

Requested by Senator GELSER BLOUIN

**PROPOSED AMENDMENTS TO
A-ENGROSSED HOUSE BILL 4042**

1 On page 1 of the printed A-engrossed bill, line 2, after the first semicolon
2 delete the rest of the line and line 3 and insert “amending ORS 418.240.”.

3 Delete lines 5 through 25 and delete pages 2 through 9 and insert:

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

5 “418.240. (1) All child-caring agencies shall obtain from the Department
6 of Human Services a license, certificate or other authorization to provide
7 care or services to children under ORS 418.205 to 418.327, 418.470, 418.475 or
8 418.950 to 418.970. The criteria for issuance, renewal, suspension or revoca-
9 tion of, or for placing conditions on, a license, certificate or authorization
10 under this section must:

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

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

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

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

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

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

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

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

1 “(F) That the child-caring agency is or will be in compliance with the
2 standards of care and treatment established in rules adopted by the depart-
3 ment.

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

7 “(A) The agency ensures child and family rights.

8 “(B) The agency complies with abuse reporting and investigation re-
9 quirements.

10 “(C) The agency engages in and applies appropriate behavior management
11 techniques.

12 “(D) The agency provides adequate furnishings and personal items for
13 children.

14 “(E) The agency provides appropriate food services.

15 “(F) The agency ensures the safety of children.

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

18 “(H) The agency or the agency’s employees or agents have not engaged
19 in financial mismanagement.

20 “(I) The agency fully and timely corrects violations and maintains stan-
21 dards in accordance with any plan of correction imposed by the department.

22 “(J) The agency provides access as required under ORS 418.305 to a child
23 or the agency’s premises to the department or the department’s employees,
24 investigators, court appointed special advocates, attorneys for a child or
25 other authorized persons or entities.

26 “(K) The agency provides the department with true copies of records re-
27 lating to incidents involving the restraint or involuntary seclusion of chil-
28 dren in care as required under ORS 418.526 (2).

29 “(b) The department may suspend, revoke or place conditions on a license,
30 certificate or authorization of a child-caring agency if the department finds

1 the agency is not in full compliance with any one or more of the full com-
2 pliance requirements listed in paragraph (a) of this subsection.

3 **“(c) The department must take immediate steps to suspend or re-
4 voke the license, certificate or other authorization of a child-caring
5 agency, if any of the following are found to exist:**

6 **“(A) The agency failed to cooperate fully with any local, state or
7 federal regulatory entity’s investigation of the agency or the agency’s
8 operations or employees.**

9 **“(B) The agency facilitated the abuse of any child in the agency’s
10 care or custody or failed to take reasonable action to remedy, prevent
11 or end the abuse of any child in the agency’s care or custody, despite
12 having knowledge that abuse of a child in the agency’s care or custody
13 was occurring.**

14 **“(C) There has been the death of a child as a result of abuse or
15 neglect on the part of the agency or any of the agency’s employees or
16 agents.**

17 **“[(c)] (d) The department must take immediate steps to suspend, [or] re-
18 voke or place conditions on the license, certificate or other authorization
19 of a child-caring agency, if [any] either of the following are found to exist:**

20 **“[(A) *There has been the death of a child as a result of abuse or neglect
21 on the part of the agency or any of the agency’s employees or agents.*]**

22 **“[(B) *There has been sexual or physical abuse or neglect of a child in the
23 agency’s care or custody that was known to the agency and the agency did not
24 take immediate steps to report the abuse or neglect and to ensure the child’s
25 safety.*]**

26 **“[(C) *The agency failed to cooperate fully with any local, state or federal
27 regulatory entity’s investigation of the agency or the agency’s operations or
28 employees.*]**

29 **“[(D)] (A) The agency failed to provide financial statements as required
30 under ORS 418.255.**

1 **“(B) The agency failed to provide reasonable access to a child in the**
2 **agency’s care or custody as required by ORS 418.305.**

3 “~~[(d)]~~ (e) If *[any]* **either** of the circumstances described in paragraph
4 ~~[(c)]~~ (d) of this subsection exists, the department may immediately place
5 conditions on the license, certificate or authorization of the child-caring
6 agency prior to a hearing if, consistent with ORS 183.430, the department
7 finds there is a serious danger to the public health or safety and sets forth
8 specific reasons for such findings.

