

Enrolled
House Bill 2903

Sponsored by Representatives OLSON, STARK, Senators PROZANSKI, GELSER, OLSEN; Representatives KENNEMER, NATHANSON, NOBLE, Senator MONNES ANDERSON

CHAPTER

AN ACT

Relating to child-caring agencies; creating new provisions; amending ORS 418.240 and section 38, chapter 106, Oregon Laws 2016; and declaring an emergency.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 418.240, as amended by section 4, chapter 106, Oregon Laws 2016, is amended to read:

418.240. (1) All child-caring agencies shall obtain from the Department of Human Services a license, certificate or other authorization to provide care or services to children under ORS 418.205 to 418.327, 418.470, 418.475 or 418.950 to 418.970. The criteria for issuance, renewal, suspension or revocation of, or for placing conditions on, a license, certificate or authorization under this section must:

- (a) Be set forth in rules adopted by the department;
- (b) Include the full compliance requirements set forth in subsection (2) of this section; and
- (c) Include, but are not limited to, the following:
 - (A) The fitness of the child-caring agency.
 - (B) The employment of capable, trained or experienced staff that meet minimum staffing requirements.
 - (C) Sufficient financial backing to ensure effective operations.
 - (D) The probability of permanence in the child-caring agency.
 - (E) The care and services provided to the children served will be in their best interests and that of society.
 - (F) That the child-caring agency is or will be in compliance with the standards of care and treatment established in rules adopted by the department.

(2)(a) The department may not issue or renew a license, certificate or other authorization to a child-caring agency unless the department finds the agency is or will be in full compliance with all of the following:

- (A) The agency ensures child and family rights.
- (B) The agency complies with abuse reporting and investigation requirements.
- (C) The agency engages in and applies appropriate behavior management techniques.
- (D) The agency provides adequate furnishings and personal items for children.
- (E) The agency provides appropriate food services.
- (F) The agency ensures the safety of children.
- (G) The agency utilizes approved procedures and protocols for use of medications for children receiving care or services from the agency.

(H) The agency or the agency's employees or agents have not engaged in financial mismanagement.

(I) The agency fully and timely corrects violations and maintains standards in accordance with any plan of correction imposed by the department.

(J) The agency provides access as required under ORS 418.305 to a child or the agency's premises to the department or the department's employees, investigators, court appointed special advocates, attorneys for a child or other authorized persons or entities.

(b) The department may suspend, revoke or place conditions on a license, certificate or authorization of a child-caring agency if the department finds the agency is not in full compliance with any one or more of the full compliance requirements listed in paragraph (a) of this subsection.

(c) *[In the following circumstances]* The department *[may not issue, renew or place conditions on a license, certificate or authorization of a child-caring agency but]* must take immediate steps to suspend or revoke the license, certificate or other authorization of *[the]* a child-caring agency, if any of the following are found to exist:

(A) There has been the death of a child as a result of abuse or neglect on the part of the agency or any of the agency's employees or agents.

(B) There has been sexual or physical abuse or neglect of a child in the agency's care or custody that was known to the agency and the agency did not take immediate steps to report the abuse or neglect and to ensure the child's safety.

(C) The agency failed to cooperate fully with any local, state or federal regulatory entity's investigation of the agency or the agency's operations or employees.

(D) The agency failed to provide financial statements as required under ORS 418.255.

(d) If any of the circumstances described in paragraph (c) of this subsection exists, the department may immediately place conditions on the license, certificate or authorization of the child-caring agency prior to a hearing if, consistent with ORS 183.430, the department finds there is a serious danger to the public health or safety and sets forth specific reasons for such findings.

[(d)] (e) It is grounds to deny issuance or renewal, suspend, revoke or place conditions on a license, certificate or other authorization if the department becomes aware that a child-caring agency, or the owner or operator of the agency, has been found by other state or federal entities to have engaged in financial, civil or criminal misconduct.

