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ARCHIVES DIVISION

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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 411
DEPARTMENT OF HUMAN SERVICES
AGING AND PEOPLE WITH DISABILITIES AND DEVELOPMENTAL DISABILITIES

FILED

01/03/2024 4:38 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: ODDS: SB93 Changes in Restraint and Involuntary Seclusion of Children in ODDS Settings

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 02/21/2024 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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Filed By:
Colleen Needham
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 02/15/2024

TIME: 3:00 PM - 4:00 PM

OFFICER: Mike Parr

REMOTE MEETING DETAILS

MEETING URL: https://www.zoomgov.com/meeting/register/vJIsde-vpz4pG_nDnq_ROvbbIYaBXmHaoM4

PHONE NUMBER: 1-669-254-5252

CONFERENCE ID: 1612679531 PASSCODE: 070305

SPECIAL INSTRUCTIONS:

LANGUAGE ACCESS AND ACCOMODATIONS: We provide free help so everyone can use our services. For people who speak or use a language other than English, people with disabilities, or people who need additional support, we can provide free help. Some examples:

- Sign language and spoken language interpreters
- Written materials in other languages
- Braille • Real-time captioning (CART)
- Large print Page
- Audio and other formats

If you need accommodations, please email ODDS.Rules@odhs.oregon.gov or call 503-508-4003. We accept all relay calls.

NEED FOR THE RULE(S)

ODDS needs to permanently amend the rules for 24-hour residential settings, child foster homes, and host homes to: Implement the requirements of Senate Bill 93 (2023 Oregon Law, Chapter 267) about restraint and involuntary seclusion of children with intellectual or developmental disabilities that take effect on September 1, 2023; and

- Include rule text to implement Senate Bill 710 (2021 Oregon Law, Chapter 672) that was permanently adopted for

host homes in OAR 411-348-0355 on April 15, 2022 that was also intended for 24-hour residential settings and child foster homes.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

1. Enrolled Senate Bill 93 (2023). Available at:
<https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/SB0093/Enrolled>
2. Overview and Measure History of Senate Bill 93 (2023). Available at:
<https://olis.oregonlegislature.gov/liz/2023R1/Measures/Overview/SB93>
3. Senate Bill 710 (2021 Regular Session). Available at:
<https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/SB710/Enrolled>
4. 2021 Oregon Law, Chapter 672. Available at:
https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2021orlaw0672.pdf
5. ODDS Notice of Proposed Rulemaking, "Restraints for Children in 24-Hour Residential and Host Home Settings (SB 710)". Available at: <https://secure.sos.state.or.us/oard/viewRedlineTRIM.action?trackChgPtId=8584444>
6. ODDS Notice of Proposed Rulemaking, "Restraints in Foster Homes for Children with Developmental Disabilities (SB 710)". Available at:
<https://secure.sos.state.or.us/oard/viewRedlineTRIM.action?trackChgPtId=8584448>

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

As a result of these minor technical changes and clarifications, there is no identified new racial equity impact. These rules do not require a change in practice, policy, or service experience.

FISCAL AND ECONOMIC IMPACT:

The Oregon Department of Human Services, Office of Developmental Disability Services (ODDS) does not anticipate any fiscal impact as a result of these technical fixes and clarifications.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

The Department does not anticipate any cost of compliance for state agencies, small businesses, providers, or people receiving services.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

RACs including providers that meet the definition of small businesses were held for SB 710-related rulemaking, and SB 93 makes technical corrections to SB 710. Solicitation for RAC participants was posted to the ODDS Engagement and Innovation website on November 15, 2021. The RAC was held on December 15, 2021.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

411-325-0020, 411-325-0355, 411-346-0110, 411-346-0195, 411-348-0020, 411-348-0355

AMEND: 411-325-0020

RULE SUMMARY: Clarified that involuntary seclusion includes "an enclosed space" in addition to a room. Clarified the

requirement that the exclusion for age-appropriate time-out is allowed if the child is not prevented from leaving "by any means".

CHANGES TO RULE:

411-325-0020

Definitions and Acronyms

In addition to the following definitions, OAR 411-317-0000 includes general definitions for words and terms frequently used in OAR chapter 411, division 325. If a word or term is defined differently in OAR 411-317-0000, the definition in this rule applies.¶

- (1) "24-Hour Residential Program" means the distinct method for the delivery of home and community-based services in a 24-hour residential setting by a provider certified and endorsed according to the rules in OAR chapter 411, division 323.¶
- (2) "24-Hour Residential Setting" means a residential home, apartment, or duplex, licensed by the Department under ORS 443.410, where home and community-based services are provided to individuals with intellectual or developmental disabilities. A 24-hour residential setting is considered a provider owned, controlled, or operated residential setting.¶
- (3) "Apartment" means "24-hour residential setting" as defined in this rule.¶
- (4) "Applicant" means a person, agency, corporation, or governmental unit, who applies for a license to deliver home and community-based services in a 24-hour residential setting.¶
- (5) "CDDP" means "Community Developmental Disabilities Program".¶
- (6) "Certificate" means the document issued by the Department to a provider that certifies the provider is eligible under the rules in OAR chapter 411, division 323 to receive state funds for the delivery of services through an endorsed 24-hour residential setting.¶
- (7) "Denial" means the refusal of the Department to issue a certificate, endorsement, or license to operate a 24-hour residential program or 24-hour residential setting because the Department has determined the provider or the home is not in compliance with these rules or the rules in OAR chapter 411, division 323.¶
- (8) "Duplex" means "24-hour residential setting" as defined in this rule.¶
- (9) "Educational Surrogate" means the person who acts in place of the parent of a child in safeguarding the rights of the child in the public education decision-making process:¶
 - (a) When the parent of the child cannot be identified or located after reasonable efforts.¶
 - (b) When there is reasonable cause to believe the child has a disability and is a ward of the state.¶
 - (c) At the request of the parent of the child or young adult student.¶
- (10) "Endorsement" means the authorization to deliver services in a 24-hour residential setting. An endorsement is issued by the Department to a certified provider that has met the qualification criteria outlined in these rules and the rules in OAR chapter 411, division 323.¶
- (11) "Executive Director" means the person designated by a board of directors or corporate owner responsible for the operation of a 24-hour residential program and the delivery of services in a 24-hour residential setting.¶
- (12) "Home" means "24-hour residential setting" as defined in this rule.¶
- (13) "Involuntary Seclusion of a Child" means the confinement of a child alone in a room or an enclosed space from which the child is prevented from leaving by any means. Involuntary seclusion of a child does not include age-appropriate time-out if the time-out is in a setting from which the child is not prevented from leaving by any means.¶
- (14) "ISP" means "Individual Support Plan".¶
- (15) "License" means a document granted by the Department to an applicant who is in compliance with the requirements of these rules and the rules in OAR chapter 411, division 323.¶
- (16) "Licensee" means the person or organization to whom a certificate, endorsement, and license is granted.¶
- (17) "Modified Diet" means the texture or consistency of food or drink is altered or limited, such as no hard foods, thickened fluids, mechanical soft, finely chopped, pureed, or bread only soaked in milk.¶
- (18) "Nursing Services" means the provision of individual-specific advice, plans, or interventions by a nurse at a home based on the nursing process as outlined by the Oregon State Board of Nursing. Nursing services differ from administrative nursing services.¶
- (19) "OCCS" means the "Office of Client and Community Services".¶
- (20) "ODDS" means the Oregon Department of Human Services, Office of Developmental Disabilities Services.¶
- (21) "Oregon Core Competencies" means:¶
 - (a) The list of skills and knowledge required for newly hired staff in the areas of health, safety, rights, values and personal regard, and the mission of the provider.¶
 - (b) The associated timelines in which newly hired staff must demonstrate the competencies.¶
- (22) "OSIPM" means "Oregon Supplemental Income Program-Medical".¶

