Legislative Concept 346

Strengthening statute in support of children's safety and well-being

SOCAC

System of Care Advisory Council

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Executive Summary

We have a shared obligation to ensure Oregon youth have the supports they need to be healthy and safe. While state statute focused on child safety and well-being has evolved substantially in the last decade, its resulting improvements have been accompanied by regulatory and other challenges that have contributed to decreased provider capacity, delays in accessing essential services for youth with complex needs, and other unintended outcomes.

In advance of the 2025 regular legislative session, the Governor's System of Care Advisory Council, in partnership with Oregon Department of Human Services, has developed a legislative concept (LC) that addresses unintended consequences arising from child safety and well-being statutes enacted over the last decade. By clarifying and adding key statutory definitions, creating narrow exceptions to certain placement regulations, and several other refinements described in the following pages, the proposed LC advances a trauma-informed, quality continuum of care that is more readily accessible by the children and youth who depend on its critical services.

This brief aims to provide an overview of relevant statutes alongside important legislative opportunities for refining and strengthening existing law in support of children's safety and well-being.

Background

In the last decade, the Oregon Legislature has enacted several laws aimed at enhancing the safety and well-being of children in care,[1] including legislation focused on:

- Improving regulatory oversight of child-caring agencies,
- Regulating the placement of children within the child welfare system,
- Establishing clearer abuse investigation requirements, and
- Governing the use of restraint and seclusion practices.

While children's well-being has been the core value driving these statutes, the resulting regulatory environment has had unintended consequences, including reduced provider capacity, recruitment and retention challenges in the workforce, liability-driven reporting of incidents as child abuse, and delays in accessing necessary care for youth with specialized behavioral health needs.

[1] "Child in care," per ORS 418.257, means a person who is under 21 years of age and residing in or receiving care or services from a child-caring agency or certain proctor foster home, certified foster home, or developmental disabilities residential facility.

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Challenges and Opportunities

Child-caring agency regulations

Senate Bill 1515 (2016) was designed to strengthen the state's safeguarding of children in foster care through enhanced regulation and oversight of private child-caring agencies (CCAs) licensed through Oregon Department of Human Services (ODHS). Among other provisions, the bill:

- Directed ODHS to increase the frequency of CCA inspections (from once every two years to annually).
- Expanded the department's oversight to include review of CCAs' finances, requiring CCAs to submit audited financial statements and tax compliance certificates.
- Required notifications to external stakeholders when there is suspected child abuse or neglect in a CCA.
- Established requirements for maintaining minimum regulatory staffing levels.
- Established periodic and event-based reporting requirements.

Additionally, SB 1515 introduced new definitions of child abuse specifically for children in care. The definitions broadened existing categories of physical abuse, neglect, and sexual abuse while adding new categories for financial exploitation, verbal abuse, wrongful restraint, and wrongful seclusion.

Problem 1: **Liability-driven child abuse reporting**

Following the passage of SB 1515, ODHS saw significant increases in reports and investigations of child abuse, driven by the bill's new definitions of child abuse for children in care, heightened liability provisions and punitive licensing actions, and establishment of official misconduct charges for failing to report. Reporters often mention they are submitting reports due to liability concerns rather than having a reasonable suspicion of child abuse. This situation raises safety concerns as valuable time and resources are spent on screening reports which can crowd out genuine child abuse concerns that need urgent attention.

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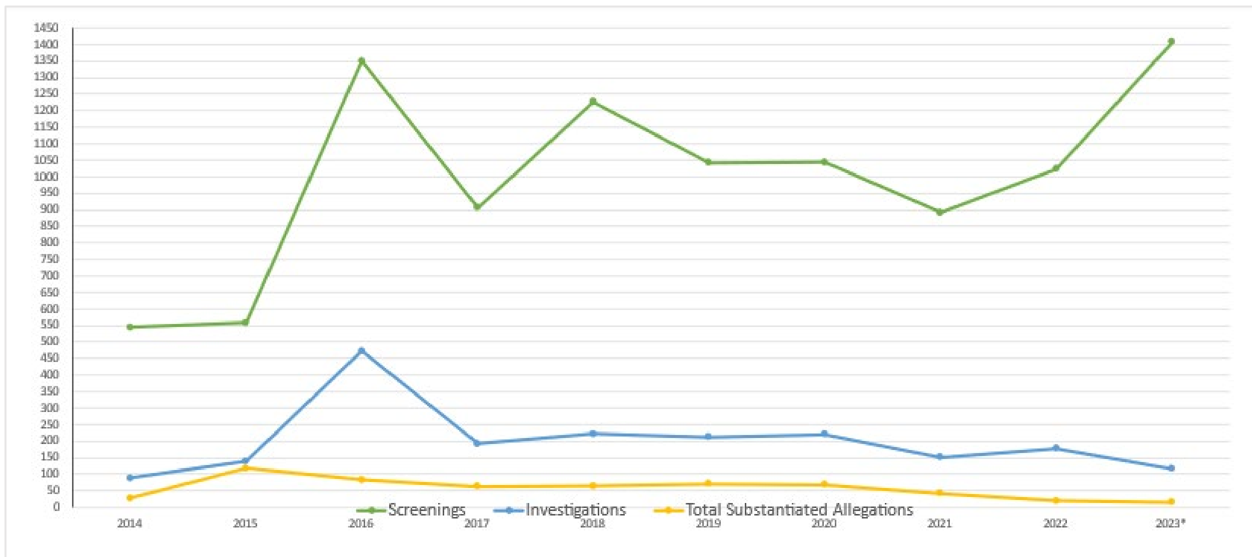

Table 1: CCA Screening, Investigation and Substantiation Trends
Source: Data provided by OTIS Child-Caring Agency Licensing Program, September 2024

Before 2016, the assignment rate to investigation for CCA screenings was 41%. After SB 1515, it has averaged 20%. Notably, in 2023, the assignment rate fell to just 8%, despite a 32% decline in the total number of CCAs from 2014 to 2023.

