

From: [VANDERVEEN Tom](#)
To: [Wyller Edward](#); [GILMORE Harry](#); [McIntosh Jenifer E](#)
Subject: FW: 419b.354
Date: Thursday, July 20, 2023 8:25:59 AM
Attachments: [image001.png](#)

More info than some of you might want to know... but CW is looking at developing 1 bed residential programs licensed as a CCA. (Dynamic Life is likely an agency that would do this work.) They are looking at short term placements for some youth to avoid Temp Lodging. Also, they would consider long term placement for the right child. The number of these would be very small.

Harry, I have to say, your idea to license providers such as Dynamic Life might be a real path out of the Temp Lodging dilemma CW is in.

Still a lot of work ahead, but I'm happy to see continued interest and progress on the CW side of things.

Tom

Tom van der Veen
Children's Care Licensing and Appeals
503-569-1091 – phone or text

From: Fox Sara B <SARA.B.FOX@odhs.oregon.gov>
Sent: Wednesday, July 19, 2023 5:58 PM
To: Ward Kristin M <kristin.m.ward@doj.state.or.us>; Barry Staci <staci.barry@doj.state.or.us>
Cc: VANDERVEEN Tom <Tom.VANDERVEEN@odhsoha.oregon.gov>; Lacey Andresen (she/her/hers) <LACEY.L.ANDRESEN@odhs.oregon.gov>
Subject: RE: 419b.354

Thank you Kristin!

Sara Fox

Treatment Services Program Manager
Office of Child Welfare
500 Summer St. NE E-77
Salem, OR 97301
C: 503-400-5575

From: Ward Kristin M <kristin.m.ward@doj.state.or.us>
Sent: Wednesday, July 19, 2023 5:55 PM
To: Fox Sara B <SARA.B.FOX@odhs.oregon.gov>; Barry Staci <staci.barry@doj.state.or.us>
Cc: VANDERVEEN Tom <Tom.VANDERVEEN@odhsoha.oregon.gov>; Lacey Andresen (she/her/hers) <LACEY.L.ANDRESEN@odhs.oregon.gov>
Subject: RE: 419b.354

Hi All,

Thanks for meeting today. I'm following up to clarify the advice below, which was somewhat confusing as written. I apologize for that, but am happy I was able to deliver some good news today!

I've revised the language we discussed as follows: **we believe it is reasonable and defensible for ODHS to interpret the definition of "congregate care residential setting" to exclude settings that only care for one child or ward at a time. In other words, a setting that only provides care for one child or ward at a time probably does not meet the definition congregate care in ORS 418.322.**

In light of recent scrutiny from Judge McShane in the TL case and the media, I feel hopeful that moving forward with this concept will be a big step toward reducing reliance on temporary lodging. I look forward to reviewing the proposal, and please let us know how we can support the agency in this endeavor.

Thanks,
Kristin



Kristin M. Ward (she/her)

Assistant Attorney in Charge | Child Advocacy and Protection Division
(971) 304-8237

From: Ward Kristin M

Sent: Thursday, July 6, 2023 12:06 PM

To: 'Fox Sara B' <SARA.B.FOX@odhs.oregon.gov>; Barry Staci <staci.barry@doj.state.or.us>

Cc: VANDERVEEN Tom <Tom.VANDERVEEN@odhsoha.oregon.gov>

Subject: RE: 419b.354

Good morning, Sara,

You asked for advice about the definition of congregate care as the agency explores developing CCAs that serve one child at a time. As previously discussed, "congregate care residential setting" is defined in ORS 418.322(1)(a) as "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), (E) or (F) or (10)." (Please note this definition used to be included in ORS chapter 419B but was moved to chapter 418 in 2021.) The settings excluded from this definition via reference to 418.205 (2)(b)(A), (D), (E) or (F) or (10) includes DD residential facilities or foster homes licensed by ODHS, shelter care homes that are foster homes and foster homes subject to ORS 418.625 to

418.645, facilities exclusively serving individuals over 18, and proctor foster homes. Those types of settings are not congregate care even though they serve more than one child or ward. Thus the question becomes what is meant by “any setting that cares for more than one child or ward.”

We believe there are two reasonable interpretations of the phrase “any setting that cares for one child or ward”: (1) a setting that cares for one child or ward at a time, and (2) a setting that cares for one child or ward in totality (here, that would mean one child or ward during the period of CCA licensure). For the reasons explained below, **we believe ODHS can defensibly and reasonably interpret the definition of “congregate care residential setting” to mean a setting that cares for one child or ward at a time.**

For legal context, ORS chapter 174.010-174.090 describes the “construction of statutes” or how we interpret laws, which has been further explored in Oregon case law. As a general legal premise, which has been developed in *PGE v. Bureau of Labor and Industries*, 317 Or 606, (1993), and its progeny including *Gaines v. Oregon*, 346 Or 160, (2009), Oregon courts attempt to discern the legislature’s intent by examining the text and context of a statute and may consider any pertinent legislative history. If the legislature’s intent is still not clear, courts apply general maxims of statutory construction. This framework does not contemplate the agency’s interpretation of the statute, but courts have noted that an agency’s interpretation of the term may help the court to understand how a law fits into the larger statutory scheme.

As described above, there is arguably some ambiguity in the statutory language so we can look to legislative history to help us understand the legislature’s intent. I was unable to locate any legislative history that would help us understand the legislature’s intent with this definition. I also conferred with colleagues statewide and nobody was aware of any applicable information from legislative sessions or other meetings that would guide our analysis.

