

A-Engrossed
House Bill 4042

Ordered by the House February 16
Including House Amendments dated February 16

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Judiciary for Representative Jason Kropf)

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. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: The Act makes changes to the regulation of CCAs and creates exceptions to some child placements limits. (Flesch Readability Score: 60.1).

Expands the types of adverse licensing actions the Department of Human Services may take against child-caring agencies following certain findings.

Modifies certain provisions regarding the use of restraints on children in care.

Creates exceptions to certain placement limitations.

A BILL FOR AN ACT

1
2 Relating to the welfare of young people; creating new provisions; and amending ORS 418.240,
3 418.322, 418.519 and 418.529.

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

5
6 **CHILD-CARING AGENCIES**

7
8 **SECTION 1.** ORS 418.240 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (E) The agency provides appropriate food services.

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

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

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

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

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

19 (K) The agency provides the department with true copies of records relating to incidents in-
20 volving the restraint or involuntary seclusion of children in care as required under ORS 418.526 (2).

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

24 (c) The department must take immediate steps to suspend, [or] revoke **or place conditions on**
25 the license, certificate or other authorization of a child-caring agency, if any of the following are
26 found to exist:

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

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

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

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

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

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

43 (3)(a) If the Director of Human Services has taken action under subsection (2)(c) of this section
44 to suspend or revoke a license, certificate or other authorization, the notice of intent to suspend or
45 revoke may be rescinded if the director determines that the concerns regarding the health and

1 safety of the children in the child-caring agency's care or custody have been ameliorated and any
2 conditions placed on the license, certificate or other authorization of the child-caring agency have
3 been resolved.

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

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

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

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

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

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

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

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

26 (A) The Governor; and

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

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

37 (5) If applicable, an applicant shall submit written proof of compliance with the notification re-
38 quirements in ORS 336.575.

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

42 (7) Except as provided in subsection (3) of this section, a license, certificate or authorization
43 issued by the department under this section shall be valid for a period of two years, unless sus-
44 pended or revoked sooner by the department. However, the department at any time may require
45 amendments to an existing license, certificate or authorization to accommodate changes in the fac-

1 tors upon which the issuance was based.

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

4 (a) The director shall issue an interim emergency order without notice, or with reasonable no-
5 tice under the circumstances, requiring the agency to correct the conditions and ensure the safety
6 of children in the care of the agency. The interim emergency order shall remain in force until a final
7 order, after a hearing, has been entered in accordance with ORS chapter 183.

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

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

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

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

24 (10) If the Department of Justice or Bureau of Labor and Industries commences an investigation
25 of a child-caring agency or an owner, operator or employee of a child-caring agency, the Department
26 of Justice or Bureau of Labor and Industries shall notify, inform and regularly update the director,
27 the director's designee or such other personnel in the Department of Human Services designated to
28 receive such information regarding the investigation. The director and the department shall imme-
29 diately undertake the responsive action required by subsection (9) of this section upon receiving
30 such notification. Interference with, discouragement of or impediment to the receipt of the notifica-
31 tion, information and updates required under this subsection constitutes official misconduct in the
32 second degree under ORS 162.405.

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

35 **SECTION 2.** ORS 418.519 is amended to read:

36 418.519. As used in ORS 418.519 to 418.532:

37 (1) "Certified foster home" means a foster home subject to ORS 418.625 to 418.645.

38 (2) "Chemical restraint" means a drug or medication that is administered to a child in care to
39 control behavior or restrict freedom of movement.

40 (3) "Child-caring agency" has the meaning given that term in ORS 418.205.

41 (4) "Child in care" has the meaning given that term in ORS 418.257.

42 (5) "Children's emergency safety intervention specialist" means a qualified mental health pro-
43 fessional licensed to order, monitor and evaluate the use of seclusion and restraint in accredited and
44 certified facilities that provide intensive mental health treatment services to individuals under 21
45 years of age.

1 (6) “Developmental disabilities residential facility” has the meaning given that term in ORS
2 418.257.

3 (7)(a) “Involuntary seclusion” means the confinement of a child in care alone in a room or an
4 enclosed space from which the child in care is prevented from leaving by any means.

5 (b) “Involuntary seclusion” does not include age-appropriate discipline, including, but not limited
6 to, time-out if the time-out is in a setting from which the child in care is not prevented from leaving
7 by any means.

8 (8)(a) “Mechanical restraint” means a device used to restrict the movement of a child in care
9 or the movement or normal function of a portion of the body of a child in care.