(23) "Program Supervisor" is a trained program provider staff member who is designated by the Executive Director, or the Executive Director's designee, to authorize the ongoing application of the restraint of a child according to OAR 411-325-0355.¶

(24) "Prone Restraint" means a restraint in which an individual is held face down on the floor or other surface.¶

(25) "Reportable Injury" means any type of injury to a child from the use of a restraint including, but not limited to, a rug burn, fracture, sprain, bruising, pain, soft tissue injury, puncture, scratch, concussion, abrasion, dizziness, loss of consciousness, loss of vision, visual disturbance, or death.¶

(26) "Restraint" means the physical restriction of an individual's actions or movements by holding the individual, using pressure, or other means.¶

(27) "Revocation" means the action taken by the Department to rescind a certificate, endorsement, or license to operate a 24-hour residential program or 24-hour residential setting after the Department determines a provider or home is not in compliance with one or more of these rules or the rules in OAR chapter 411, division 323.¶

(28) "Serious Bodily Injury" means any significant impairment of the physical condition of a child or others, as determined by qualified medical personnel, whether self-inflicted or inflicted by someone else.¶

(29) "Special Diets" means the specially prepared food or particular types of food specific to the medical condition or diagnosis of an individual and in support of an evidence-based treatment regimen. Examples of special diets include, but are not limited to, low calorie, high fiber, diabetic, low salt, lactose free, or low-fat diets. Special diets do not include a diet where extra or additional food is offered without the order of a physician but may not be eaten, such as offering prunes each morning at breakfast or including fresh fruit with each meal.¶

(30) "Supine Restraint" means a restraint in which an individual is held face up on the floor or other surface.¶

(31) "Suspension" means an immediate temporary withdrawal of the approval to operate a 24-hour residential program or 24-hour residential setting after the Department determines a provider or home is not in compliance with one or more of these rules or the rules in OAR chapter 411, division 323.¶

(32) "These Rules" mean the rules in OAR chapter 411, division 325.

Statutory/Other Authority: ORS 409.050, 427.104, 441.715, 430.662, 443.450, 443.455, SB 93 (2023 OR Law, Ch. 267)

Statutes/Other Implemented: 427.104, 430.662, 443.450, 443.455, ORS 409.010, 418.519-418.529, 427.007, 427.30.215, 430.6104, 441.705-441.720, 441.740, 441.745, 443.384, 443.392, 443.400-443.445, 443.450, 443.455, 443.880, 443.881, 443.991, SB 93 (2023 OR Law, Ch. 267)

AMEND: 411-325-0355

RULE SUMMARY: Clarified that for a restraint that includes intentional use of solid object, "intentional" also means "nonincidental" and provided example of when use of a solid object is incidental and not prohibited. Changed list of body parts restraints may not include from plural to singular.

CHANGES TO RULE:

411-325-0355

Restraint and Involuntary Seclusion of a Child

(1) PROHIBITIONS.

(a) Involuntary seclusion of a child is prohibited.

(b) A child may not be placed in a restraint except as described in section (2) of this rule.

(c) The use of any of the following types of restraint of a child is prohibited:

(A) A restraint with any of the following characteristics:

(i) Abusive.

(ii) Aversive.

(iii) Coercive.

(iv) Demeaning.

(v) Disciplinary.

(vi) For convenience.

(vii) Punishment.

(viii) Retaliatory.

(B) Chemical restraint.

(C) Mechanical restraint.

(D) Prone restraint.

(E) Supine restraint.

(F) Any restraint that includes the intentional and nonincidental use of a solid object, including the ground, a wall, or the floor, to impede a child's movement, unless the restraint is necessary to gain control of a weapon. The use of a solid object is not prohibited when the object is used solely for the stability and support of the person placing the child in a restraint and the object does not apply pressure to the child's body.

(G) Any restraint that places, or creates a risk of placing, pressure on a child's neck or throat.

(H) Any restraint that places, or creates a risk of placing, pressure on a child's mouth, unless the restraint is necessary for the purpose of extracting a body part from a bite.

(I) Any restraint that impedes, or creates a risk of impeding, a child's breathing.

(J) Any restraint that involves the intentional placement of hands, feet, elbows, object or a hand, knees, ~~or any object~~ foot, or elbow on a child's neck, throat, genitals, or other intimate parts.

