

# Enrolled Senate Bill 85

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CHAPTER .....

## AN ACT

Relating to children; creating new provisions; amending ORS 419B.335 and 419B.354 and sections 4, 7a and 12b, chapter 19, Oregon Laws 2020 (first special session); and declaring an emergency.

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

**SECTION 1.** Section 4, chapter 19, Oregon Laws 2020 (first special session), is amended to read:

**Sec. 4.** (1) The Department of Human Services shall adopt rules allowing up to two programs that meet the following criteria to provide services to children in this state:

- (a) The services are provided in a family home setting.
- (b) The foster parents live in the house [24 hours per day, seven days per week] **full time**.
- (c) The foster parents are the primary care providers for the children served by the program.
- (d) The program serves no more than 15 children.
- (e) The program accepts children who have sexually maladaptive behaviors, a history of eloping from care or a history of unsuccessful placement in other settings.

(2)(a) Notwithstanding ORS 419B.354 and section 19b [of this 2020 special session Act], **chapter 19, Oregon Laws 2020 (first special session):**

(A) The department may engage and make reasonable payment to the programs allowed under subsection (1) of this section; and

(B) A program allowed under subsection (1) of this section is not required to be a qualified residential treatment program, as described in section 12b [of this 2020 special session Act], **chapter 19, Oregon Laws 2020 (first special session).**

(b) Notwithstanding section 14b [of this 2020 special session Act], **chapter 19, Oregon Laws 2020 (first special session)**, if a program allowed under subsection (1) of this section is a qualified residential treatment program, the department is not required to move the court for approval of its placement of a child in the program.

(c) The department is not required to ensure that a child the department places in a program allowed under subsection (1) of this section is assessed by a qualified individual under section 13b [of this 2020 special session Act], **chapter 19, Oregon Laws 2020 (first special session).**

(3) No later than September 1, 2022, the department shall submit a report to the interim committees of the Legislative Assembly related to child welfare regarding the success of placements in the programs allowed under subsection (1) of this section and recommendations, if any, for the continuation or expansion of placements consistent with this section.

**SECTION 2.** Section 7a, chapter 19, Oregon Laws 2020 (first special session), as amended by section 7b, chapter 19, Oregon Laws 2020 (first special session), is amended to read:

**Sec. 7a.** (1) Subject to ORS 419B.354, the Department of Human Services may place a child in an out-of-state child-caring agency only if:

(a) The out-of-state child-caring agency is licensed to provide or engage in the provision of care or services by the department under ORS 418.205 to 418.327 and complies with the licensing requirements under ORS 418.215;

(b) The department has a current contract with the child-caring agency; and

(c) The department's contract with the child-caring agency meets the criteria under subsection (3) of this section.

(2)(a) The department shall license an out-of-state child-caring agency pursuant to the same licensure requirements the department would impose if the out-of-state child-caring agency was located in this state.

(b) Notwithstanding paragraph (b) of Article V of the Interstate Compact on the Placement of Children and ORS 417.230, the department may not delegate the department's licensing, visitation, inspection, investigation or supervision of an out-of-state child-caring agency licensed by the department to provide care or services to an Oregon child.

(3)(a) The department shall review the department's contract with an out-of-state child-caring agency prior to placing a child with the child-caring agency.

(b) The contract must, at a minimum, meet the following criteria:

(A) At the time the contract is executed, the child-caring agency must provide the department with a current list of every entity for which the child-caring agency is providing placement services.

(B) No later than 15 days after accepting placement of a child from a new entity, the child-caring agency must notify the department in writing of the child-caring agency's association with the new entity. The notice must include the name and contact information of the new entity and the name and contact information of an individual associated with the new entity.

(C) The child-caring agency must make mandatory reports of child abuse, as defined in ORS 418.257 and 419B.005, involving Oregon children both to the Oregon child abuse hotline and as required under the laws of the state in which the child-caring agency is located.

(D) The child-caring agency must allow the department full access to the child-caring agency's facilities, residents, records and personnel as necessary for the department to conduct child abuse investigations and licensing activities or investigations.

(E) The child-caring agency must notify the department in writing no later than three business days after any state determines that an allegation of child abuse or a license violation involving the child-caring agency is founded, regardless of whether the child abuse or violation involves an Oregon child.

(F) The child-caring agency must notify the department in writing no later than three business days after the child-caring agency receives notice from any other state imposing a restriction on placement of children with the child-caring agency, suspending or revoking the child-caring agency's license with that state or indicating the state's intent to suspend or revoke the child-caring agency's license with that state.

