

House Bill 2903

Sponsored by Representatives OLSON, STARK, Senators PROZANSKI, OLSEN; Representative NATHANSON, Senator MONNES ANDERSON

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Modifies definition of "abuse" occurring in child-caring agencies.

Directs Department of Human Services to determine within five days of receipt of report of abuse of child in care whether incident of abuse was life threatening or affected physical safety of child in care and prescribes actions to be taken upon determination. Provides that final determination of nature of incidence is within sole discretion of Director of Human Services or director's designee.

Modifies findings required as result of investigation of report of suspected abuse. Permits director or director's designee to issue letter of concern or reprimand in lieu of taking action that would affect license, certificate or authorization of child-caring agency if investigation results in finding that report of suspected abuse is substantiated but not life threatening and did not affect physical safety of child in care.

Creates "deemed status" determination for automatic issuance or renewal of license, certificate or authorization without further requirement to establish child-caring agency has met required criteria if agency has been accredited and is in good standing with national accrediting body or organization.

Authorizes director or director's designee to rescind notice of intent to revoke or suspend license, certification or authorization of child-caring agency when concerns regarding children's health and safety have been ameliorated and conditions placed on license, certificate or other authorization of agency have been resolved.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to child-caring agencies; creating new provisions; amending ORS 418.240 and 418.260 and
3 sections 36, 37 and 38, chapter 106, Oregon Laws 2016; and declaring an emergency.

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

5 **SECTION 1.** Section 36, chapter 106, Oregon Laws 2016, is amended to read:

6 **Sec. 36.** As used in sections 36 to 38 [of this 2016 Act], **chapter 106, Oregon Laws 2016:**

7 (1) "Abuse" [means one or more of the following:]

8 [(a) Any physical injury to a child in care caused by other than accidental means, or which appears
9 to be at variance with the explanation given of the injury.]

10 [(b) Neglect of a child in care.]

11 [(c) Abandonment, including desertion or willful forsaking of a child in care or the withdrawal or
12 neglect of duties and obligations owed a child in care by a child-caring agency, caretaker or other
13 person.]

14 [(d) Willful infliction of physical pain or injury upon a child in care.]

15 [(e) An act that constitutes a crime under ORS 163.375, 163.405, 163.411, 163.415, 163.425, 163.427,
16 163.465, 163.467 or 163.525.]

17 [(f) Verbal abuse.]

18 [(g) Financial exploitation.]

19 [(h) Sexual abuse.]

20 [(i) Involuntary seclusion of a child in care for the convenience of a child-caring agency or care-

NOTE: Matter in **boldfaced** type in an amended section is new; matter [italic and bracketed] is existing law to be omitted. New sections are in **boldfaced** type.

1 *taker or to discipline the child in care.]*

2 *[(j) A wrongful use of a physical or chemical restraint of a child in care, excluding an act of re-*
 3 *straint prescribed by a physician licensed under ORS chapter 677 and any treatment activities that are*
 4 *consistent with an approved treatment plan or in connection with a court order] **has the meaning***
 5 **given that term in ORS 419B.005.**

6 (2) “Child in care” means a person under 21 years of age who is residing in or receiving care
 7 or services from a child-caring agency or proctor foster home subject to ORS 418.205 to 418.327,
 8 418.470, 418.475 or 418.950 to 418.970.

9 (3) “Child-caring agency” has the meaning given that term in ORS 418.205.

10 (4) “Proctor foster home” has the meaning given that term in ORS 418.205.

11 [(5)(a) “Financial exploitation” means:]

12 [(A) *Wrongfully taking the assets, funds or property belonging to or intended for the use of a child*
 13 *in care.]*

14 [(B) *Alarming a child in care by conveying a threat to wrongfully take or appropriate moneys or*
 15 *property of the child in care if the child would reasonably believe that the threat conveyed would be*
 16 *carried out.]*

17 [(C) *Misappropriating, misusing or transferring without authorization any moneys from any ac-*
 18 *count held jointly or singly by a child in care.]*

19 [(D) *Failing to use the income or assets of a child in care effectively for the support and mainte-*
 20 *nance of the child in care.]*

21 [(b) “Financial exploitation” does not include age-appropriate discipline that may involve the threat
 22 to withhold, or the withholding of, privileges.]

23 [(6) “Intimidation” means compelling or deterring conduct by threat. “Intimidation” does not in-
 24 clude age-appropriate discipline that may involve the threat to withhold privileges.]

