may remove the subject individual from placement and duties at any time during the investigation or any subsequent review.
- (3) Placement after abuse investigation. If removed from the placement, the subject individual may reapply for a placement under OAR 407-007-0430.

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

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

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All abuse information and other records collected or developed during the abuse check process shall be kept confidential and disseminated only on a need-to-know basis as permitted by applicable Oregon statutes and Oregon administrative rules.

Stat. Auth.: ORS 409.027 & 409.050

Stats. Implemented: ORS 409.027 & 409.050