(K) Any restraint that causes pressure to be placed, or creates a risk of causing pressure to be placed, on a child's stomach, chest, joints, throat, or back by a knee, foot, or elbow.

(L) Any other ~~restraint~~ action, the primary purpose of which is to inflict pain.

(2) PERMISSIBLE USE OF RESTRAINT.

(a) Except as otherwise provided in this rule, a child may only be placed in a restraint if the child's behavior poses a reasonable risk of imminent serious bodily injury to the child or others and less restrictive interventions would not effectively reduce the risk.

(b) A restraint may only be used on a child if:

(A) The restraint is necessary to break up a physical fight or to effectively protect a person from an assault, serious bodily injury, or sexual contact;

(B) The restraint uses the least amount of physical force and contact possible; and

(C) The restraint is not a prohibited restraint described in section (1)(c) of this rule.

(c) In addition to the restraints described in subsection (b) of this section, a child may be placed in a restraint if:

(A) The restraint is used only for as long as the child's behavior poses a reasonable risk of imminent serious bodily injury;

(B) The person placing the child in the restraint is trained, as described in section (3) of this rule, to administer the type of restraint used;

(C) The program provider continuously monitors the child for the duration of the restraint; and

(D) The restraint is performed in a manner that is safe, proportionate, and appropriate, taking into consideration the child's:

(i) Chronological and developmental age;

(ii) Size;

- (iii) Gender identity; ¶
- (iv) Physical, medical, and psychiatric condition; and ¶
- (v) Personal history, including any history of physical or sexual abuse. ¶
- (d) The following restraints are not subject to the requirements described in subsections (b) or (c) of this section. ¶
- (A) Holding the child's hand or arm to escort the child safely and without the use of force from one area to another. ¶
- (B) Assisting the child to complete a task if the child does not resist the physical contact. ¶
- (C) The use of safeguarding equipment to address a child's medical condition or medical support need when the safeguarding equipment is included in a medical order written by the child's licensed health care provider and implemented consistent with the medical order. ¶
- (D) The use of safeguarding equipment to address a child's behavior support need when the safeguarding equipment is included in the child's Positive Behavior Support Plan. ¶
- (E) The use of acceptable infant safety products. ¶
- (F) The use of car safety systems, consistent with applicable state law. ¶
- (e) In addition to the requirements described in subsection (c) of this section, if a program provider places a child in a restraint for more than 10 minutes, the program provider must: ¶
- (A) Provide the child with adequate access to the bathroom and water at least every 30 minutes; and ¶
- (B) Receive authorization for the continuation of the restraint by a Program Supervisor every five minutes after the first 10 minutes of the restraint. ¶
- (i) The Program Supervisor must be trained in the ODDS-approved behavior intervention curriculum, specifically in the type of restraint being used. ¶
- (ii) If the Program Supervisor is not on-site at the time the restraint is used, the Program Supervisor may provide the written authorization electronically. The written authorization must document why the restraint continues to be the least restrictive intervention to reduce the risk of imminent serious bodily injury in the given circumstances. ¶
- (3) TRAINING REQUIREMENTS. With the exception of restraints described in section (2)(d) of this rule, each person placing a child in a restraint must be trained by a certified trainer using an ODDS-approved behavior intervention curriculum, to administer the type of restraint used. ¶
- (4) POLICY AND PROCEDURE. A program provider must develop and implement written policies and procedures when a child is placed in a restraint according to this rule. ¶
- (5) NOTIFICATION OF RESTRAINT. ¶
- (a) If a program provider places a child in a restraint, except as provided in section (2)(d) of this rule, the program provider must provide the child's case manager, attorney, court appointed special advocate, and parent or guardian with: ¶
- (A) Verbal or electronic notice that a restraint was used as soon as practicable following the restraint but not later than the end of the next business day; and ¶
- (B) Written notice as described in subsection (b) of this section as soon as practicable following the incident but not later than the end of the next business day. ¶
- (b) WRITTEN NOTICE. The written notice must include: ¶
- (A) A description of the restraint including all of the following: ¶
- (i) The date of the restraint. ¶
- (ii) The times when the restraint began and ended. ¶
- (iii) The location of the restraint. ¶
- (B) A description of the child's activity that necessitated the use of the restraint. ¶
- (C) The efforts the program provider used to deescalate the situation and the alternatives to restraint attempted before placing the child in the restraint. ¶
- (D) The names of each person who placed the child in the restraint and who monitored or approved the placement of the child in the restraint including all of the following: ¶
- (i) Whether the person was trained as required by section (3) of this rule to administer the type of restraint used, the date of the person's most recent training, and a description of the types of restraint the person is trained to use, if any. ¶
- (ii) If a person was not trained in the type of restraint, or if the person's training was not current, a description of the person's training deficiency and the reason the person without the proper training was involved in the restraint. ¶
- (c) DEBRIEFING MEETING. ¶
- (A) When notification is required as described in subsection (b) of this section, the program provider must hold a debriefing meeting with each person involved in the restraint and with any other appropriate staff. ¶
- (B) The debriefing meeting must be held no later than two business days following the date of the restraint. ¶
- (C) Written notes of each debriefing meeting must be taken and provided to the child's case manager, attorney,

court appointed special advocate, and parent or guardian.¶

(6) If serious bodily injury or the death of staff occurs in connection to the use of a restraint, the program provider must provide ODDS with written notification of the incident not later than 24 hours following the incident.¶

(7) REPORTABLE INJURY.¶

(a) A program provider must maintain a record for each incident in which a reportable injury arises from the use of a restraint.¶

(b) If a program provider places a child in a restraint and the child suffers a reportable injury arising from the restraint, the program provider must immediately provide ODDS and the child's attorney, court appointed special advocate, and parent or guardian with written notification of the incident and upon request, access to copies of all records related to the restraint, including any photographs.¶

(8) INCIDENT REPORTING. In addition to the notice requirements in section (5)(b) of this rule, all incidents involving restraint must be documented in an incident report as required by OAR 411-323-0063.¶