25 [(7) (5) “Law enforcement agency” means:

26 (a) Any city or municipal police department.

27 (b) Any county sheriff’s office.

28 (c) The Oregon State Police.

29 (d) Any district attorney.

30 (e) A police department established by a university under ORS 352.121 or 353.125.

31 [(8) “Neglect” means:]

32 [(a) *Failure to provide the care, supervision or services necessary to maintain the physical and*
 33 *mental health of a child in care; or]*

34 [(b) *The failure of a child-caring agency, proctor foster home, caretaker or other person to make a*
 35 *reasonable effort to protect a child in care from abuse.]*

36 [(9) (6) “Services” includes but is not limited to the provision of food, clothing, medicine,
 37 housing, medical services, assistance with bathing or personal hygiene or any other service essential
 38 to the well-being of a child in care.

39 [(10) “Sexual abuse” means:]

40 [(a) *Sexual harassment, sexual exploitation or inappropriate exposure to sexually explicit material*
 41 *or language;]*

42 [(b) *Any sexual contact between a child in care and an employee of a child-caring agency or proctor*
 43 *foster home, caretaker or other person responsible for the provision of care or services to a child in*
 44 *care;]*

45 [(c) *Any sexual contact between a person and a child in care that is unlawful under ORS chapter*

1 163 and not subject to a defense under that chapter; or]

2 [(d) Any sexual contact that is achieved through force, trickery, threat or coercion.]

3 [(11) "Sexual contact" has the meaning given that term in ORS 163.305.]

4 [(12) "Sexual exploitation" as described in ORS 419B.005 (1)(a)(E).]

5 [(13) "Verbal abuse" means to threaten significant physical or emotional harm to a child in care
6 through the use of:]

7 [(a) Derogatory or inappropriate names, insults, verbal assaults, profanity or ridicule; or]

8 [(b) Harassment, coercion, threats, intimidation, humiliation, mental cruelty or inappropriate sexual
9 comments.]

10 **SECTION 2.** Section 37, chapter 106, Oregon Laws 2016, is amended to read:

11 **Sec. 37.** (1) When the Department of Human Services becomes aware of a report of suspected
12 [child] abuse of a child in care, whether in the form of an allegation, complaint or formal report
13 made under this section, and whether made directly to the Director of Human Services, the depart-
14 ment or an employee of the department, to a hotline operated by the department, through the man-
15 datory abuse reporting process set forth in ORS 419B.005 to 419B.050 or otherwise, the department
16 shall [immediately:], **within a period of five days, determine whether the incident of suspected**
17 **abuse was life threatening or affected the physical safety of the child in care.**

18 **(2) If the incident of suspected abuse was life threatening or affected the physical safety**
19 **of a child in care, the department shall:**

20 (a) Notify appropriate personnel within the department, including but not limited to employees
21 responsible for licensing, certifying or authorizing child-caring agencies.

22 (b) Notify any [governmental agency or unit] **state agency** that has a contract with the child-
23 caring agency to provide care or services to the child in care.

24 (c) Commence an investigation to determine whether the report of suspected abuse is
25 substantiated[,] **or** unsubstantiated [or inconclusive] under section 38, **chapter 106, Oregon Laws**
26 **2016 [of this 2016 Act].**

27 (d) Report to a law enforcement agency any crime that the department has reason to believe
28 has occurred with respect to a child in care or at a child-caring agency or proctor foster home, even
29 if the suspected crime is not related to a report of abuse made under this section.

30 **(3) If the department determines that the incident of suspected abuse was not life**
31 **threatening and did not affect the physical safety of a child in care, the department need not**
32 **commence an investigation regarding the incident unless the Director of Human Services or**
33 **the director's designee determines that further investigation is appropriate or necessary.**

34 **(4) The final determination of whether an incident of suspected abuse was life threaten-**
35 **ing or affected the physical safety of a child in care under this subsection is within the sole**
36 **discretion of the Director of Human Services or the director's designee.**

37 [(2)] **(5)** As a condition for issuance or renewal of a license, certificate or authorization to a
38 child-caring agency under ORS 418.205 to 418.327, 418.470, 418.475 or 418.950 to 418.970, the de-
39 partment shall require and verify that the child-caring agency has procedures and protocols that:

40 (a) Require employees of the child-caring agency, or a proctor foster home certified by the
41 child-caring agency, to immediately report suspected abuse of a child in care to the director, the
42 director's designee or personnel within the department who have been specifically designated to
43 receive reports of abuse of children in care;

44 (b) Mandate that the child-caring agency provide an annual training and written materials that
45 include information about the child abuse reporting hotline, and that the agency advise and educate

1 employees of the child-caring agency, and employees of any proctor foster home certified by the
 2 child-caring agency, of the duty under this section **and ORS 419B.005 to 419B.050** to report abuse
 3 of a child in care; and

4 (c) Inform employees of child-caring agencies and proctor foster homes that the duty to report
 5 abuse of a child in care is personal to the employee and that the duty is not fulfilled by reporting
 6 the abuse to the owner, operator or any other employee of the child-caring agency or proctor foster
 7 home even if the owner, operator or other employee reports the abuse of a child in care to the di-
 8 rector, the director's designee or the department.

9 [(3)] **(6)** Interference or hindering an investigation of abuse of a child in care, including but not
 10 limited to the intimidation of witnesses, falsification of records or denial or limitation of interviews
 11 with the child in care who is the subject of the investigation or with witnesses, may constitute
 12 grounds for the revocation, suspension or placing of conditions on the license, certificate or other
 13 authorization of a child-caring agency or proctor foster home.

14 [(4)(a)] **(7)(a)** Anyone, including but not limited to an employee of a child-caring agency or
 15 proctor foster home, who makes a report of suspected abuse of a child in care to the Governor, the
 16 Department of Justice, the Director of Human Services, the director's designee or the department
 17 under this section in good faith and who has reasonable grounds for the making of the report shall
 18 have immunity:

19 (A) From any liability, civil or criminal, that might otherwise be incurred or imposed with re-
 20 spect to the making or content of [*such*] **the** report;

21 (B) From disciplinary action taken by the person's employer; and

22 (C) With respect to participating in any judicial proceeding resulting from or involving the re-
 23 port.

24 (b) A person making a report under this section may include references to otherwise confidential
 25 information for the sole purpose of making the report, and any such disclosure must be protected
 26 from further disclosure to other persons or entities for any other purpose not related to the making
 27 of the report.

28 **SECTION 3.** Section 38, chapter 106, Oregon Laws 2016, is amended to read:

29 **Sec. 38.** (1) The investigation conducted by the Department of Human Services under section
 30 37 **(2), chapter 106, Oregon Laws 2016,** [*of this 2016 Act*] must result in one of the following
 31 findings:

32 (a) That the report is substantiated. A report is substantiated when [*there is reasonable cause to*
 33 *believe*] **a preponderance of the evidence demonstrates** that the abuse of a child in care occurred.

34 (b) That the report is unsubstantiated. A report is unsubstantiated when [*there is no evidence*]
 35 **the preponderance of the evidence does not demonstrate** that the abuse of a child in care oc-
 36 curred.

37 [*c) That the report is inconclusive. A report is inconclusive when there is some indication that the*
 38 *abuse occurred but there is insufficient evidence to conclude that there is reasonable cause to believe*
 39 *that the abuse occurred.*]

40 **(c) That the report is substantiated but the incident of abuse was not life threatening**
 41 **and did not affect the physical safety of a child in care.**

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

1 *agency to provide care or services to the child that a report has been received.] (a) The department*
 2 **shall notify the persons or entities described in paragraph (b) of this subsection that a report**
 3 **of suspected abuse has been made when:**

4 (A) The department becomes aware of a report under section 37 (1), chapter 106, Oregon
 5 Laws 2016;

6 (B) The five-day period described in section 37 (1), chapter 106, Oregon Laws 2016, has
 7 expired; and

8 (C) The department determines that the incident of abuse was life threatening or affected
 9 the physical safety of a child in care.

10 (b) The persons or entities that the department must notify under this subsection that
 11 a report of suspected abuse has been made include the following:

12 (A) The case managers for the child;

13 (B) The attorney for the child;

14 (C) The child's court appointed special advocate;

15 (D) The parents or guardians of the child;

16 (E) Any attorney representing a parent or guardian of the child; and

17 (F) Any state agency that has a contract with the child-caring agency to provide care
 18 or services to the child.

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

25 (4) The department shall notify the following when a report of abuse is substantiated **as de-**
 26 **scribed in subsection (1)(a) of this section:**

27 (a) The Director of Human Services.