10 (b) **“Mechanical restraint” does not include a vehicle safety restraint when used as in-**
11 **tended during the transport of a child in care in a moving vehicle.**

12 (9) “Proctor foster home” means a foster home certified by a child-caring agency under ORS
13 418.248.

14 (10) “Program” means:

15 (a) A child-caring agency;

16 (b) A proctor foster home; or

17 (c) A developmental disabilities residential facility that is a residential training home or facility
18 licensed under ORS 443.415 to serve children under 18 years of age.

19 (11) “Prone restraint” means a restraint in which a child in care is held face down on the floor.

20 (12) “Reportable injury” means any type of injury to a child in care, including but not limited
21 to rug burns, fractures, sprains, bruising, pain, soft tissue injury, punctures, scratches, concussions,
22 abrasions, dizziness, loss of consciousness, loss of vision, visual disturbance or death.

23 (13) “Restraint” means the physical restriction of a child in care’s actions or movements by
24 holding the child in care or using pressure or other means.

25 (14) “Secure adolescent inpatient treatment program” means a child-caring agency that is an
26 intensive treatment services program, as described by the Oregon Health Authority by rule, that
27 provides inpatient psychiatric stabilization and treatment services to individuals under 21 years of
28 age who require a secure intensive treatment setting.

29 (15) “Secure children’s inpatient treatment program” means a child-caring agency that is an in-
30 tensive treatment services program, as described by the authority by rule, that provides inpatient
31 psychiatric stabilization and treatment services to children under 14 years of age who require a
32 secure intensive treatment setting.

33 (16) “Serious bodily injury” means any significant impairment of the physical condition of an
34 individual, as determined by qualified medical personnel, whether self-inflicted or inflicted by some-
35 one else.

36 (17) “Supine restraint” means a restraint in which a child in care is held face up on the floor.

37 **SECTION 3.** ORS 418.529 is amended to read:

38 418.529. (1)(a) The Department of Human Services shall adopt by rule training standards and
39 certification requirements regarding the placement of a child in care in a restraint or involuntary
40 seclusion, consistent with this section.

41 (b) The department shall designate *[two or three]* nationally recognized providers of crisis
42 intervention training that meet the department’s training standards and whose certifications issued
43 upon completion of the training programs the department will recognize as satisfying the
44 department’s certification requirements.

45 (2) The department’s rules under this section must:

- 1 (a) Ensure consistency of training and professional development across all programs;
- 2 (b) Require the teaching of techniques for nonviolent crisis intervention that do not require re-
3 straint;
- 4 (c) Focus on de-escalation and trauma-informed behavioral support as the core of a training
5 program;
- 6 (d) Offer options for certification in skills that do not include the use of restraint to improve
7 agency-wide safety, culture and trauma-informed practices;
- 8 (e) Prioritize the reduction or elimination of the use of restraint and involuntary seclusion;
- 9 (f) Ensure that any physical intervention skills taught are trauma-informed, age-appropriate and
10 developmentally appropriate for children in care, reduce the risk of physical or emotional harm and
11 are consistent with all state and federal laws;
- 12 (g) Include training to identify the physical, psychological and emotional risks for children and
13 program staff related to the use of restraint and involuntary seclusion;
- 14 (h) Ensure fidelity of training through the publication of consistent training materials and re-
15 sources for certified instructors and certified program staff;
- 16 (i) Include requirements for instructor training and certification; and
- 17 (j) Require regular, ongoing support to certified instructors, including quality control, monitor-
18 ing of outcomes and provision of information regarding networks for professional collaboration and
19 support.
- 20 (3) The department's rules must require that training instructors:
 - 21 (a) Be certified to conduct the type of training the instructor is providing;
 - 22 (b) Complete a minimum of 26 hours of initial education with a focus on de-escalation, nonviolent
23 intervention and methods consistent with the department's rules for the use of [*physical*
24 *intervention*] **restraint**;
 - 25 (c) Complete a minimum of 12 hours of continuing education every two years;
 - 26 (d) Be recertified at least once every two years; and
 - 27 (e) Demonstrate written and physical competency before receiving certification or recertif-
28 ication.
- 29 (4) The department's rules must provide that an individual who places a child in care in a pro-
30 gram in a restraint must be certified in the use of the specific type of restraint used. The
31 department's rules must describe the minimum certification requirements, including:
 - 32 (a) Completion of a minimum of 12 hours of initial training in person from an instructor certified
33 as provided in subsection (3) of this section, including at least six hours of training in positive be-
34 havior support, nonviolent crisis intervention and other methods of nonphysical intervention to
35 support children in care in crisis;
 - 36 (b) Annual continuing education with a certified instructor; and
 - 37 (c) Demonstration of a mastery of the training program material both in writing and by physical
38 competency before receiving certification.
- 39 (5) A certification issued under this section:
 - 40 (a) Must be personal to the individual certified by the training provider;
 - 41 (b) May be valid for no more than two years without recertification;
 - 42 (c) Must require annual continuing education to maintain;
 - 43 (d) Must require additional training to renew the certification;
 - 44 (e) Must be portable between employers; and
 - 45 (f) Must include:

1 (A) The dates during which the certification is current;

2 (B) The types of restraint in which the individual is certified, if any;

3 (C) The types of training the individual is certified to conduct, if any;

4 (D) Any special endorsements earned by the individual;

5 (E) The level of training; and

6 (F) The name of the certified instructor who conducted the training and administered the as-
7 sessment of proficiency.

8 (6) An individual whose certification is consistent with the department's rules under this section
9 shall maintain the documentation of the certification and make that documentation available to the
10 department upon request.

11
12 **PLACEMENT DECISIONS**

13
14 **SECTION 4.** ORS 418.322 is amended to read:

15 418.322. (1) As used in this section:

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

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

23 (2) The Department of Human Services may place a child or ward in a congregate care resi-
24 dential setting only if the setting is:

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

27 (b) A qualified residential treatment program described in ORS 418.323.

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

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

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

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

36 (d) The Oregon Health Authority has approved the [*placement as medically necessary*] **services**
37 **or treatment** and the child-caring agency:

38 (A) Is a residential care facility;

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

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

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

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

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

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

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

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

12 **(k) The entity, including, if applicable, the authority or a coordinated care organization,**
13 **that is responsible for paying for the child's or ward's services or treatment has determined**
14 **that the services or treatment are medically necessary and medically appropriate and has**
15 **approved payment for the services or treatment consistent with the entity's policies.**

16 **(4) Notwithstanding subsection (2) or (3) of this section, the department may place a child**
17 **or ward in a congregate care residential setting that is not a child-caring agency or a quali-**
18 **fied residential treatment program if the congregate care residential setting is licensed by**
19 **the department or authority and provides services or treatment that are medically necessary**
20 **and medically appropriate for the child or ward.**

21 [(4)] **(5)(a)** The department may not place a child or ward in a residential care facility or
22 shelter-care home described in subsection (3)(g) or (h) of this section:

23 [(a)] **(A)** For more than 60 consecutive days or 90 cumulative days in a 12-month period, **unless**
24 **the limits for the duration of the placement are extended as provided in paragraph (b) of this**
25 **subsection; or**

26 [(b)] **(B)** If the residential care facility or shelter-care home also serves youths or adjudicated
27 youths served by the county juvenile department or adjudicated youths committed to the custody
28 of the Oregon Youth Authority by the court.

29 **(b) The department, by rule, may extend the limits for the duration of placement of a**
30 **child or ward under paragraph (a) of this subsection:**

31 **(A) As requested by the child or ward; or**

32 **(B) By up to 30 consecutive or 30 cumulative days in a 12-month period if the department**
33 **determines that the extension is in the best interest of the child or ward.**

34 [(5)] **(6)** The department may not place a child or ward in a homeless, runaway or transitional
35 living shelter described in subsection (3)(i) of this section for more than 60 consecutive or 90 cu-
36 mulative days in any 12-month period.

37 [(6)] **(7)** Calculations of the number of days a child or ward is placed in a shelter-care home
38 under subsection (3)(h) of this section or a homeless, runaway or transitional living shelter under
39 subsection (3)(i) of this section exclude the days the child or ward is in the shelter-care home or
40 shelter if the child or ward:

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

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

44 [(7)(a)] **(8)(a)** Nothing in this section prohibits the Oregon Youth Authority from placing an ad-
45 judicated youth committed to its custody in a placement that is not a qualified residential treatment

1 program.

2 (b) Nothing in this section prohibits the Oregon Youth Authority or a county juvenile depart-
3 ment from placing an adjudicated youth or a youth served by the Oregon Youth Authority or the
4 county juvenile department in shelter care or detention under ORS chapter 419C.

5 **(9) All approvals of the exceptions described in subsections (3)(k) and (5)(b) of this section**
6 **must be made by the director of the division of the department that administers the state**
7 **child welfare program or the director's designee.**

8

9

MISCELLANEOUS

10

11 **SECTION 5. The unit captions used in this 2026 Act are provided only for the convenience**
12 **of the reader and do not become part of the statutory law of this state or express any leg-**
13 **islative intent in the enactment of this 2026 Act.**

14