(9) QUARTERLY REPORTING. Beginning September 1, 2021, a program provider must provide to ODDS data regarding the use of restraints in a quarterly report. The report must be thoroughly and accurately completed using the ODDS approved form and submitted quarterly.¶

(a) If a program provider delivers services in more than one 24-hour residential setting, the quarterly reports must separate the data for each 24-hour residential setting that serves five or more children.¶

(b) If the site-specific data for a given 24-hour residential setting is not included in the quarterly report because the program provider serves fewer than five children in that setting, the quarterly report must include the aggregate number of children served by the program provider across all of its 24-hour residential settings and the reporting requirements described in this section still apply to any of the program provider's other settings serving five or more children.¶

(c) ODDS shall make the quarterly report available on ODDS' website.¶

(d) Each program provider that submits a quarterly report under this section shall make the quarterly report available to the public upon request at the program provider's main office and on the program provider's website if the program provider maintains a website.¶

(e) Each program provider shall provide notice regarding how to access the quarterly reports to a child's parent or guardian. The program provider shall provide the notice upon the child's admission and at least two times each year thereafter.¶

(f) Restraints described in section (2)(d) of this rule are not subject to the reporting requirements of this section.¶

~~(10) EFFECTIVE DATE. This rule implements the requirements of Senate Bill 710 (2021 Oregon Law, Chapter 672) that took effect on September 1, 2021.~~

Statutory/Other Authority: ORS 409.050, 427.104, 441.715, 430.662, 443.450, 443.455, SB 93 (2023 OR Law, Ch. 267)

Statutes/Other Implemented: 427.104, 430.662, 443.450, 443.455, SB 93 (2023 OR Law, Ch. 267), ORS 409.010, 418.519-418.529, 427.007, ~~427.30.215~~, 430.6104, 441.705-441.720, 441.740, 441.745, 443.384, 443.392, 443.400-443.445, ~~443.450, 443.455~~, 443.880, 443.881, 443.991

RULE SUMMARY: Clarified that involuntary seclusion includes "an enclosed space" in addition to a room. Clarified the requirement that the exclusion for age-appropriate time-out is allowed if the child is not prevented from leaving "by any means".

CHANGES TO RULE:

411-346-0110

Definitions and Acronyms

In addition to the following definitions, OAR 411-317-0000 includes general definitions for words and terms frequently used in OAR chapter 411, division 346. If a word or term is defined differently in OAR 411-317-0000, the definition in this rule applies.¶

- (1) "Alternate Caregiver" means any person 18 years of age and older responsible for the care or supervision of a child in foster care.¶
- (2) "Alternative Educational Plan" means any school plan that does not occur within the physical school setting.¶
- (3) "Appeal" means the process for a contested hearing under ORS chapter 183 that a foster provider may use to petition the suspension, denial, non-renewal, or revocation of their certificate or application.¶
- (4) "Applicant" means a person who wants to become a foster provider, lives at the residence where a child in foster care is to live, and is applying for, or renewing, a certificate for a child foster home.¶
- (5) "Case Plan" means the goal-oriented, time-limited, individualized plan of action for a child and the family of the child developed by the family and DHS-CW for promotion of the safety, permanency, and well-being of the child.¶
- (6) "Case Worker" means an employee of DHS-CW.¶
- (7) "CDDP" means "Community Developmental Disabilities Program".¶
- (8) "Certificate" means the document issued by the Department that notes approval to operate a child foster home for a period not to exceed two years.¶
- (9) "Certifying Agency" means the Department, CDDP, or an agency approved by the Department who is authorized to gather required documentation to issue or maintain a certificate.¶
- (10) "Child" means:¶
 - (a) An individual who is less than 18 years of age who has a provisional determination of an intellectual or developmental disability by the CDDP; or¶
 - (b) An individual 18 to 21 years of age with an intellectual or developmental disability who is remaining in their current child foster home for the purpose of completing their IEP based on the recommendation of their ISP team and an approved certification variance.¶
- (11) "Child Foster Home" means a home certified by the Department that is maintained and lived in by the person named on the certificate. A child foster home is considered a provider owned, controlled, or operated residential setting.¶
- (12) "Child Foster Home Contract" means the agreement between a foster provider and the Department that describes the responsibility of the foster provider and the Department.¶
- (13) "Child Placing Agency" means the Department, CDDP, or the OYA.¶
- (14) "Clinical Criteria" means the criteria used by the Department or the Medically Fragile Children's Unit as described in OAR 411-300-0150 to assess the private duty nursing support needs of a child.¶
- (15) "Commercial Basis" means providing and receiving compensation for the temporary care of individuals not identified as members of the household.¶
- (16) "Community Nursing Services" mean the nursing services that focus on the chronic and ongoing health and safety needs of a child. Community nursing services include an assessment, monitoring, delegation, training, and coordination of services. Community nursing services are provided according to the rules in OAR chapter 411, division 048 and the Oregon State Board of Nursing rules in OAR chapter 851.¶
- (17) "Denial" means the refusal of the certifying agency to issue a certificate to operate a child foster home because the certifying agency has determined that the home or the applicant is not in compliance with one or more of these rules.¶
- (18) "Department" means the Oregon Department of Human Services.¶
- (19) "DHS-CW" means the child welfare program area within the Department.¶
- (20) "Educational Surrogate" means the person who acts in place of a parent in safeguarding the rights of a child in the public education decision-making process:¶
 - (a) When the parent of the child cannot be identified or located after reasonable efforts;¶
 - (b) When there is reasonable cause to believe that the child has a disability and is a ward of the state; or¶
 - (c) At the request of the parent of the child or young adult student.¶
- (21) "Emergency Certificate" means a certificate issued for 30 calendar days.¶