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

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

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

33 *[(A) Case managers for the child in care;]*

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

35 *[(C) The attorney for the child in care, if any.]*

36 **(d) With respect to the child in care who is the subject of the abuse report and investi-**
 37 **gation, the case managers for the child, the attorney for the child, the child's court ap-**
 38 **pointed special advocate, any attorney representing a parent or guardian of the child and any**
 39 **state agency that has a contract with the child-caring agency to provide care or services to**
 40 **the child.**

41 (e) The parents or guardians of the child in care who is the subject of the abuse report and in-
 42 vestigation if the child in care has not been committed to the custody of the department or the
 43 youth authority. Notification under this paragraph may not include any details or information other
 44 than that a report of abuse has been substantiated **as described in subsection (1)(a) of this sec-**
 45 **tion.**

1 *[(f) The parents or guardians of each child in care that is residing, or receiving care or services,*
2 *at the child-caring agency or proctor foster home that is the subject of the report and investigation, if*
3 *the child in care has not been committed to the custody of the department or the youth authority. No-*
4 *tification under this paragraph may not include any details or information other than that a report of*
5 *abuse has been substantiated.]*

6 [(g)] (f) Any [governmental agency or unit] **state agency** that has a contract with the child-
7 caring agency to provide care or services to a child in care.

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

14 (a) The name of any child-caring agency or proctor foster home where the department conducted
15 an investigation [*pursuant to*] under section 37 (2), **chapter 106, Oregon Laws 2016**, [*of this 2016*
16 *Act*] that resulted in a finding that the report of abuse was substantiated **as described in sub-**
17 **section (1)(a) of this section**, during that quarter;

18 (b) The approximate date that the abuse occurred;

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

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

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

23 **(6)(a) When the Director of Human Services, the director's designee or the department**
24 **determines that a report of suspected abuse is substantiated but the incident of abuse was**
25 **not life threatening and did not affect the physical safety of a child in care as described in**
26 **subsection (1)(c) of this section, the director or the director's designee, in lieu of taking any**
27 **other action that would affect the license, certificate or authorization of the child-caring**
28 **agency involved in the incident of abuse, may:**

29 **(A) Issue a letter of concern. The letter of concern shall set forth the rules, policies or**
30 **procedures that were not followed or that were violated by the incident of abuse and shall**
31 **make recommendations to the child-caring agency or responsible employee, person or entity**
32 **for remedial action, including but not limited to seeking peer review, providing or obtaining**
33 **additional training or seeking professional counseling and support. The director, director's**
34 **designee and the department are not required to follow up regarding whether the remedial**
35 **actions recommended in the letter of concern were taken by the child-caring agency, em-**
36 **ployee, person or entity. A copy of the letter must be provided to the child-caring agency and**
37 **the employee, person or entity responsible for the incident of abuse.**

38 **(B) Issue a reprimand. The reprimand shall set forth the rules, policies or procedures**
39 **that were violated and shall set forth remedial actions that must be taken by the child-caring**
40 **agency or employee, person or entity in order to avoid disciplinary action. The director,**
41 **director's designee and the department must follow up regarding whether the remedial**
42 **actions set forth in the reprimand were taken by the child-caring agency, employee, person**
43 **or entity. A copy of the reprimand must be provided to the child-caring agency and the em-**
44 **ployee, person or entity responsible for the incident of abuse.**

45 (b) The final decision as to whether to issue a letter of concern or a reprimand under this

1 subsection is within the sole discretion of the Director of Human Services or the director's
 2 designee.

3 (7) In compiling records, reports and other information during an investigation under
 4 section 37 (2), chapter 106, Oregon Laws 2016, and in issuing findings, letters of concern or
 5 reprimands, the Director of Human Services or the director's designee and the department
 6 shall not refer to the employee, person or entity that is the subject of the investigation as
 7 an "alleged perpetrator" but must refer to the employee, person or entity as the
 8 "respondent".

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

11 418.240. (1) All child-caring agencies shall obtain from the Department of Human Services a li-
 12 cense, certificate or other authorization to provide care or services to children under ORS 418.205
 13 to 418.327, 418.470, 418.475 or 418.950 to 418.970. The criteria for issuance, renewal, suspension or
 14 revocation of, or for placing conditions on, a license, certificate or authorization under this section
 15 must:

16 (a) Be set forth in rules adopted by the department;

17 (b) Include the full compliance requirements set forth in subsection (2) of this section **unless**
 18 **paragraph (d) of this subsection applies; [and]**

19 (c) Include, but are not limited to, the following:

20 (A) The fitness of the child-caring agency.

