

# House Bill 4042

Introduced and printed pursuant to House Rule 12.00. Presession 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 **as introduced**. 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

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

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

## CHILD-CARING AGENCIES

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

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

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

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

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

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

(B) The employment of capable, trained or experienced staff that meet minimum staffing requirements.

(C) Sufficient financial backing to ensure effective operations.

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

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

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

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

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

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

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

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

5 (E) The agency provides appropriate food services.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

40 (3)(a) If the Director of Human Services has taken action under subsection (2)(c) of this section  
41 to suspend or revoke a license, certificate or other authorization, the notice of intent to suspend or  
42 revoke may be rescinded if the director determines that the concerns regarding the health and  
43 safety of the children in the child-caring agency's care or custody have been ameliorated and any  
44 conditions placed on the license, certificate or other authorization of the child-caring agency have  
45 been resolved.

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

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

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

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

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

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

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

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

23 (A) The Governor; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

418.519. As used in ORS 418.519 to 418.532:

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

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

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

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

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

(6) "Developmental disabilities residential facility" has the meaning given that term in ORS 418.257.

(7)(a) "Involuntary seclusion" means the confinement of a child in care alone in a room or an

1 enclosed space from which the child in care is prevented from leaving by any means.

2 (b) "Involuntary seclusion" does not include age-appropriate discipline, including, but not limited  
3 to, time-out if the time-out is in a setting from which the child in care is not prevented from leaving  
4 by any means.

5 (8)(a) "Mechanical restraint" means a device used to restrict the movement of a child in care  
6 or the movement or normal function of a portion of the body of a child in care.

7 **(b) "Mechanical restraint" does not include a vehicle safety restraint when used as in-**  
8 **tended during the transport of a child in care in a moving vehicle.**

9 (9) "Proctor foster home" means a foster home certified by a child-caring agency under ORS  
10 418.248.

11 (10) "Program" means:

12 (a) A child-caring agency;

13 (b) A proctor foster home; or

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

16 (11) "Prone restraint" means a restraint in which a child in care is held face down on the floor.

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

20 (13) "Restraint" means the physical restriction of a child in care's actions or movements by  
21 holding the child in care or using pressure or other means.

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

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

30 (16) "Serious bodily injury" means any significant impairment of the physical condition of an  
31 individual, as determined by qualified medical personnel, whether self-inflicted or inflicted by some-  
32 one else.

33 (17) "Supine restraint" means a restraint in which a child in care is held face up on the floor.

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

35 418.529. (1)(a) The Department of Human Services shall adopt by rule training standards and  
36 certification requirements regarding the placement of a child in care in a restraint or involuntary  
37 seclusion, consistent with this section.

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

42 (2) The department's rules under this section must:

43 (a) Ensure consistency of training and professional development across all programs;

44 (b) Require the teaching of techniques for nonviolent crisis intervention that do not require re-  
45 straint;

(c) Focus on de-escalation and trauma-informed behavioral support as the core of a training program;

(d) Offer options for certification in skills that do not include the use of restraint to improve agency-wide safety, culture and trauma-informed practices;

(e) Prioritize the reduction or elimination of the use of restraint and involuntary seclusion;

(f) Ensure that any physical intervention skills taught are trauma-informed, age-appropriate and developmentally appropriate for children in care, reduce the risk of physical or emotional harm and are consistent with all state and federal laws;

(g) Include training to identify the physical, psychological and emotional risks for children and program staff related to the use of restraint and involuntary seclusion;

(h) Ensure fidelity of training through the publication of consistent training materials and resources for certified instructors and certified program staff;

(i) Include requirements for instructor training and certification; and

(j) Require regular, ongoing support to certified instructors, including quality control, monitoring of outcomes and provision of information regarding networks for professional collaboration and support.

(3) The department's rules must require that training instructors:

(a) Be certified to conduct the type of training the instructor is providing;

(b) Complete a minimum of 26 hours of initial education with a focus on de-escalation, nonviolent intervention and methods consistent with the department's rules for the use of *[physical intervention]* **restraint**;

(c) Complete a minimum of 12 hours of continuing education every two years;

(d) Be recertified at least once every two years; and

(e) Demonstrate written and physical competency before receiving certification or recertification.

(4) The department's rules must provide that an individual who places a child in care in a program in a restraint must be certified in the use of the specific type of restraint used. The department's rules must describe the minimum certification requirements, including:

(a) Completion of a minimum of 12 hours of initial training in person from an instructor certified as provided in subsection (3) of this section, including at least six hours of training in positive behavior support, nonviolent crisis intervention and other methods of nonphysical intervention to support children in care in crisis;

(b) Annual continuing education with a certified instructor; and

(c) Demonstration of a mastery of the training program material both in writing and by physical competency before receiving certification.

(5) A certification issued under this section:

(a) Must be personal to the individual certified by the training provider;

(b) May be valid for no more than two years without recertification;

(c) Must require annual continuing education to maintain;

(d) Must require additional training to renew the certification;

(e) Must be portable between employers; and

(f) Must include:

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

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

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

(D) Any special endorsements earned by the individual;

(E) The level of training; and

(F) The name of the certified instructor who conducted the training and administered the assessment of proficiency.

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

## PLACEMENT DECISIONS

**SECTION 4. Out-of-state placement of Indian children.** (1) Notwithstanding ORS 418.321 or 418.322, if there is reason to know, as described in ORS 419B.636, that a child is an Indian child, the Department of Human Services may place the child in an out-of-state placement without requiring the placement to be licensed by or under contract with the department or to be a qualified residential treatment program if:

(a) The placement complies with the placement preferences under ORS 419B.654; and

(b)(A) The out-of-state placement is a youth regional treatment center operated or funded by the Indian Health Service and serves the needs of Indian children or youth; or

(B) The Indian child's tribe has affirmatively requested that the child be placed in the out-of-state placement.

(2) As used in this section:

(a) "Indian child" has the meaning given that term in ORS 419B.603.

(b) "Qualified residential treatment program" means a program described in ORS 418.323.

**SECTION 5.** ORS 418.322 is amended to read:

418.322. (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)(c)(A), (C), (D), (E), [or] (F) or (G) 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 ORS 418.323.

(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*] **services or treatment** 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.

**(k) The responsible Medicaid entity has approved the services or treatment.**

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

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

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

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

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

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

[(5)] (6) 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)] (7) 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)] (8)(a) Nothing in this section prohibits the Oregon Youth Authority from placing an adjudicated youth 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 an adjudicated youth or a youth served by the Oregon Youth Authority or the county juvenile department in shelter care or detention under ORS chapter 419C.

**(9)(a) All approvals of the exceptions described in subsections (3)(k) and (5)(b) of this section must be made by the director of the division of the department that administers the state child welfare program or the director's designee. In addition, the exceptions under subsection (3)(k) of this section must also be approved by the director of the division of the authority that administers the state medical assistance program or the director's designee.**

**(b) The department and the authority shall collaborate to establish rules for the approval process under this subsection.**

## MISCELLANEOUS

**SECTION 6. The unit and section captions used in this 2026 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2026 Act.**