(3)(a) If the Director of Human Services has taken action under subsection (2)(c) of this section to suspend or revoke a license, certificate or other authorization, the notice of intent to suspend or revoke may be rescinded if the director determines that the concerns regarding the health and safety of the children in the child-caring agency's care or custody have been ameliorated and any conditions placed on the license, certificate or other authorization of the child-caring agency have been resolved. A rescission under this subsection must be made by agreement between the Director of Human Services and the Director of the Oregon Youth Authority and, if the child-caring agency is licensed to provide medical or psychiatric services, with the additional agreement of the Director of the Oregon Health Authority in consultation with the medical director for such services within the authority.

(b) Fourteen days before rescinding a notice of intent to suspend or revoke, the Director of Human Services must provide written notice regarding the intent to rescind to the Governor. The notice of intent to rescind is a public record and open for inspection by any person without order of a court. The notice of intent to rescind must include the following information:

(A) The circumstances that led to the notice of intent to suspend or revoke;

(B) The actions taken by the child-caring agency, the Department of Human Services, the Attorney General, the Oregon Youth Authority and the Oregon Health Authority in response to the circumstances leading to the notice of intent to suspend or revoke;

(C) Any penalties, fees or charges made or levied against the child-caring agency; and

(D) A complete description of changes that were made at the child-caring agency and the reasons for the determination that the concerns regarding the health and safety of children in the child-caring agency's care or custody have been ameliorated or that any conditions placed on the license, certificate or other authorization of the child-caring agency have been resolved.

(c) In making a decision to rescind a notice of intent to suspend or revoke under this subsection, the decision must be based solely on the health and safety of the children served by the child-caring agency. Systemwide capacity of the child welfare system may not be considered as an element of the decision.

(d) For three years after a notice of intent to suspend or revoke is rescinded under this subsection, the child-caring agency must apply for a renewal of the child-caring agency's license, certificate or other authorization on an annual basis.

(e) The department must provide the following with copies of a notice of intent to rescind within five business days of issuing the notice:

(A) The Governor; and

(B) The committees of the Legislative Assembly relating to child welfare.

[3] **(4) The department may immediately place conditions on any license, certificate or authorization issued under this section, including but not limited to placing full or partial restrictions on admission of children, temporary suspension, limitation of operations subject to an intent to revoke and limitation of operations subject to correction of violations as specified in a plan of correction imposed by the department. The department shall immediately notify any state or governmental agency or unit that has a contract with the child-caring agency to provide care or services to a child, and the governing board, trustees, owners, managers, operators or other appropriate authorities responsible for the child-caring agency, of conditions placed by the department on the child-caring agency's license, certificate or authorization under this section.**

[4] **(5) If applicable, an applicant shall submit written proof of compliance with the notification requirements in ORS 336.575.**

[5] **(6) The department may not charge a fee for inspections leading to decisions regarding, and issuance of, licenses, certifications or authorizations under this section, but may impose fees to cover costs of related inspections done for the department by other governmental agencies.**

[6] **(7) Except as provided in subsection (3) of this section, a license, certificate or authorization issued by the department under this section shall be valid for a period of two years, unless suspended or revoked sooner by the department. However, the department at any time may require amendments to an existing license, certificate or authorization to accommodate changes in the factors upon which the issuance was based.**

[7] **(8) When a condition exists that seriously endangers or places at risk the health, safety or welfare of a child who is receiving care or services at a child-caring agency:**

(a) The [Director of Human Services] director shall issue an interim emergency order without notice, or with reasonable notice under the circumstances, requiring the agency to correct the conditions and ensure the safety of children in the care of the agency. The interim emergency order shall remain in force until a final order, after a hearing, has been entered in accordance with ORS chapter 183.