(G) The child-caring agency must notify the department immediately, verbally and in writing:

(i) Any time a child from any state who is in the care of the child-caring agency dies, is sexually assaulted or suffers serious physical injury; or

(ii) When the child-caring agency becomes aware of any criminal investigation, arrest or criminal charges involving an agency staff member if the alleged offense involved a child or could have reasonably posed a risk to the health, safety or welfare of a child.

(H) Except with respect to protected information described in ORS 418.256 (5), the child-caring agency may not ask or require an employee or volunteer to sign a nondisclosure or other agreement prohibiting the employee or volunteer from the good faith disclosure of information concerning the abuse or mistreatment of a child who is in the care of the child-caring agency, violations of licensing or certification requirements, criminal activity at the child-caring agency, violations of state or federal laws or any practice that threatens the health and safety of a child in the care of the child-caring agency.

(I) The child-caring agency must ensure staffing [*and direct service level*] **ratio and staff training and education** requirements that meet, at a minimum, the standards set by the department by rule for intensive behavioral support services.

(J) The child-caring agency must meet all of the program, discipline, behavior support, supervision and child rights requirements adopted by the department by rule for behavioral rehabilitation services provided in this state.

(K) The child-caring agency may not practice conversion therapy, as defined in ORS 675.850.

(L) The child-caring agency must identify a child by the child's preferred name and pronouns and may not implement a dress code that prohibits or requires clothing on the basis of biological sex.

(M) Genetic testing, including testing for [*psychopharmacological*] **psychopharmacological** purposes, must be approved by a court and may not be included as a standing order for a child in care.

(N) Neither the child-caring agency nor its contractors or volunteers may use chemical or mechanical restraints on a child, including during secure transport.

(O) The child-caring agency must ensure that the use of any psychotropic medications for a child placed with the child-caring agency by the department is in compliance with ORS 418.517 and any rules regarding psychotropic medications adopted by the department.

(4) The department shall develop rules outlining a process for review of the out-of-state placement of a child who is identified as a child with an intellectual or developmental disability or who is suspected of having an intellectual or developmental disability. At a minimum, the rules must:

(a) Identify a process for expediting review of the child's eligibility for developmental disability services.

(b) Require that a multidisciplinary review team, including administrators in the developmental disability services program, review the placement before the child is placed out-of-state.

(c) Require that a multidisciplinary team, including administrators in the developmental disability services program, monitor the progress of the child in the out-of-state placement.

(d) Require that contracts for placement of the child ensure that the child has the same rights and protections that the child would have if the child was placed in this state.

(5)(a) A department child welfare services employee must accompany a child who is placed in an out-of-state child-caring agency any time the child is transported to an initial out-of-state placement, any time the child is moved to a new placement and any time the child is moved by secure transport.

**(b) Notwithstanding paragraph (a) of this subsection, if a child placed in an out-of-state child-caring agency requires secure transport from the out-of-state placement due to an emergency, a department child welfare services employee is not required to accompany the child if the time it would take for the employee to travel to the child's out-of-state location would pose a risk to the health, safety or welfare of the child. If a department child welfare services employee does not accompany a child transported to an alternate out-of-state placement, as provided in this paragraph, the child welfare services employee must immediately travel to meet the child at the new out-of-state facility.**

(6)(a) As used in this subsection, "juvenile offender" means a person under 18 years of age who has or is alleged to have committed an act that is a violation, or, if done by an adult, would constitute a violation, of a law or ordinance of the United States or a [*state,*] county or city in this state.

(b) Except as provided in paragraph (c) of this subsection, the department may not place a child in an out-of-state child-caring agency if the child-caring agency provides care to juvenile offenders.

(c) The department may place a child in an out-of-state [*child caring*] **child-caring** agency that provides care to juvenile offenders if:

[*(A) The child being placed is a juvenile offender; or*]

[*(B) The child being placed is not a juvenile offender and the out-of-state child caring agency;*]

[*(i) Operates distinct programs for children and juvenile offenders;*]

[*(ii) Prohibits the commingling of children and juvenile offenders;*]

- [(iii) Prohibits the commingling of the staff from the child and juvenile offender programs;]*
- [(iv) Has separate handbooks and policies for the child and juvenile offender programs;]*
- [(v) Has a facility that is large enough to ensure that the nature and culture of the child and juvenile offender programs are separate and distinct; and]*
- [(vi) Is a qualified residential treatment program.]*

**(A) The child-caring agency is a qualified residential treatment program licensed by the department;**

**(B) The child-caring agency maintains site-specific accreditation from a nationally recognized organization;**

**(C) The child being placed is a juvenile offender; and**

**(D) Prior to the hearing to approve the placement, the court and all parties to the dependency case have been informed of the nature of the services offered by the program and of the population served by the program, and the court, having considered the nature of the services and composition of the facility population and the report of the qualified individual, has found that placement in the facility is the least restrictive setting available to appropriately meet the child's treatment needs.**

**SECTION 3.** ORS 419B.354, as amended by sections 11a and 11b, chapter 19, Oregon Laws 2020 (first special session), is amended to read:

419B.354. (1) As used in this section:

(a) "Congregate care residential setting" means any setting that cares for more than one child or ward and is not a setting described in ORS 418.205 (2)(b)(A), (D) [*or (E)*], **(E) or (F)** or (10).