- (22) "Foster Care" means a child is placed away from their parent or guardian in a certified child foster home.¶
- (23) "Foster Provider" means the certified care provider who resides at the address listed on a certificate. A foster provider is a mandatory reporter.¶
- (24) "Home Inspection" means the on-site, physical review of the home of an applicant to assure the applicant and the home meets all health and safety requirements within these rules.¶
- (25) "Home Study" means the assessment process used for the purpose of determining the ability of an applicant to care for a child in need of foster care placement.¶
- (26) "ICWA" means the Indian Child Welfare Act.¶
- (27) "IEP" means "Individualized Education Program".¶
- (28) "Involuntary Seclusion" means the confinement of a child alone in a room or an enclosed space from which the child is prevented from leaving by any means. Involuntary seclusion does not include time-out if the time-out is in a common area of the home from which the child is not prevented from leaving by any means and used as a positive behavior support practice that meets the requirements in OAR 411-346-0190(9)(c)(A)-(C).¶
- (29) "ISP" means "Individual Support Plan".¶
- (30) "Licensed Medical Practitioner" means a person who meets the following:¶
- (a) Holds at least one of the following valid licensures or certifications:¶
 - (A) Physician licensed to practice in Oregon;¶
 - (B) Nurse practitioner certified by the Oregon State Board of Nursing according to ORS 678.375; or¶
 - (C) Physician's assistant licensed to practice in Oregon; and¶
 - (b) Whose training, experience, and competence demonstrate expertise in children's mental health and the ability to conduct a mental health assessment and provide psychotropic medication management for a child in foster care.¶
- (31) "MAR" means medication administration record.¶
- (32) "Member of the Household" means any adult or child living in a child foster home, including an employee or volunteer assisting in the care provided to a child placed in the child foster home. A child in foster care is not considered a member of the household.¶
- (33) "Mental Health Assessment" means the assessment used to determine the need for mental health services by interviewing a child and obtaining all pertinent biopsychosocial information as identified by the child, the family of the child, and collateral sources. A mental health assessment:¶
- (a) Addresses the condition presented by the child;¶
 - (b) Determines a diagnosis; and¶
 - (c) Provides treatment direction and individualized services and supports.¶
- (34) "Misuse of Funds" includes, but is not limited to, a foster provider or employee:¶
- (a) Borrowing from, or loaning money to, a child in foster care;¶
 - (b) Witnessing a will in which the foster provider or employee is a beneficiary;¶
 - (c) Adding the name of the foster provider or employee to the bank account of a child or other titles for personal property without approval of the child when of age to give legal consent, or the guardian of the child and authorization of the ISP team;¶
 - (d) Inappropriately expending or theft of the personal funds of a child;¶
 - (e) Using the personal funds of a child for the benefit of the foster provider or employee; or¶
 - (f) Commingling the funds of a child with the funds of the foster provider or the funds of another child.¶
- (35) "Monitoring" means:¶
- (a) The observation of a certified child foster home by the Department or the designee of the Department to determine continuing compliance with these rules; and¶
 - (b) The periodic review of the implementation of services and supports identified in an ISP and the quality of services delivered.¶
- (36) "Nursing Services" mean the provision of individual-specific advice, plans, or interventions by a nurse at a child foster home based on the nursing process as outlined by the Oregon State Board of Nursing.¶
- (37) "Occupant" means any person having official residence in a certified child foster home.¶
- (38) "ODDS" means the Oregon Department of Human Services, Office of Developmental Disabilities Services.¶
- (39) "OHA" means "Oregon Health Authority".¶
- (40) "OYA" means "Oregon Youth Authority". OYA is the agency that has been given commitment and supervision responsibilities over a youth offender by order of the juvenile court according to ORS 137.124 or other statute, until the time that a lawful release authority authorizes release or terminates the commitment or placement.¶
- (41) "Permanent Foster Care" means the long term contractual agreement between a foster provider and DHS-CW, approved by the juvenile court that specifies the responsibilities and authority of the foster provider and the commitment by the permanent foster provider to raise a child until the age of majority or until the court determines that permanent foster care is no longer the appropriate plan for the child.¶
- (42) "Private Duty Nursing" means the state plan nursing services described in OAR chapter 410, division 132 and

OAR 411-300-0150, that are determined medically necessary to support a child or young adult in a child foster home.¶

(43) "Prone Restraint" means a restraint in which a child is held face down on the floor or other surface.¶

(44) "Protected Health Information" means any oral or written health information that identifies a child and relates to the past, present, or future physical or mental health condition, health care treatment, or payment for health care treatment.¶

(45) "Punishment" means the imposition of a penalty as retribution for an offense or unwanted behavior.¶

(46) "Qualified Mental Health Professional" means a licensed medical practitioner or any other meeting the minimum qualifications specified in OAR 309-019-0125.¶

(47) "Restraint" means the physical restriction of a child's actions or movements by holding the child, using pressure, or other means.¶

(48) "Revocation" means the action taken by the certifying agency to rescind a certificate after the certifying agency has determined that a foster provider or a child foster home is not in compliance with one or more of these rules.¶

(49) "Serious Bodily Injury" means any significant impairment of the physical condition of a child or others, as determined by qualified medical personnel, whether self-inflicted or inflicted by someone else.¶

(50) "Significant Medical Needs" includes, but is not limited to, total assistance required for all activities of daily living, such as access to food or fluids, daily hygiene that is not attributable to the chronological age of a child, and frequent medical interventions required by a Nursing Service Plan or ISP for health and safety of the child.¶

(51) "Supine Restraint" means a restraint in which a child is held face up on the floor or other surface.¶

(52) "Suspension" means an immediate, temporary withdrawal of the approval to operate a child foster home after the certifying agency determines a foster provider or the child foster home is not in compliance with one or more of these rules or there is a threat to the health, safety, or welfare of a child.¶

(53) "These Rules" mean the rules in OAR chapter 411, division 346.¶

(54) "Unauthorized Absence" means any length of time when a child is absent from a child foster home without prior approval as specified in the ISP for the child.¶

(55) "Urgent Medical Need" means the onset of psychiatric or medical symptoms requiring attention within 48 hours to prevent a serious deterioration in the mental or physical condition of a child.¶

(56) "Variance" means the temporary exemption from a regulation or provision of these rules that may be granted by the Department upon written application by the certifying agency.

