

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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to become effective [ May 5, 2010 ] through [ October 31, 2010 ].  
Date upon filing or later A maximum of 180 days including the effective date

**RULE CAPTION**

**Criminal Records Checks – Disqualifying Crimes Under ORS 443.004**

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: OAR 407-007-0275

Stat. Auth.: ORS 181.534 & ORS 409.050

Other Auth.: Chapter 837, Oregon Laws 2009 (Enrolled House Bill 2442)

Stats. Implemented: ORS 181.534 & ORS 443.004

**RULE SUMMARY**

The Department of Human Services (Department) is temporarily adopting OAR 407-007-0275 to implement section 6, chapter 837, Oregon Laws 2009 (Enrolled House Bill 2442) and ORS 443.004 by providing a list of disqualifying crimes for those employees and individuals subject to ORS 443.004 and as specified in the relevant program administrative rules; and by prohibiting the use of public funds to support, in whole or in part, the employment of those described above who have been convicted of the crimes listed in ORS 443.004.

  
Authorized Signer

Kym Gasper, Authorized Signer

Printed name

5/5/10

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 OAR 407-007-0275.**

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

**Criminal Records Checks – Disqualifying Crimes Under ORS 443.004**

Statutory Authority: **ORS 181.534 & ORS 409.050**

Other Authority: **Chapter 837, Oregon Laws 2009 (Enrolled House Bill 2442)**

Stats. Implemented: **ORS 181.534 & ORS 443.004**

Need for the Temporary Rule(s):

The Department of Human Services (Department) is temporarily adopting OAR 407-007-0275 to implement section 6, chapter 837, Oregon Laws 2009 (Enrolled House Bill 2442) and ORS 443.004 by providing a list of disqualifying crimes for those employees and individuals subject to ORS 443.004 and as specified in the relevant program administrative rules; and by prohibiting the use of public funds to support, in whole or in part, the employment of those described above who have been convicted of the crimes listed in ORS 443.004.

Documents Relied Upon, and where they are available:

House Bill 2442, available at: <http://www.leg.state.or.us/09reg/measpdf/hb2400.dir/hb2442.en.pdf>; and chapter 837, Oregon Laws 2009, available at: [http://www.leg.state.or.us/bills\\_laws/](http://www.leg.state.or.us/bills_laws/).

Justification of Temporary Rule(s):

The Department finds that failure to act promptly will result in serious prejudice to the public interest, the Department and its clients and recipients of Medicaid benefits. These rules need to be adopted promptly to comply with section 6, chapter 837, Oregon Laws 2009 (Enrolled House Bill 2442) and ORS 443.004.



Authorized Signer

Kym Gasper, Authorized Signer

Printed name

5/5/10

Date

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

**DIVISION 7  
CRIMINAL RECORDS AND ABUSE CHECKS**

**Providers**

**407-007-0275**

**Disqualifying Crimes Under ORS 443.004**

- (1) The crimes listed in section (3) of this rule are disqualifying crimes for those employees and individuals subject to ORS 443.004, and as specified in the relevant program administrative rules. For the purpose of this rule, a subject individual does not include a peer support specialist who:
  - (a) Is providing peer support services as defined by OAR 309-032-1505;
  - (b) Is under the supervision of a qualified clinical supervisor;
  - (c) Has completed training required by the Department; and
  - (d) Is currently receiving or has formerly received mental health services, or is in recovery from a substance use disorder and meets the abstinence requirements for staff providing services in alcohol or other drug treatment programs.
- (2) Individuals who are employees and hired prior to July 28, 2009 are exempt from section (3) of this rule provided that the employee remains in the same position working for the same employer after July 28, 2009. This exemption is not applicable to licensees.
- (3) Public funds may not be used to support, in whole or in part, the employment of an individual in any capacity identified in section (1) of this rule who has been convicted:
  - (a) In the last 10 years, of a crime involving the delivery or manufacture of a controlled substance; or
  - (b) Of any of the following crimes:
    - (A) ORS 163.095, Aggravated murder;
    - (B) ORS 163.115, Murder;
    - (C) ORS 163.118, Manslaughter I;