21 (B) The employment of capable, trained or experienced staff that meet minimum staffing re-
 22 quirements.

23 (C) Sufficient financial backing to ensure effective operations.

24 (D) The probability of permanence in the child-caring agency.

25 (E) The care and services provided to the children served will be in their best interests and that
 26 of society.

27 (F) That the child-caring agency is or will be in compliance with the standards of care and
 28 treatment established in rules adopted by the department[.]; **and**

29 **(d) Provide for a "deemed status" determination that a child-caring agency is entitled to**
 30 **automatic issuance or renewal of a license, certificate or authorization under this section**
 31 **without any further requirement to establish that the child-caring agency has met the cri-**
 32 **teria listed in paragraph (c) of this subsection or the full compliance requirements listed in**
 33 **subsection (2) of this section when the child-caring agency has been accredited and is in good**
 34 **standing with a national accrediting body or organization.**

35 (2)(a) **Unless a license, certificate or authorization was issued under subsection (1)(d) of**
 36 **this section,** the department may not issue or renew a license, certificate or other authorization to
 37 a child-caring agency unless the department finds the agency is or will be in full compliance with
 38 all of the following:

39 (A) The agency ensures child and family rights.

40 (B) The agency complies with abuse reporting and investigation requirements.

41 (C) The agency engages in and applies appropriate behavior management techniques.

42 (D) The agency provides adequate furnishings and personal items for children.

43 (E) The agency provides appropriate food services.

44 (F) The agency ensures the safety of children.

45 (G) The agency utilizes approved procedures and protocols for use of medications for children

1 receiving care or services from the agency.

2 (H) The agency or the agency's employees or agents have not engaged in financial mismanage-
3 ment.

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

6 (J) The agency provides access as required under ORS 418.305 to a child or the agency's prem-
7 ises to the department or the department's employees, investigators, court appointed special advo-
8 cates, attorneys for a child or other authorized persons or entities.

9 (b) **Unless a license, certificate or authorization was issued under subsection (1)(d) of this**
10 **section**, the department may suspend, revoke or place conditions on a license, certificate or au-
11 thorization of a child-caring agency if the department finds the agency is not in full compliance with
12 any one or more of the full compliance requirements listed in paragraph (a) of this subsection.

13 (c) **Notwithstanding subsection (1)(d) of this section**, in the following circumstances, the
14 [*department*] **Director of Human Services or the director's designee** may [*not issue, renew or*
15 *place conditions on a license, certificate or authorization of a child-caring agency but must*] take im-
16 mediate steps to suspend or revoke the license, certificate or other authorization of the child-caring
17 agency, if any of the following are found to exist:

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

20 (B) There has been sexual or physical abuse [*or neglect*] of a child in the agency's care or cus-
21 tody that was known to the agency and the agency did not take immediate steps to report the abuse
22 [*or neglect*] and to ensure the child's safety.

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

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

26 (d) **Notwithstanding subsection (1)(d) of this section**, it is grounds to deny issuance or re-
27 newal, suspend, revoke or place conditions on a license, certificate or other authorization if the
28 department becomes aware that a child-caring agency, or the owner or operator of the agency, has
29 been found by other state or federal entities to have engaged in financial, civil or criminal miscon-
30 duct.

31 (3) **If the Director of Human Services or the director's designee has taken action under**
32 **subsection (2)(c) of this section to suspend or revoke a license, certificate or other authori-**
33 **zation, the notice of intent to suspend or revoke may be rescinded by the director or**
34 **director's designee within the director's or director's designee's sole discretion if the director**
35 **or director's designee determines that the concerns regarding the health and safety of the**
36 **children in the child-caring agency's care or custody have been ameliorated and any condi-**
37 **tions placed on the license, certificate or other authorization of the child-caring agency have**
38 **been resolved.**

39 [(3)] (4) The department may place conditions on any license, certificate or authorization issued
40 under this section, including but not limited to placing full or partial restrictions on admission of
41 children, temporary suspension, limitation of operations subject to an intent to revoke and limitation
42 of operations subject to correction of violations as specified in a plan of correction imposed by the
43 department. The department shall immediately notify any governmental agency or unit that has a
44 contract with the child-caring agency to provide care or services to a child of conditions placed by
45 the department on the child-caring agency's license, certificate or authorization under this section.