Statutory/Other Authority: ORS 409.050, 427.104, ~~443.835~~30.662, 443.835, SB 93 (2023 OR Law, Ch. 267)

Statutes/Other Implemented: ORS 409.010, 418.519-418.523, 427.007, 427.104, 430.215, ~~443.830,~~

~~443.835~~30.610, 430.662, 443.830, 443.835, SB 93 (2023 OR Law, Ch. 267)

RULE SUMMARY: Clarified that for a restraint that includes intentional use of solid object, "intentional" also means "nonincidental" and provided example of when use of a solid object is incidental and not prohibited. Changed list of body parts restraints may not include from plural to singular.

CHANGES TO RULE:

411-346-0195

Restraint and Involuntary Seclusion

(1) PROHIBITIONS¶

(a) A child may not be placed in involuntary seclusion.¶

(b) A child may not be placed in a restraint except as described in section (2) of this rule. ¶

(c) The use of any of the following types of restraint of a child is prohibited:¶

(A) A restraint with any of the following characteristics:¶

(i) Abusive.¶

(ii) Aversive.¶

(iii) Coercive.¶

(iv) Demeaning.¶

(v) Disciplinary.¶

(vi) For convenience.¶

(vii) Punishment.¶

(viii) Retaliatory.¶

(B) Chemical restraint.¶

(C) Mechanical restraint.¶

(D) Prone restraint.¶

(E) Supine restraint.¶

(F) Any restraint that includes the intentional and nonincidental use of a solid object, including the ground, a wall, or the floor, to impede a child's movement, unless the restraint is necessary to gain control of a weapon. The use of a solid object is not prohibited when the object is used solely for the stability and support of the person placing the child in a restraint and the object does not apply pressure to the child's body.¶

(G) Any restraint that places, or creates a risk of placing, pressure on a child's neck or throat.¶

(H) Any restraint that places, or creates a risk of placing, pressure on a child's mouth, unless the restraint is necessary for the purpose of extracting a body part from a bite.¶

(I) Any restraint that impedes, or creates a risk of impeding, a child's breathing.¶

(J) Any restraint that involves the intentional placement of hands, feet, elbows, object or a hand, knees, or any object foot, or elbow on a child's neck, throat, genitals, or other intimate parts.¶

(K) Any restraint that causes pressure to be placed, or creates a risk of causing pressure to be placed, on a child's stomach, chest, joints, throat, or back by a knee, foot, or elbow.¶

(L) Any other ~~restraint~~action, the primary purpose of which is to inflict pain.¶

(2) PERMISSIBLE USE OF RESTRAINT. ¶

(a) Except as otherwise provided in this rule, a child may only be placed in a restraint if the child's behavior poses a reasonable risk of imminent serious bodily injury to the child or others and less restrictive interventions would not effectively reduce that risk. ¶

(b) A restraint may only be used on a child if:¶

(A) The restraint is necessary to break up a physical fight or to effectively protect a person from an assault, serious bodily injury, or sexual contact;¶

(B) The restraint uses the least amount of physical force and contact possible; and¶

(C) The restraint is not a prohibited restraint described in section (1)(c) of this rule.¶

(c) The following restraints are not subject to the requirements described in subsection (b) of this section.¶

(A) Holding the child's hand or arm to escort the child safely and without the use of force from one area to another.¶

(B) Assisting the child to complete a task if the child does not resist the physical contact.¶

(C) The use of safeguarding equipment to address a child's medical condition or medical support need when the safeguarding equipment is included in a medical order written by the child's licensed health care provider and implemented consistent with the medical order.¶

(D) The use of safeguarding equipment to address a child's behavior support need when the safeguarding equipment is included in the child's Positive Behavior Support Plan.¶

(E) The use of acceptable infant safety products.¶

(F) The use of car safety systems, consistent with applicable state law.¶

(3) TRAINING REQUIREMENTS. With the exception of restraints described in section (2)(c) of this rule, each person placing a child in a restraint must be trained by a certified trainer using an ODDS-approved behavior intervention curriculum, to administer the type of restraint used.¶

(4) EFFECTIVE DATE. This rule implements the requirements of Senate Bill 710 (2021 Oregon Law, Chapter 672) that took effect on September 1, 2021.

Statutory/Other Authority: ORS 409.050, 427.104, ~~443.835~~30.662, 443.835, SB 93 (2023 OR Law, Ch. 267)

Statutes/Other Implemented: 427.104, 430.662, 443.835, SB 93 (2023 OR Law, Ch. 267), ORS 409.010, 418.519-418.523, 427.007, ~~427.104~~, 430.215, ~~443.83~~30.610, 443.8350

AMEND: 411-348-0020

RULE SUMMARY: Clarified that involuntary seclusion includes "an enclosed space" in addition to a room. Clarified the requirement that the exclusion for age-appropriate time-out is allowed if the child is not prevented from leaving "by any means".

CHANGES TO RULE:

411-348-0020

Definitions and Acronyms

In addition to the following definitions, OAR 411-317-0000 includes general definitions for words and terms frequently used in OAR chapter 411, division 348. If a word or term is defined differently in OAR 411-317-0000, the definition in this rule applies.¶