(b) The director may commence an action to enjoin operation of a child-caring agency:

(A) If the agency is being operated without a valid license, certificate or other authorization issued under this section; or

(B) If the agency fails to comply with a plan of correction imposed by the department or to correct conditions not in conformity with standards as set out in an order issued under paragraph (a) of this subsection, within the time specified in the order.

[8] **(9) If the director, the director's designee or the department becomes aware through any means that a child-caring agency, or an owner, operator or employee of a child-caring agency, is the subject of an investigation by another state agency, law enforcement agency or federal agency, the director or director's designee shall take immediate steps to cause an investigation to take place**

into the circumstances surrounding the investigation and whether there is a threat to a child, or whether a child is at risk, at the child-caring agency. Upon determination of the level of threat or risk to children at the agency, the director shall take appropriate steps to protect and ensure the health, safety and welfare of children as necessary under the circumstances. Failure to comply with the requirements of this subsection constitutes grounds for a charge of official misconduct in the second degree under ORS 162.405.

~~[(9)]~~ **(10)** If the Department of Justice or Bureau of Labor and Industries commences an investigation of a child-caring agency or an owner, operator or employee of a child-caring agency, the Department of Justice or Bureau of Labor and Industries shall notify, inform and regularly update the director, the director's designee or such other personnel in the Department of Human Services designated to receive such information regarding the investigation. The director and the department shall immediately undertake the responsive action required by subsection ~~[(8)]~~ **(9)** of this section upon receiving such notification. Interference with, discouragement of or impediment to the receipt of the notification, information and updates required under this subsection constitutes official misconduct in the second degree under ORS 162.405.

~~[(10)]~~ **(11)** The Department of Human Services shall adopt rules to implement the provisions of this section.

SECTION 2. ORS 418.240, as amended by section 4, chapter 106, Oregon Laws 2016, and section 1 of this 2017 Act, is amended to read:

418.240. (1) All child-caring agencies shall obtain from the Department of Human Services a license, certificate or other authorization to provide care or services to children under ORS 418.205 to 418.327, 418.470, 418.475 or 418.950 to 418.970. The criteria for issuance, renewal, suspension or revocation of, or for placing conditions on, a license, certificate or authorization under this section must:

- (a) Be set forth in rules adopted by the department;
- (b) Include the full compliance requirements set forth in subsection (2) of this section; and
- (c) Include, but are not limited to, the following:
 - (A) The fitness of the child-caring agency.
 - (B) The employment of capable, trained or experienced staff that meet minimum staffing requirements.
 - (C) Sufficient financial backing to ensure effective operations.
 - (D) The probability of permanence in the child-caring agency.
 - (E) The care and services provided to the children served will be in their best interests and that of society.
 - (F) That the child-caring agency is or will be in compliance with the standards of care and treatment established in rules adopted by the department.

(2)(a) The department may not issue or renew a license, certificate or other authorization to a child-caring agency unless the department finds the agency is or will be in full compliance with all of the following:

- (A) The agency ensures child and family rights.
- (B) The agency complies with abuse reporting and investigation requirements.
- (C) The agency engages in and applies appropriate behavior management techniques.
- (D) The agency provides adequate furnishings and personal items for children.
- (E) The agency provides appropriate food services.
- (F) The agency ensures the safety of children.
- (G) The agency utilizes approved procedures and protocols for use of medications for children receiving care or services from the agency.
- (H) The agency or the agency's employees or agents have not engaged in financial mismanagement.
- (I) The agency fully and timely corrects violations and maintains standards in accordance with any plan of correction imposed by the department.

(J) The agency provides access as required under ORS 418.305 to a child or the agency's premises to the department or the department's employees, investigators, court appointed special advocates, attorneys for a child or other authorized persons or entities.

(b) The department may suspend, revoke or place conditions on a license, certificate or authorization of a child-caring agency if the department finds the agency is not in full compliance with any one or more of the full compliance requirements listed in paragraph (a) of this subsection.