TEMPORARY ADOPT

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- (D) ORS 163.125, Manslaughter II;
- (E) ORS 163.145, Criminally negligent homicide;
- (F) ORS 163.149, Aggravated vehicular homicide;
- (G) ORS 163.165, Assault III;
- (H) ORS 163.175, Assault II;
- (I) ORS 163.185, Assault I;
- (J) ORS 163.187, Strangulation;
- (K) ORS 163.200, Criminal mistreatment II;
- (L) ORS 163.205, Criminal mistreatment I;
- (M) ORS 163.225, Kidnapping II;
- (N) ORS 163.235, Kidnapping I;
- (O) ORS 163.263, Subjecting another person to involuntary servitude II;
- (P) ORS 163.264, Subjecting another person to involuntary servitude I;
- (Q) ORS 163.266, Trafficking in persons;
- (R) ORS 163.275, Coercion;
- (S) ORS 163.355, Rape III;
- (T) ORS 163.365, Rape II;
- (U) ORS 163.375, Rape I;
- (V) ORS 163.385, Sodomy III;
- (W) ORS 163.395, Sodomy II;
- (X) ORS 163.405, Sodomy I;
- (Y) ORS 163.408, Unlawful sexual penetration II;
- (Z) ORS 163.411, Unlawful sexual penetration I;

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TEMPORARY ADOPT

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- (AA) ORS 163.415, Sexual Abuse III;
- (BB) ORS 163.425, Sexual Abuse II;
- (CC) ORS 163.427, Sexual Abuse I;
- (DD) ORS 163.432, Online sexual corruption of a child II, if the offender reasonably believed the child to be more than five years younger than the offender;
- (EE) ORS 163.433, Online sexual corruption of a child I, if the offender reasonably believed the child to be more than five years younger than the offender;
- (FF) ORS 163.435, Contributing to the sexual delinquency of a minor;
- (GG) ORS 163.445, Sexual misconduct, if the offender is at least 18 years of age;
- (HH) ORS 163.465, Public Indecency;
- (II) ORS 163.467, Private Indecency;
- (JJ) ORS 181.594, Incest with a child victim;
- (KK) ORS 163.535, Abandonment of a child;
- (LL) ORS 163.537, Buying or selling a person under 18 years of age;
- (MM) ORS 163.670, Using a child in display of sexually explicit conduct;
- (NN) ORS 181.594, Paying for viewing a child's sexually explicit conduct;
- (OO) ORS 163.684, Encouraging child sexual abuse I;
- (PP) ORS 163.686, Encouraging child sexual abuse II;
- (QQ) ORS 163.687, Encouraging child sexual abuse III;
- (RR) ORS 163.688, Possession of materials depicting sexually explicit conduct of a child I;
- (SS) ORS 163.689, Possession of materials depicting sexually explicit conduct of a child II;
- (TT) ORS 163.700, Invasion of personal privacy;

TEMPORARY ADOPT

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- (UU) ORS 164.055, Theft I;
- (VV) ORS 164.057, Aggravated theft I;
- (WW) ORS 164.098, Organized retail theft;
- (XX) ORS 164.125, Theft of services, if charged as a felony;
- (YY) ORS 164.215, Burglary II;
- (ZZ) ORS 164.225, Burglary I;
- (AAA) ORS 164.325, Arson I;
- (BBB) ORS 164.377, Computer crime, if charged with a felony;
- (CCC) ORS 164.405, Robbery II;
- (DDD) ORS 164.415, Robbery I;
- (EEE) ORS 165.022, Criminal possession of a forged instrument I;
- (FFF) ORS 165.032, Criminal possession of a forgery device;
- (GGG) ORS 165.800, Identity theft;
- (HHH) ORS 165.803, Aggravated identity theft;
- (III) ORS 167.012, Promoting prostitution;
- (JJJ) ORS 167.017, Compelling prostitution;
- (KKK) ORS 167.054, Furnishing sexually explicit material to a child;
- (LLL) ORS 167.057, Luring a minor;
- (MMM) ORS 181.594, Sex crimes, including transporting child pornography into the state;
- (c) Of an attempt, conspiracy, or solicitation to commit a crime described in section (b) of this rule; or
- (d) Of a crime in another jurisdiction that is substantially equivalent to a crime described in section (b) of this rule.

TEMPORARY ADOPT

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- (4) The Department may conduct a weighing test under ORS 181.534 on employees and individuals convicted of any crime in section (3) of this rule. However, the preclusive effect of ORS 443.004 shall outweigh all other factors described in OAR 407-007-0300.

Stat. Auth.: ORS 181.534 & ORS 409.050

Stats. Implemented: ORS 181.534 & ORS 443.004