(b) "Sex trafficking" means the recruitment, harboring, transportation, provision, obtaining, patronizing or soliciting of a person under 18 years of age for the purpose of a commercial sex act, as defined in ORS 163.266, or the recruitment, harboring, transportation, provision or obtaining of a person over 18 years of age using force, fraud or coercion for the purpose of a commercial sex act, as defined in ORS 163.266.

(2) The Department of Human Services may place a child or ward in a congregate care residential setting only if the setting is:

(a) A child-caring agency, as defined in ORS 418.205, a hospital, as defined in ORS 442.015, or a rural hospital, as defined in ORS 442.470; and

(b) A qualified residential treatment program described in section 12b, chapter 19, Oregon Laws 2020 (first special session).

(3) Notwithstanding subsection (2) of this section, the department may place a child or ward in a child-caring agency that is not a qualified residential treatment program if:

(a) The child-caring agency is providing prenatal, postpartum or parenting supports to the child or ward.

(b) The child or ward is placed in an independent residence facility described in ORS 418.475 that is licensed by the department as a child-caring agency.

(c) The child or ward is, or is at risk of becoming, a victim of sex trafficking and the child-caring agency is providing high-quality residential care and supportive services to the child or ward.

(d) The Oregon Health Authority has approved the placement as medically necessary and the child-caring agency:

(A) Is a residential care facility;

(B) Is licensed by the authority and maintains site-specific accreditation from a nationally recognized organization to provide psychiatric treatment to children; and

(C) Has an active provider agreement with the Oregon Medicaid program.

(e) The child-caring agency is an adolescent residential drug and alcohol treatment program licensed or certified by the State of Oregon to provide residential care, and the court has approved, or approval is pending for, the placement in the child-caring agency of each child or ward over whom the department retains jurisdiction.

(f) The placement with the child-caring agency is for the purpose of placing the child or ward in a proctor foster home.

(g) The child-caring agency is a residential care facility licensed by the department that provides short-term assessment and stabilization services.

(h) The child-caring agency is a shelter-care home, as defined in ORS 418.470, that provides short-term assessment and stabilization services.

(i) The child-caring agency is a homeless, runaway or transitional living shelter licensed by the department that provides short-term assessment and stabilization services.

**(j) The ward is 18 years of age or older and the child-caring agency is a residential treatment facility or a residential home licensed or certified by the department or the Oregon Health Authority.**

(4) The department may not place a child or ward in a residential care facility or shelter-care home described in subsection (3)(g) or (h) of this section:

(a) For more than 60 consecutive days or 90 cumulative days in a 12-month period; or

(b) If the residential care facility or shelter-care home also serves youth or youth offenders served by the county juvenile department or youth offenders committed to the custody of the Oregon Youth Authority by the court.

(5) The department may not place a child or ward in a homeless, runaway or transitional living shelter described in subsection (3)(i) of this section for more than 60 consecutive or 90 cumulative days in any 12-month period.

(6) Calculations of the number of days a child or ward is placed in a shelter-care home under subsection (3)(h) of this section or a homeless, runaway or transitional living shelter under subsection (3)(i) of this section exclude the days the child or ward is in the shelter-care home or shelter if the child or ward:

(a) Accessed the shelter-care home or shelter without the support or direction of the department; and

(b) Is homeless or a runaway, as defined by the department by rule.

(7)(a) Nothing in this section prohibits the Oregon Youth Authority from placing a youth offender committed to its custody in a placement that is not a qualified residential treatment program.

(b) Nothing in this section prohibits the Oregon Youth Authority or a county juvenile department from placing a youth offender or a youth served by the Oregon Youth Authority or the county juvenile department in shelter care or detention under ORS chapter 419C.

**SECTION 4.** Section 12b, chapter 19, Oregon Laws 2020 (first special session), is amended to read:

**Sec. 12b.** A program is a qualified residential treatment program if it:

(1) Provides residential care and treatment to a child who, based on an independent assessment described in section 13b *[of this 2020 special session Act]*, **chapter 19, Oregon Laws 2020 (first special session)**, requires specialized, evidence-based, as defined by the Department of Human Services by rule, supports and services related to the effects of trauma or mental, emotional or behavioral health needs.

(2) Uses a trauma-informed treatment model that is designed to address the needs, including clinical needs as appropriate, of the child.