(c) The department must take immediate steps to suspend or revoke the license, certificate or other authorization of a child-caring agency, if any of the following are found to exist:

(A) There has been the death of a child as a result of abuse or neglect on the part of the agency or any of the agency's employees or agents.

(B) There has been sexual or physical abuse or neglect of a child in the agency's care or custody that was known to the agency and the agency did not take immediate steps to report the abuse or neglect and to ensure the child's safety.

(C) The agency failed to cooperate fully with any local, state or federal regulatory entity's investigation of the agency or the agency's operations or employees.

(D) The agency failed to provide financial statements as required under ORS 418.255.

(d) If any of the circumstances described in paragraph (c) of this subsection exists, the department may immediately place conditions on the license, certificate or authorization of the child-caring agency prior to a hearing if, consistent with ORS 183.430, the department finds there is a serious danger to the public health or safety and sets forth specific reasons for such findings.

(e) It is grounds to deny issuance or renewal, suspend, revoke or place conditions on a license, certificate or other authorization if the department becomes aware that a child-caring agency, or the owner or operator of the agency, has been found by other state or federal entities to have engaged in financial, civil or criminal misconduct.

(3)(a) If the Director of Human Services has taken action under subsection (2)(c) of this section to suspend or revoke a license, certificate or other authorization, the notice of intent to suspend or revoke may be rescinded if the director determines that the concerns regarding the health and safety of the children in the child-caring agency's care or custody have been ameliorated and any conditions placed on the license, certificate or other authorization of the child-caring agency have been resolved. *[A rescission under this subsection must be made by agreement between the Director of Human Services and the Director of the Oregon Youth Authority and, if the child-caring agency is licensed to provide medical or psychiatric services, with the additional agreement of the Director of the Oregon Health Authority in consultation with the medical director for such services within the authority.]*

(b) Fourteen days before rescinding a notice of intent to suspend or revoke, the Director of Human Services must provide written notice regarding the intent to rescind to the Governor. The notice of intent to rescind is a public record and open for inspection by any person without order of a court. The notice of intent to rescind must include the following information:

(A) The circumstances that led to the notice of intent to suspend or revoke;

(B) The actions taken by the child-caring agency, the Department of Human Services, the Attorney General, the Oregon Youth Authority and the Oregon Health Authority in response to the circumstances leading to the notice of intent to suspend or revoke;

(C) Any penalties, fees or charges made or levied against the child-caring agency; and

(D) A complete description of changes that were made at the child-caring agency and the reasons for the determination that the concerns regarding the health and safety of children in the child-caring agency's care or custody have been ameliorated or that any conditions placed on the license, certificate or other authorization of the child-caring agency have been resolved.

(c) In making a decision to rescind a notice of intent to suspend or revoke under this subsection, the decision must be based solely on the health and safety of the children served by the child-caring agency. Systemwide capacity of the child welfare system may not be considered as an element of the decision.

(d) For three years after a notice of intent to suspend or revoke is rescinded under this subsection, the child-caring agency must apply for a renewal of the child-caring agency's license, certificate or other authorization on an annual basis.

(e) The department must provide the following with copies of a notice of intent to rescind within five business days of issuing the notice:

(A) The Governor; and

(B) The committees of the Legislative Assembly relating to child welfare.

(4) The department may immediately place conditions on any license, certificate or authorization issued under this section, including but not limited to placing full or partial restrictions on admission of children, temporary suspension, limitation of operations subject to an intent to revoke and limitation of operations subject to correction of violations as specified in a plan of correction imposed by the department. The department shall immediately notify any state or governmental agency or unit that has a contract with the child-caring agency to provide care or services to a child, and the governing board, trustees, owners, managers, operators or other appropriate authorities responsible for the child-caring agency, of conditions placed by the department on the child-caring agency's license, certificate or authorization under this section.

(5) If applicable, an applicant shall submit written proof of compliance with the notification requirements in ORS 336.575.

