

# Senate Bill 246

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## 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**.

Sets forth circumstances under which Department of Human Services may immediately suspend, revoke or place conditions on license, certification or other authorization of child-caring agency.

Permits Director of Human Services to rescind notice of intent to revoke or suspend license, certification or other 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 restrictions placed on authorizations of child-caring agencies; amending ORS 418.240;  
3 and declaring an emergency.

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

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

7 418.240. (1) All child-caring agencies shall obtain from the Department of Human Services a li-  
8 cense, certificate or other authorization to provide care or services to children under ORS 418.205  
9 to 418.327, 418.470, 418.475 or 418.950 to 418.970. The criteria for issuance, renewal, suspension or  
10 revocation of, or for placing conditions on, a license, certificate or authorization under this section  
11 must:

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

13 (b) Include the full compliance requirements set forth in subsection (2) of this section; and

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

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

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

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

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

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

22 (F) That the child-caring agency is or will be in compliance with the standards of care and  
23 treatment established in rules adopted by the department.

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

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

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

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

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

4 (E) The agency provides appropriate food services.

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

6 (G) The agency utilizes approved procedures and protocols for use of medications for children  
7 receiving care or services from the agency.

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

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

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

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

18 (c) In the following circumstances, the department [*may not issue, renew or place conditions on*  
19 *a license, certificate or authorization of a child-caring agency but*] must take immediate steps to sus-  
20 pend or revoke the license, certificate or other authorization of [*the*] a child-caring agency, **and**  
21 **may immediately place conditions on the license, certificate or authorization of the child-**  
22 **caring agency**, if any of the following are found to exist:

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

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

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

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

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

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

45 (b) Fourteen days before rescinding a notice of intent to suspend or revoke, the Director

1 of Human Services and the Attorney General must provide written notice regarding the in-  
 2 tent to rescind to the Governor and the committees of the Legislative Assembly relating to  
 3 child welfare. The notice of intent to rescind must include the following information:

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

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

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

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

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

18 (d) A notice of intent to suspend or revoke may not be rescinded more than once in a  
 19 10-year period for any single child-caring agency.

20 (e) For five years after a notice of intent to suspend or revoke is rescinded under this  
 21 subsection, the Department of Human Services may immediately suspend or revoke a license,  
 22 certificate or other authorization of a child-caring agency if circumstances arise that, under  
 23 this section, would authorize the department to suspend, revoke or place conditions on the  
 24 child-caring agency's license, certificate or other authorization.

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

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

30 (A) The Governor; and

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

32 [(3)] (4) The department may **immediately** place conditions on any license, certificate or au-  
 33 thorization issued under this section, including but not limited to placing full or partial restrictions  
 34 on admission of children, temporary suspension, limitation of operations subject to an intent to re-  
 35 voke and limitation of operations subject to correction of violations as specified in a plan of cor-  
 36 rection imposed by the department. The department shall immediately notify any **state or**  
 37 governmental agency or unit that has a contract with the child-caring agency to provide care or  
 38 services to a child, **and the governing board, trustees, owners, managers, operators or other**  
 39 **appropriate authorities responsible for the child-caring agency**, of conditions placed by the de-  
 40 partment on the child-caring agency's license, certificate or authorization under this section.

41 [(4)] (5) If applicable, an applicant shall submit written proof of compliance with the notification  
 42 requirements in ORS 336.575.

43 [(5)] (6) The department may not charge a fee for inspections leading to decisions regarding, and  
 44 issuance of, licenses, certifications or authorizations under this section, but may impose fees to  
 45 cover costs of related inspections done for the department by other governmental agencies.

1        [(6)] (7) **Except as provided in subsection (3) of this section**, a license, certificate or au-  
 2        thorization issued by the department under this section shall be valid for a period of two years,  
 3        unless suspended or revoked sooner by the department. However, the department at any time may  
 4        require amendments to an existing license, certificate or authorization to accommodate changes in  
 5        the factors upon which the issuance was based.

6        [(7)] (8) When a condition exists that seriously endangers or places at risk the health, safety or  
 7        welfare of a child who is receiving care or services at a child-caring agency:

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

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

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

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

19       [(8)] (9) If the director, the director's designee or the department becomes aware through any  
 20       means that a child-caring agency, or an owner, operator or employee of a child-caring agency, is the  
 21       subject of an investigation by another state agency, law enforcement agency or federal agency, the  
 22       director or director's designee shall take immediate steps to cause an investigation to take place  
 23       into the circumstances surrounding the investigation and whether there is a threat to a child, or  
 24       whether a child is at risk, at the child-caring agency. Upon determination of the level of threat or  
 25       risk to children at the agency, the director shall take appropriate steps to protect and ensure the  
 26       health, safety and welfare of children as necessary under the circumstances. Failure to comply with  
 27       the requirements of this subsection constitutes grounds for a charge of official misconduct in the  
 28       second degree under ORS 162.405.

29       [(9)] (10) If the Department of Justice or Bureau of Labor and Industries commences an inves-  
 30       tigation of a child-caring agency or an owner, operator or employee of a child-caring agency, the  
 31       Department of Justice or Bureau of Labor and Industries shall notify, inform and regularly update  
 32       the director, the director's designee or such other personnel in the Department of Human Services  
 33       designated to receive such information regarding the investigation. The director and the department  
 34       shall immediately undertake the responsive action required by subsection [(8)] (9) of this section  
 35       upon receiving such notification. Interference with, discouragement of or impediment to the receipt  
 36       of the notification, information and updates required under this subsection constitutes official mis-  
 37       conduct in the second degree under ORS 162.405.

38       [(10)] (11) The Department of Human Services shall adopt rules to implement the provisions of  
 39       this section.

40       **SECTION 2. This 2017 Act being necessary for the immediate preservation of the public**  
 41       **peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect**  
 42       **on its passage.**