(3) Ensures that the staff at the facility includes licensed or registered nurses licensed under ORS chapter 678, **or the equivalent statute in the state in which the facility is located**, and other licensed clinical staff who:

(a) **Are licensed or registered in good standing under the laws and regulations of the state in which the facility is located and** provide care within their licensed scope of practice;

(b) Are on site according to the treatment model identified in subsection (2) of this section; and

(c) Are available 24 hours per day and seven days per week.

(4) Facilitates the involvement of the child's family, as defined in ORS 418.575, in the child's treatment program, to the extent appropriate and in the child's best interests.

(5) Facilitates outreach to the child's family, as defined in ORS 418.575, documents how outreach is made and maintains contact information for any known biological relatives or fictive kin, as defined by the department by rule.

(6) Documents how the program integrates family into the child's treatment process, including after discharge, and how sibling connections are maintained.

(7) Provides discharge planning and family-based after-care support for at least six months following the child's discharge from the program.

(8) Is licensed and accredited in accordance with requirements adopted by the department by rule. The rules adopted by the department under this subsection must be consistent with federal licensure and accreditation requirements for qualified residential treatment programs and require that the qualified residential treatment program maintain site-specific accreditation from a nationally recognized organization.

**SECTION 5.** ORS 419B.335 is amended to read:

419B.335. The Department of Human Services shall provide the following information regarding out-of-state placements of children and wards on a website maintained by the department and updated monthly:

(1) The name of each out-of-state facility in which children or wards placed by the department are currently receiving services;

(2) The city and state in which each facility is located;

(3) The name of any parent organization for each facility;

(4) The name of each facility's accreditation agency;

(5) The number of children or wards placed by the department currently receiving services from each facility;

(6) The total number of children or wards currently receiving services from each facility;

(7) The daily rate charged by each facility for each child or ward;

(8) The name of the face-to-face contracting agency, including the city and state in which it is located;

(9) Whether each facility provides services to youth offenders or the resident state's equivalent of youth offenders;

(10) Demographic information about all children or wards the department currently has placed in out-of-state facilities, including but not limited to age, gender or gender identity, race, ethnicity, tribal status and, if [known] **disclosed by the child or ward**, sexual orientation;

(11) The number of children or wards the department currently has placed in out-of-state facilities who have autism, intellectual disabilities or developmental disabilities; and

(12) Aggregate travel costs for the department to support out-of-state placements during the previous month.

**SECTION 6.** (1) **The Department of Human Services shall submit reports to the interim committees of the Legislative Assembly related to human services no later than November 1, 2021, and November 1, 2022, regarding children or wards placed in temporary lodgings by the department in the preceding 12-month period who were required to leave their placement at a residential care facility or shelter-care home solely due to the expiration of the limits on the duration of placements described in ORS 419B.354 (4)(a).**

(2) **For each child or ward accounted for in a report under this section, the department shall include the month the temporary lodging occurred, the number of nights the child or ward remained in the temporary lodging, the type of placement the child or ward was placed in at the end of the temporary lodging and the number of times the child or ward was placed in temporary lodging due to the expiration of the placement time limits during the reporting period.**

**SECTION 7.** Section 6 of this 2021 Act is repealed on January 1, 2023.

**SECTION 8.** (1) **It is the policy of this state that an individual may not be disqualified from providing child welfare services to a child or ward:**

(a) For the sole reason that the individual received child welfare services as a child or youth;

(b) For the sole reason that the individual is a person with a disability; or

(c) On the basis of race, religion, national origin, sex, age, marital status, sexual orientation, gender expression or disability.

(2) Subsection (1) of this section applies to any person providing child welfare services to a child or ward, including but not limited to foster parents, proctor foster parents, adoptive parents, relative caregivers, safety providers and direct service providers.

**SECTION 9.** It is the policy of this state that a child, ward or youth may not be prohibited from, disciplined for or retaliated against for publicly or privately speaking about the child, ward or youth's experience receiving child welfare services.

**SECTION 10.** The amendments to ORS 419B.335 and 419B.354 and sections 4, 7a and 12b, chapter 19, Oregon Laws 2020 (first special session), by sections 1 to 5 of this 2021 Act become operative on January 2, 2022.

**SECTION 11.** This 2021 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect on its passage.

Passed by Senate April 22, 2021

Received by Governor:

Repassed by Senate June 8, 2021

.....M.,....., 2021

Approved:

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Lori L. Brocker, Secretary of Senate

.....M.,....., 2021

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Peter Courtney, President of Senate

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Kate Brown, Governor

Passed by House June 3, 2021

Filed in Office of Secretary of State:

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Tina Kotek, Speaker of House

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Shemia Fagan, Secretary of State