9 “~~[(e)]~~ (f) It is grounds to deny issuance or renewal, suspend, revoke or
10 place conditions on a license, certificate or other authorization if the de-
11 partment becomes aware that a child-caring agency, or the owner or operator
12 of the agency, has been found by other state or federal entities to have en-
13 gaged in financial, civil or criminal misconduct.

14 “(3)(a) If the Director of Human Services has taken action under sub-
15 section (2)(c) **or (d)** of this section to suspend or revoke a license, certificate
16 or other authorization, the notice of intent to suspend or revoke may be
17 rescinded if the director determines that the concerns regarding the health
18 and safety of the children in the child-caring agency’s care or custody have
19 been ameliorated and any conditions placed on the license, certificate or
20 other authorization of the child-caring agency have been resolved.

21 “(b) Fourteen days before rescinding a notice of intent to suspend or re-
22 voke, the Director of Human Services must provide written notice regarding
23 the intent to rescind to the Governor. The notice of intent to rescind is a
24 public record and open for inspection by any person without order of a court.
25 The notice of intent to rescind must include the following information:

26 “(A) The circumstances that led to the notice of intent to suspend or re-
27 voke;

28 “(B) The actions taken by the child-caring agency, the Department of
29 Human Services, the Attorney General, the Oregon Youth Authority and the
30 Oregon Health Authority in response to the circumstances leading to the

1 notice of intent to suspend or revoke;

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

4 “(D) A complete description of changes that were made at the child-caring
5 agency and the reasons for the determination that the concerns regarding the
6 health and safety of children in the child-caring agency’s care or custody
7 have been ameliorated or that any conditions placed on the license, certif-
8 icate or other authorization of the child-caring agency have been resolved.

9 “(c) In making a decision to rescind a notice of intent to suspend or re-
10 voke under this subsection, the decision must be based solely on the health
11 and safety of the children served by the child-caring agency. Systemwide
12 capacity of the child welfare system may not be considered as an element
13 of the decision.

14 “(d) For three years after a notice of intent to suspend or revoke is
15 rescinded under this subsection, the child-caring agency must apply for a
16 renewal of the child-caring agency’s license, certificate or other authori-
17 zation on an annual basis.

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

20 “(A) The Governor; and

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

22 “(4) The department may immediately place conditions on any license,
23 certificate or authorization issued under this section, including but not lim-
24 ited to placing full or partial restrictions on admission of children, tempo-
25 rary suspension, limitation of operations subject to an intent to revoke and
26 limitation of operations subject to correction of violations as specified in a
27 plan of correction imposed by the department. The department shall imme-
28 diately notify any state or governmental agency or unit that has a contract
29 with the child-caring agency to provide care or services to a child, and the
30 governing board, trustees, owners, managers, operators or other appropriate

1 authorities responsible for the child-caring agency, of conditions placed by
2 the department on the child-caring agency's license, certificate or authori-
3 zation under this section.

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

6 “(6) The department may not charge a fee for inspections leading to de-
7 cisions regarding, and issuance of, licenses, certifications or authorizations
8 under this section, but may impose fees to cover costs of related inspections
9 done for the department by other governmental agencies.

10 “(7) Except as provided in subsection (3) of this section, a license, certifi-
11 cate or authorization issued by the department under this section shall be
12 valid for a period of two years, unless suspended or revoked sooner by the
13 department. However, the department at any time may require amendments
14 to an existing license, certificate or authorization to accommodate changes
15 in the factors upon which the issuance was based.

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

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

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

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

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

1 time specified in the order.

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

15 “(10) If the Department of Justice or Bureau of Labor and Industries
16 commences an investigation of a child-caring agency or an owner, operator
17 or employee of a child-caring agency, the Department of Justice or Bureau
18 of Labor and Industries shall notify, inform and regularly update the direc-
19 tor, the director’s designee or such other personnel in the Department of
20 Human Services designated to receive such information regarding the inves-
21 tigation. The director and the department shall immediately undertake the
22 responsive action required by subsection (9) of this section upon receiving
23 such notification. Interference with, discouragement of or impediment to the
24 receipt of the notification, information and updates required under this sub-
25 section constitutes official misconduct in the second degree under ORS
26 162.405.

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

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