(6) The department may not charge a fee for inspections leading to decisions regarding, and issuance of, licenses, certifications or authorizations under this section, but may impose fees to cover costs of related inspections done for the department by other governmental agencies.

(7) Except as provided in subsection (3) of this section, a license, certificate or authorization issued by the department under this section shall be valid for a period of two years, unless suspended or revoked sooner by the department. However, the department at any time may require amendments to an existing license, certificate or authorization to accommodate changes in the factors upon which the issuance was based.

(8) When a condition exists that seriously endangers or places at risk the health, safety or welfare of a child who is receiving care or services at a child-caring agency:

(a) The director shall issue an interim emergency order without notice, or with reasonable notice under the circumstances, requiring the agency to correct the conditions and ensure the safety of children in the care of the agency. The interim emergency order shall remain in force until a final order, after a hearing, has been entered in accordance with ORS chapter 183.

(b) The director may commence an action to enjoin operation of a child-caring agency:

(A) If the agency is being operated without a valid license, certificate or other authorization issued under this section; or

(B) If the agency fails to comply with a plan of correction imposed by the department or to correct conditions not in conformity with standards as set out in an order issued under paragraph (a) of this subsection, within the time specified in the order.

(9) If the director, the director's designee or the department becomes aware through any means that a child-caring agency, or an owner, operator or employee of a child-caring agency, is the subject of an investigation by another state agency, law enforcement agency or federal agency, the director or director's designee shall take immediate steps to cause an investigation to take place into the circumstances surrounding the investigation and whether there is a threat to a child, or whether a child is at risk, at the child-caring agency. Upon determination of the level of threat or risk to children at the agency, the director shall take appropriate steps to protect and ensure the health, safety and welfare of children as necessary under the circumstances. Failure to comply with the requirements of this subsection constitutes grounds for a charge of official misconduct in the second degree under ORS 162.405.

(10) If the Department of Justice or Bureau of Labor and Industries commences an investigation of a child-caring agency or an owner, operator or employee of a child-caring agency, the Department of Justice or Bureau of Labor and Industries shall notify, inform and regularly update the director, the director's designee or such other personnel in the Department of Human Services designated to

receive such information regarding the investigation. The director and the department shall immediately undertake the responsive action required by subsection (9) of this section upon receiving such notification. Interference with, discouragement of or impediment to the receipt of the notification, information and updates required under this subsection constitutes official misconduct in the second degree under ORS 162.405.

(11) The Department of Human Services shall adopt rules to implement the provisions of this section.

SECTION 3. The amendments to ORS 418.240 by section 2 of this 2017 Act become operative on January 1, 2021.

SECTION 4. Section 38, chapter 106, Oregon Laws 2016, is amended to read:

Sec. 38. (1) The investigation conducted by the Department of Human Services under section 37, **chapter 106, Oregon Laws 2016**, [of this 2016 Act] must result in one of the following findings:

(a) That the report is substantiated. A report is substantiated when there is reasonable cause to believe that the abuse of a child in care occurred.

(b) That the report is unsubstantiated. A report is unsubstantiated when there is no evidence that the abuse of a child in care occurred.

(c) That the report is inconclusive. A report is inconclusive when there is some indication that the abuse occurred but there is insufficient evidence to conclude that there is reasonable cause to believe that the abuse occurred.

(2) When a report is received under section 37, **chapter 106, Oregon Laws 2016**, [of this 2016 Act] alleging that a child in care may have been subjected to abuse, the department shall notify the attorney for the child, the child's court appointed special advocate, the parents or guardians of the child, any attorney representing a parent or guardian of the child and any governmental agency or unit that has a contract with the child-caring agency to provide care or services to the child that a report has been received.

(3) The department may interview the child in care who is the subject of suspected abuse and witnesses without the presence of child-caring agency or proctor foster home employees or department personnel. The department shall inform the child in care that the child may have the child's parent or guardian, if the child has not been committed to the custody of the department or the Oregon Youth Authority, or attorney present when participating in an interview conducted in the course of an abuse investigation.