1 [(4)] (5) If applicable, an applicant shall submit written proof of compliance with the notification
2 requirements in ORS 336.575.

3 [(5)] (6) The department may not charge a fee for inspections leading to decisions regarding, and
4 issuance of, licenses, certifications or authorizations under this section, but may impose fees to
5 cover costs of related inspections done for the department by other governmental agencies.

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

10 [(7)] (8) When a condition exists that seriously endangers or places at risk the health, safety or
11 welfare of a child who is receiving care or services at a child-caring agency:

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

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

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

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

22 [(8)] (9) If the director, the director's designee or the department becomes aware through any
23 means that a child-caring agency, or an owner, operator or employee of a child-caring agency, is the
24 subject of an investigation by another state agency, law enforcement agency or federal agency, the
25 director or director's designee shall take immediate steps to cause an investigation to take place
26 into the circumstances surrounding the investigation and whether there is a threat to a child, or
27 whether a child is at risk, at the child-caring agency. Upon determination of the level of threat or
28 risk to children at the agency, the director shall take appropriate steps to protect and ensure the
29 health, safety and welfare of children as necessary under the circumstances. Failure to comply with
30 the requirements of this subsection constitutes grounds for a charge of official misconduct in the
31 second degree under ORS 162.405.

32 [(9)] (10) If the Department of Justice or Bureau of Labor and Industries commences an inves-
33 tigation of a child-caring agency or an owner, operator or employee of a child-caring agency, the
34 Department of Justice or Bureau of Labor and Industries shall notify, inform and regularly update
35 the director, the director's designee or such other personnel in the Department of Human Services
36 designated to receive such information regarding the investigation. The director and the department
37 shall immediately undertake the responsive action required by subsection (8) of this section upon
38 receiving such notification. Interference with, discouragement of or impediment to the receipt of the
39 notification, information and updates required under this subsection constitutes official misconduct
40 in the second degree under ORS 162.405.

41 [(10)] (11) The Department of Human Services shall adopt rules to implement the provisions of
42 this section.

43 **SECTION 5.** ORS 418.260, as amended by section 11, chapter 106, Oregon Laws 2016, is
44 amended to read:

45 418.260. (1) If the Department of Human Services **receives a report or otherwise** becomes

1 aware that any suspected [*or founded abuses,*] deficiencies, violations or failures to comply with the
2 full compliance requirements described in ORS 418.240 are occurring in a child-caring agency,
3 whether as a part of the inspections undertaken pursuant to ORS 418.255 or otherwise, the depart-
4 ment shall immediately **notify appropriate personnel within the department, including but not**
5 **limited to employees responsible for licensing, certifying or authorizing child-caring agencies,**
6 **who shall** investigate and take appropriate action **without undue delay**, with primary concern
7 given to the health, safety and welfare of the children for whom the child-caring agency is respon-
8 sible. [*The department shall immediately report the alleged abuses, deficiencies or violations to the state*
9 *or governmental agency or unit, governing board, trustees, owners, managers or operators or other*
10 *appropriate authorities responsible for the child-caring agency. The department shall immediately notify*
11 *any governmental agency or unit that has a contract with the child-caring agency to provide care or*
12 *services to a child of the alleged abuses, deficiencies, violations or failures to comply.*] The department
13 may notify law enforcement agencies as necessary to coordinate and assist in the investigation and
14 enforcement of corrective actions undertaken by the department. **If the child-caring agency is**
15 **known or found to serve children committed to the care of the Oregon Youth Authority or**
16 **the developmental disabilities office within the department, the department shall notify those**
17 **entities of the report of suspected deficiencies, violations or failures.**

18 (2) If the department finds, after investigation by the department or law enforcement agencies,
19 that the [*abuses,*] deficiencies, violations or failures to comply are founded **or that a report of**
20 **abuse of a child in care has been substantiated under section 3 of this 2017 Act**, the depart-
21 ment may suspend, revoke or place conditions on the license, certificate or other authorization of
22 the child-caring agency. The conditions placed on a license, certificate or authorization may include,
23 but are not limited to, placing full or partial restrictions on admission of children, temporary sus-
24 pension, limitation of operations subject to an intent to revoke or limitation of operations subject
25 to correction of violations as specified in a plan of correction. If the department imposes a plan of
26 correction, and the corrections are not made within 45 days from the effective date of the plan of
27 correction, the department may immediately suspend or revoke the license, certificate or authori-
28 zation of the child-caring agency. The department shall immediately notify any [*governmental agency*
29 *or unit*] **state agency** that has a contract with the child-caring agency to provide care or services
30 to a child of any suspension or revocation of, or conditions placed on, the license, certificate or
31 other authorization of the child-caring agency.