- (1) "Alternative Care" means attendant care support for a child delivered in a setting other than the child's family home or Host Home to allow for respite for the in-residence caregiver. Alternative care arrangements are made in accordance with OAR 411-348-0410.¶
- (2) "CDDP" means "Community Developmental Disabilities Program".¶
- (3) "DHS-CW" means the child welfare program area within the Department.¶
- (4) "Emergency Escape and Rescue Opening" refers to an opening accessible from the interior of a Host Home that allows for egress without the use of tools, keys, or special knowledge.¶
- (5) "Executive Director" means the person designated by a board of directors or corporate owner responsible for the operation of a Host Home Program and the delivery of services in a Host Home.¶
- (6) "Host Home" means a residential training home per ORS 443.400 that is a community-based family home setting licensed by the Department according to these rules to provide home and community-based services to children with intellectual or developmental disabilities. Host Homes are community homes featuring an in-residence caregiver serving in a parental role with the support of additional staff to deliver intensive care and support to children in a family home environment.¶
- (7) "Host Home Program" means a Medicaid provider agency certified and endorsed according to OAR chapter 411, division 323 to operate a licensed Host Home according to these rules.¶
- (8) "IEP" means "Individualized Education Program".¶
- (9) "In-Residence Caregiver" means the caregiver who utilizes a Host Home as their primary residence and assumes ownership, rental, or lease responsibility for the property of the Host Home. An in-residence caregiver is unrelated to children enrolled to receive services in a Host Home.¶
- (10) "Involuntary Seclusion of a Child" means the confinement of a child alone in a room or an enclosed space from which the child is prevented from leaving by any means. Involuntary seclusion of a child does not include age-appropriate time-out if the time-out is in a setting from which the child is not prevented from leaving by any means.¶
- (11) "ISP" means "Individual Support Plan".¶
- (12) "ODDS" means the Oregon Department of Human Services, Office of Developmental Disabilities Services.¶
- (13) "Program Provider" means the Host Home Program certified and endorsed according to OAR chapter 411, division 323 to operate a licensed Host Home according to these rules.¶
- (14) "Program Supervisor" is a trained program provider staff member who is designated by the Executive Director, or the Executive Director's designee, to authorize the ongoing application of the restraint of a child according to OAR 411-348-0355.¶
- (15) "Prone Restraint" means a restraint in which a child is held face down on the floor or other surface.¶
- (16) "Reportable Injury" means any type of injury to a child from the use of a restraint including, but not limited to, a rug burn, fracture, sprain, bruising, pain, soft tissue injury, puncture, scratch, concussion, abrasion, dizziness, loss of consciousness, loss of vision, visual disturbance, or death.¶
- (17) "Restraint" means the physical restriction of a child's actions or movements by holding the child, using pressure, or other means.¶
- (18) "Serious Bodily Injury" means any significant impairment of the physical condition of a child or others, as determined by qualified medical personnel, whether self-inflicted or inflicted by someone else.¶
- (19) "Supine Restraint" means a restraint in which a child is held face up on the floor or other surface.¶
- (20) "These Rules" mean the rules in OAR chapter 411, division 348.¶
- (21) "Transition Support" means planning and other efforts to support a child entering into or exiting from a placement in a Host Home.

Statutory/Other Authority: ORS 409.050, 427.104, 441.715, 430.662, 443.450, 443.455, SB 93 (2023 OR Law, Ch. 267)

Statutes/Other Implemented: 427.104, 430.662, 443.450, 443.455, SB 93 (2023 OR Law, Ch. 267), ORS 409.010,

418.519-418.529, 427.007, ~~427.30.215~~, 430.6104, 441.705-441.720, 441.740, 441.745, 443.384, 443.392,
443.400-443.445, ~~443.450, 443.455~~, 443.880, 443.881, 443.991

RULE SUMMARY: Clarified that for a restraint that includes intentional use of solid object, "intentional" also means "nonincidental". Changed list of body parts restraints may not include from plural to singular.

CHANGES TO RULE:

411-348-0355

Restraint and Involuntary Seclusion

(1) PROHIBITIONS.

(a) Involuntary seclusion of a child is prohibited.

(b) A child may not be placed in a restraint except as described in section (2) of this rule.

(c) The use of any of the following types of restraint of a child is prohibited:

(A) A restraint with any of the following characteristics:

(i) Abusive.

(ii) Aversive.

(iii) Coercive.

(iv) Demeaning.

(v) Disciplinary.

(vi) For convenience.

(vii) Punishment.

(viii) Retaliatory.

(B) Chemical restraint.

(C) Mechanical restraint.

(D) Prone restraint.

(E) Supine restraint.

(F) Any restraint that includes the intentional and nonincidental use of a solid object, including the ground, a wall, or the floor, to impede a child's movement, unless the restraint is necessary to gain control of a weapon. The use of a solid object is not prohibited when the object is used solely for the stability and support of the person placing the child in a restraint and the object does not apply pressure to the child's body.

(G) Any restraint that places, or creates a risk of placing, pressure on a child's neck or throat.

(H) Any restraint that places, or creates a risk of placing, pressure on a child's mouth, unless the restraint is necessary for the purpose of extracting a body part from a bite.

(I) Any restraint that impedes, or creates a risk of impeding, a child's breathing.

(J) Any restraint that involves the intentional placement of hands, feet, elbows, knees, or any object object or a hand, knee, foot, or elbow on a child's neck, throat, genitals, or other intimate parts.

(K) Any restraint that causes pressure to be placed, or creates a risk of causing pressure to be placed, on a child's stomach, chest, joints, throat, or back by a knee, foot, or elbow.

(L) Any other ~~restraint~~ action, the primary purpose of which is to inflict pain.

(2) PERMISSIBLE USE OF RESTRAINT.

(a) Except as otherwise provided in this rule, a child may only be placed in a restraint if the child's behavior poses a reasonable risk of imminent serious bodily injury to the child or others and less restrictive interventions would not effectively reduce the risk.

(b) A restraint may only be used on a child if:

(A) The restraint is necessary to break up a physical fight or to effectively protect a person from an assault, serious bodily injury, or sexual contact;

(B) The restraint uses the least amount of physical force and contact possible; and

(C) The restraint is not a prohibited restraint described in section (1)(c) of this rule.