(4) The department shall notify the following when a report of abuse is substantiated:

(a) The Director of Human Services.

(b) Personnel in the department responsible for the licensing, certificate or authorization of child-caring agencies.

(c) The department's lead personnel in that part of the department that is responsible for child welfare generally.

(d) With respect to the child in care who is the subject of the abuse report and investigation:

(A) Case managers for the child in care;

(B) The court appointed special advocate, if any, for the child in care; and

(C) The attorney for the child in care, if any.

(e) The parents or guardians of the child in care who is the subject of the abuse report and investigation if the child in care has not been committed to the custody of the department or the youth authority. Notification under this paragraph may not include any details or information other than that a report of abuse has been substantiated.

(f) The parents or guardians of each child in care that is residing, or receiving care or services, at the child-caring agency or proctor foster home that is the subject of the report and investigation, if the child in care has not been committed to the custody of the department or the youth authority. Notification under this paragraph may not include any details or information other than that a report of abuse has been substantiated.

(g) Any governmental agency or unit that has a contract with the child-caring agency to provide care or services to a child in care.

(5) The department shall report on a quarterly basis to the interim legislative committees on child welfare for the purposes of public review and oversight of the quality and safety of child-caring agencies that are licensed, certified or authorized by the department in this state and of proctor foster homes that are certified by the child-caring agencies. Information provided in reports under this subsection may not contain the name or any identifying information of a child in care but must contain all of the following:

(a) The name of any child-caring agency or proctor foster home where the department conducted an investigation pursuant to section 37, **chapter 106, Oregon Laws 2016**, [of this 2016 Act] that resulted in a finding that the report of abuse was substantiated during that quarter;

(b) The approximate date that the abuse occurred;

(c) The nature of the abuse and a brief narrative description of the abuse that occurred;

(d) Whether physical injury, sexual abuse or death resulted from the abuse; and

(e) Corrective actions taken or ordered by the department and the outcome of the corrective actions.

(6) **In compiling records, reports and other information during an investigation under section 37 (1), chapter 106, Oregon Laws 2016, and in issuing findings, letters of concern or reprimands, the Director of Human Services or the director's designee and the department may not refer to the employee, person or entity that is the subject of the investigation as an "alleged perpetrator" but must refer to the employee, person or entity as the "respondent."**

SECTION 5. (1) No later than September 15, 2018, the Department of Human Services shall submit a report to the interim legislative committees on child welfare regarding the establishment of a "deemed status" determination that a child-caring agency has met some or all of the criteria or the full compliance requirements listed in ORS 418.240. The "deemed status" determination will apply when a child-caring agency has been accredited and is in good standing with a national accrediting program, body or organization approved by the department.

(2) The report shall include:

(a) Recommendations for the process of and requirements for establishing a "deemed status" determination in the issuance of licenses, certifications and other authorizations to child-caring agency applicants.

(b) Information about available accreditation programs, bodies or organizations, membership in which would qualify a child-caring agency for a "deemed status" determination.

(c) Recommendations regarding the criteria for determining whether an applicant child-caring agency is in good standing with a national accrediting program, body or organization.

(d) Information about the potential impact that a "deemed status" determination would have on children's safety and well-being in this state.

(e) Information about how other states have implemented similar "deemed status" determinations and the consequences of such implementation.

(f) Recommendations for necessary legislation and budget requirements to implement a "deemed status" determination option for licensure, certification and authorization of child-caring agencies.

SECTION 6. Section 5 of this 2017 Act is repealed on January 2, 2019.

SECTION 7. This 2017 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect on its passage.

Passed by House April 26, 2017

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate May 15, 2017

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Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2017

Approved:

.....M,....., 2017

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2017

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Dennis Richardson, Secretary of State