In looking at other sources to better understand this definition, I located a list of QRTP and non-QRTP congregate care providers on the agency’s website (see [Congregate-Care-Provider-List.pdf \(oregon.gov\)](#)). This list describes the gender of individuals served, bed capacity, and ages served. In the proposal you’re exploring, the CCA would have capacity for just one child, arguably of any age or gender. In comparison, your proposal seems different than what is contemplated on the list. Moreover, the settings excluded in the 418.322 definition of “congregate care residential setting” typically, but not always, serve more than one child at a time, or feasibly may do so. Arguably, these settings would otherwise meet the definition of congregate care without the exclusion from the definition by nature of serving more than one child at a time, and the legislature clarified these are not congregate care settings in the definition. These factors lend credibility to the agency’s interpretation that a

CCA serving one child at a time is not congregate care.

I understand this concept is simply an idea right now, and the agency may want to consider the possibility that a CCA developed under this framework could potentially meet the definition of a QRTP depending on how it is structured. The definition of a QRTP in ORS 418.323 does not specifically articulate a congregate care residential setting; rather, the program is a QRTP if it “provides residential care and treatment to a child” based on an independent assessment, along with various other components. I wanted to flag this for you.

Please let us know if you have any follow up questions or would like to discuss. It seems like a very simple question, but we feel a strong and thorough legal analysis is important given the sensitive nature of this issue and the individuals involved. I hope to continue the discussion about this interesting concept.

Thanks,
Kristin

Kristin M. Ward

Oregon Department of Justice
971.304.8237

From: Ward Kristin M
Sent: Wednesday, July 5, 2023 11:26 AM
To: Fox Sara B <SARA.B.FOX@odhs.oregon.gov>; Barry Staci <staci.barry@doj.state.or.us>
Cc: VANDERVEEN Tom <Tom.VANDERVEEN@odhsoha.oregon.gov>
Subject: RE: 419b.354

Hi Sara,

My apologies for the delay. Yes, I will get back to you by tomorrow at noon! Thanks for your patience.

Kristin

Kristin M. Ward

Oregon Department of Justice
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From: Fox Sara B <SARA.B.FOX@odhs.oregon.gov>
Sent: Wednesday, July 5, 2023 10:54 AM
To: Ward Kristin M <kristin.m.ward@doj.state.or.us>; Barry Staci <staci.barry@doj.state.or.us>

Cc: VANDERVEEN Tom <Tom.VANDERVEEN@odhsoha.oregon.gov>

Subject: RE: 419b.354

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Hi Kristin and Staci, I will be meeting with Lacey tomorrow afternoon for our monthly 1:1 and would like to discuss the potential to begin drafting framework for a solicitation regarding care for one youth at a time. Would you be able to provide a response by Noon tomorrow on this?

Thanks so much,

Sara Fox

Treatment Services Program Manager

Office of Child Welfare

500 Summer St. NE E-77

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From: Fox Sara B

Sent: Friday, June 23, 2023 5:09 PM

To: Ward Kristin M <kristin.m.ward@doj.state.or.us>; Barry Staci <staci.barry@doj.state.or.us>

Cc: VANDERVEEN Tom <Tom.VANDERVEEN@odhsoha.oregon.gov>

Subject: RE: 419b.354

Hello again, further information as requested:

- The goal is to provide a highly specialized setting supporting the individual needs of a child or young adult in the care of CW who is waiting for residential-level care from another part of the children's system of care (such as ODDS residential, PRTF or other OHA certified settings)
- This setting would be a traditional CCA with rotating staff serving only 1 child/young adult at any given time and would not be restricted to the 60-day consecutive, 90-day cumulative limitation if not defined as congregate care.
- The current definition of congregate care "means any setting that cares for more than one child..." and the basis of this definition includes the inherent knowledge that congregate care settings serve a set of children that are not intended to remain in that setting permanently. Instead, congregate care settings serve more than one child at any time with active changes to that milieu.
- Would that same understanding be applied when one child is served (one child at any time, not a permanent placement) in a home setting licensed as a CCA with rotating staff present?

Sara Fox

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From: Ward Kristin M <kristin.m.ward@doj.state.or.us>
Sent: Friday, June 23, 2023 2:51 PM
To: Fox Sara B <SARA.B.FOX@odhs.oregon.gov>; Barry Staci <staci.barry@doj.state.or.us>
Subject: RE: 419b.354

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Hi Sara,

419B.354 moved to ORS 418.322 in 2021 - not sure if you realized that, but I wanted to flag it for you. It sounds like this may be related to the "mobile CCA" concept we have been looking into. I think it would be helpful to have a brief discussion before we provide advice - is that possible? I am available now until 3, at 3:30, or we could look at Monday if that doesn't work.

Thanks!
Kristin

Kristin M. Ward
Oregon Department of Justice
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From: Fox Sara B <SARA.B.FOX@odhs.oregon.gov>
Sent: Friday, June 23, 2023 1:56 PM
To: Ward Kristin M <kristin.m.ward@doj.state.or.us>; Barry Staci <staci.barry@doj.state.or.us>
Subject: 419b.354

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Hi Kristin and Staci,

Licensing, the RMD team and Treatment Services continue to explore building diverse service array

with options specific to kids having experienced TL. It would help me to have recorded agreement that one child receiving care in a setting with rotating staff in a CCA is not congregate care according to 419b.354(1)(a). Is that accurate in your opinion?

Thanks!

Sara Fox

Treatment Services Program Manager

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