32 (3) If the department determines at any time during or after an investigation that the abuses,
33 deficiencies, violations or failures to comply are or threaten a serious danger to any child or to the
34 public, or place a child at risk with respect to the child's health, safety or welfare, the department
35 may immediately suspend, [*or*] revoke **or place conditions on** the child-caring agency's license,
36 certificate or authorization, subject to the provisions of ORS chapter 183. The department shall im-
37 mediately notify any [*governmental agency or unit*] **state agency** that has a contract with the
38 child-caring agency to provide care or services to a child of any suspension or revocation of the li-
39 cense, certificate or other authorization of the child-caring agency. **The department shall imme-**
40 **diately report the suspected deficiencies, violations or failures to comply to the state agency**
41 **and the governing board responsible for the oversight of the child-caring agency.**

42 (4) If the department determines that the [*abuses,*] deficiencies, violations or failures to comply
43 are founded and the department imposes a plan of correction that the child-caring agency does not
44 comply with in the time allotted for correction, the department shall immediately notify the follow-
45 ing of the failure of the child-caring agency to comply with the plan of correction:

1 (a) The Legislative Assembly or the interim committees of the Legislative Assembly relating to
 2 child welfare.

3 (b) [*The state or governmental agency or unit, governing board, trustees, owners, managers or op-*
 4 *erators or other appropriate authorities*] **Members of the governing board** responsible for the
 5 child-caring agency.

6 (c) Any [*governmental agency or unit*] **state agency** that has a contract with the child-caring
 7 agency to provide care or services to a child.

8 (5) Any employee of the department that has reasonable cause to believe that a child-caring
 9 agency has committed an abuse or incurred a deficiency or violation, or that grounds for immediate
 10 suspension or revocation of a license, certificate or authorization exist under ORS 418.240, and that
 11 such abuse, deficiency, violation or grounds is or threatens a danger to any child at the child-caring
 12 agency or to the public, or places a child at risk with respect to the child's health, safety or welfare,
 13 is required to immediately inform the Director of Human Services, the director's designee or such
 14 other personnel in the department designated to receive such information. Upon receipt of an em-
 15 ployee report under this subsection, the director and department personnel shall immediately com-
 16 mence an investigation and take all reasonably prudent and necessary actions to ensure the health,
 17 safety and welfare of children at the child-caring agency. Failure to commence an investigation and
 18 take actions as required by this subsection constitutes official misconduct in the second degree un-
 19 der ORS 162.405.

20 **SECTION 6. (1) The amendments to ORS 418.240 and 418.260 and sections 36 to 38, chap-**
 21 **ter 106, Oregon Laws 2016, by sections 1 to 5 of this 2017 Act apply to incidents of abuse of**
 22 **a child in care occurring on or after the effective date of this 2017 Act and child-caring**
 23 **agencies that are licensed, certified or authorized on or after the effective date of this 2017**
 24 **Act.**

25 **(2) Notwithstanding subsection (1) of this section, the amendments to ORS 418.240 and**
 26 **418.260 and sections 36 to 38, chapter 106, Oregon Laws 2016, by sections 1 to 5 of this 2017**
 27 **Act do not affect a contract or agreement between the Department of Human Services or**
 28 **the Oregon Youth Authority and a child-caring agency that was licensed, certified or other-**
 29 **wise authorized by the department or the youth authority, and do not affect a contract or**
 30 **agreement between a child-caring agency and a proctor foster home to provide care or ser-**
 31 **vices to children in this state under state law as that law existed on the day immediately**
 32 **preceding the effective date of this 2017 Act. However, the amendments by sections 1 to 5**
 33 **of this 2017 Act apply to a renewal or extension of any such contract or agreement on or**
 34 **after the effective date of this 2017 Act, as well as to any new contract or agreement made**
 35 **on or after the effective date of this 2017 Act.**

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