(c) In addition to the restraints described in subsection (b) of this section, a child may be placed in a restraint if:

(A) The restraint is used only for as long as the child's behavior poses a reasonable risk of imminent serious bodily injury;

(B) The person placing the child in the restraint is trained, as described in section (3) of this rule, to administer the type of restraint used;

(C) The in-residence caregiver or staff continuously monitors the child for the duration of the restraint; and

(D) The restraint is performed in a manner that is safe, proportionate, and appropriate, taking into consideration the child's:

(i) Chronological and developmental age;

(ii) Size;

(iii) Gender identity;

(iv) Physical, medical, and psychiatric condition; and

- (v) Personal history, including any history of physical or sexual abuse.¶
- (d) The following restraints are not subject to the requirements described in subsections (b) or (c) of this section.¶
 - (A) Holding the child's hand or arm to escort the child safely and without the use of force from one area to another.¶
 - (B) Assisting the child to complete a task if the child does not resist the physical contact.¶
 - (C) The use of safeguarding equipment to address a child's medical condition or medical support need when the safeguarding equipment is included in a medical order written by the child's licensed health care provider and implemented consistent with the medical order.¶
 - (D) The use of safeguarding equipment to address a child's behavior support need when the safeguarding equipment is included in the child's Positive Behavior Support Plan.¶
 - (E) The use of acceptable infant safety products.¶
 - (F) The use of car safety systems, consistent with applicable state law.¶
- (e) In addition to the requirements described in subsection (c) of this section, if an in-residence caregiver or staff places a child in a restraint for more than 10 minutes, the in-residence caregiver or staff must:¶
 - (A) Provide the child with adequate access to the bathroom and water at least every 30 minutes; and¶
 - (B) Receive authorization for the continuation of the restraint by a Program Supervisor every five minutes after the first 10 minutes of the restraint.¶
 - (i) The Program Supervisor must be trained in the ODDS-approved behavior intervention curriculum, specifically in the type of restraint being used.¶
 - (ii) If the Program Supervisor is not on-site at the time the restraint is used, the Program Supervisor may provide the written authorization electronically. The written authorization must document why the restraint continues to be the least restrictive intervention to reduce the risk of imminent serious bodily injury in the given circumstances.¶
- (3) TRAINING REQUIREMENTS. With the exception of restraints described in section (2)(d) of this rule, each person placing a child in a restraint must be trained by a certified trainer using an ODDS-approved behavior intervention curriculum, to administer the type of restraint used.¶
- (4) POLICY AND PROCEDURE. A program provider must develop and implement written policies and procedures for the in-residence caregiver and staff to follow when a child is placed in a restraint according to this rule.¶
- (5) NOTIFICATION OF RESTRAINT.¶
 - (a) If an in-residence caregiver or staff places a child in a restraint, except as provided in section (2)(d) of this rule, the program provider or in-residence caregiver must provide the child's case manager, attorney, court appointed special advocate, and parent or guardian with:¶
 - (A) Verbal or electronic notice that a restraint was used as soon as practicable following the restraint but not later than the end of the next business day; and¶
 - (B) Written notice as described in subsection (b) of this section as soon as practicable following the incident but not later than the end of the next business day.¶
 - (b) WRITTEN NOTICE. The written notice must include:¶
 - (A) A description of the restraint including all of the following:¶
 - (i) The date of the restraint.¶
 - (ii) The times when the restraint began and ended.¶
 - (iii) The location of the restraint.¶
 - (B) A description of the child's activity that necessitated the use of the restraint.¶
 - (C) The efforts the in-residence caregiver or staff used to deescalate the situation and the alternatives to restraint attempted before placing the child in the restraint.¶
 - (D) The names of each person who placed the child in the restraint and who monitored or approved the placement of the child in the restraint including all of the following:¶
 - (i) Whether the person was trained as required by section (3) of this rule to administer the type of restraint used, the date of the person's most recent training, and a description of the types of restraint the person is trained to use, if any.¶
 - (ii) If a person was not trained in the type of restraint, or if the person's training was not current, a description of the person's training deficiency and the reason the person without the proper training was involved in the restraint.¶
 - (c) DEBRIEFING MEETING.¶
 - (A) When notification is required as described in subsection (b) of this section, the program provider must hold a debriefing meeting with each person involved in the restraint, the in-residence caregiver, and with any other appropriate staff.¶
 - (B) The debriefing meeting must be held no later than two business days following the date of the restraint.¶
 - (C) Written notes of each debriefing meeting must be taken and provided to the child's case manager, attorney, court appointed special advocate, and parent or guardian.¶

(6) If serious bodily injury or the death of an in-residence caregiver or staff occurs in connection to the use of a restraint, the program provider must provide ODDS with written notification of the incident not later than 24 hours following the incident.¶

(7) REPORTABLE INJURY.¶

(a) A program provider must maintain a record for each incident in which a reportable injury arises from the use of a restraint.¶

(b) If an in-residence caregiver or staff places a child in a restraint and the child suffers a reportable injury arising from the restraint, the program provider must immediately provide ODDS and the child's attorney, court appointed special advocate, and parent or guardian with written notification of the incident and upon request, access to copies of all records related to the restraint, including any photographs.¶

(8) INCIDENT REPORTING. In addition to the notice requirements in section (5)(b) of this rule, all incidents involving restraint must be documented in an incident report as required by OAR 411-323-0063.¶

(9) QUARTERLY REPORTING. Beginning September 1, 2021, a program provider must provide to ODDS data regarding the use of restraints in a quarterly report. The report must be thoroughly and accurately completed using the ODDS approved form and submitted quarterly.¶

(a) The quarterly report must include the aggregate number of children served by the program provider across all of their Host Home locations.¶

(b) ODDS shall make the quarterly report available on ODDS' website.¶

(c) Each program provider that submits a quarterly report under this section shall make the quarterly report available to the public upon request at the program provider's main office and on the program provider's website if the program provider maintains a website.¶

(d) Each program provider shall provide notice regarding how to access the quarterly reports to a child's parent or guardian. The program provider shall provide the notice upon the child's admission and at least two times each year thereafter.¶

(e) Restraints described in section (2)(d) of this rule are not subject to the reporting requirements of this section.¶

~~(10) EFFECTIVE DATE. This rule implements the requirements of Senate Bill 710 (2021 Oregon Law, Chapter 672) that took effect on September 1, 2021.~~

Statutory/Other Authority: ORS 409.050, 427.104, 441.715, 430.662, 443.450, 443.455, SB 93 (2023 OR Law, Ch. 267)

Statutes/Other Implemented: 427.104, 430.662, 443.450, 443.455, SB 93 (2023 OR Law, Ch. 267), ORS 409.010, 418.519-418.529, 427.007, ~~427.30.215~~, 430.6104, 441.705-441.720, 441.740, 441.745, 443.384, 443.392, 443.400-443.445, 443.450, 443.455, 443.880, 443.881, 443.991