Solutions

The proposed legislative concept (LC) would address these unintended consequences through the following statutory refinements:

- **Define "Agency Management"** to clarify which failures within a child-caring agency must trigger mandatory actions regarding the agency's license, as outlined in ORS 418.240 (2)(c).
- **Broaden Mandatory Actions** related to a CCA's license outlined in ORS 418.240 to include placing conditions on the license, not just suspension or revocation, aligning with similar regulatory actions of developmental disabilities residential facilities for children.
- **Eliminate Official Misconduct Language** that a failure to take action constitutes official misconduct by the director or department personnel.
- **Clarify Child Abuse Reporting** must be made directly to the Oregon Child Abuse Hotline.

Problem 2: **One-size-fits-all Regulations**

In the fall of 2024, ODHS sought to license as a CCA an out-of-state residential treatment provider specializing in services for children with eating disorders. A major barrier was the requirement to operate as a corporation. Given the infrequent instances in which they would serve children in Oregon's custody, this requirement proved untenable as it was too cumbersome and would draw resources away

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from the children they serve, to change their organization's structure for the occasional child from Oregon they may serve. In cases like this, ODHS lacks authority to approve an exception, which limits children's access to medically appropriate and necessary care and has been a barrier for providers seeking new types of CCA licensure.

SB 1515 required all CCAs to provide ODHS with financial statements that have been reviewed by an independent certified public accountant. In 2018, Senate Bill 1525 made a limited exception but only for adoption agencies. It has since been identified that the statute is too prescriptive by naming a specific type of CCA licensed provider rather than allowing for an exception when a CCA does not provide care to a child and does not receive public funds.

Solutions

The proposed LC aims to address these issues by:

- **Adding a Limited Corporate Status Exception** with requirements to have an advisory board and meet additional standards established by the Department of Human Services by rule.

- **Expanding Professional Financial Audit Exceptions** beyond adoption agencies. Additionally, the LC offers a suite of conforming and technical amendments to CCA regulations based on substantiative amendments made above or feedback from CCA providers.

- **Clarify Investigation Procedures** the ODHS director or designee must follow when a CCA is investigated by another state agency, law enforcement, or a federal agency. Amendments are also to have consistent use of the term "investigate" to child abuse investigations, aligning with the defined term in ORS 419B.

- **Improve Notification Requirements**: The amendment clarifies the notification requirements that apply when ODHS receives reports of abuse through the centralized child abuse hotline.

- **Align Quarterly Reporting**: The information required in quarterly reports to the legislature is revised to align with the circumstances that would trigger mandatory actions on a CCA's license as specified in ORS 418.240 (2)(c).

- **Remove Unused Civil Penalty** created by SB 1515 that has never been used. Additionally, the factors considered in issuing civil penalties are clarified to align with contested case hearing language in OAR 137-003-0010 ("seriously endangers").

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Child-in-care abuse statues

In 2017, Senate Bill 243 expanded the application of SB 1515's child abuse definitions to include ODHS Child Welfare-certified foster homes and residential facilities for children with intellectual and developmental disabilities licensed by ODHS' Office of Developmental Disability Services (ODDS).

The bill also:

- Clarified that children living in a child-caring agency are not considered "children in care" if their care is provided by a parent. For example, if a child lives at home with a parent who is also a foster parent, the parent-child relationship would not fall under the "child in care" definition.
- Exempted child-caring agencies without staff or volunteers from certain training and material requirements established by SB 1515.
- Excluded age-appropriate discipline from the definition of "involuntary seclusion."

Problem 1: **Remaining gaps**

While SB 243 endeavored to better clarify who is subject to child-in-care abuse definitions, it did not codify the legislative intent that ORS 418 child-in-care abuse definitions apply to employees, contractors, and volunteers of child-caring agencies, residential facilities for individuals with developmental disabilities, foster parents, and individuals running foster homes. Additionally, while SB 243 aligned regulations, quarterly reporting requirements and applicable child abuse statutes across most foster care settings, foster homes for adjudicated youth certified by the Oregon Youth Authority (OYA) were not included among these.

Solutions

The proposed LC would:

- **Codify Application of Child-in-Care Child Abuse Definitions** in ORS 418 to apply exclusively to providers, including employees, contractors, and volunteers of child-caring agencies, residential facilities for individuals with developmental disabilities, foster parents, and individuals running foster homes. It explicitly clarifies that these definitions do not apply to parents, relatives, or other members of the community who are not acting in a provider capacity.

- **Expand Definition of Child-in-Care** to include youth who are adjudicated in Oregon Youth Authority (OYA), thereby aligning regulations and definitions for OYA certified foster homes and across all types of Oregon foster homes. This statutory amendment clarifies legislative intent and aligns with current practices in screening and investigation by ODHS, with no anticipated impact on workload as OYA has a relatively small number of certified placement settings (26 foster homes, 7 respite homes, and a total of 48 beds) for adjudicated youth.

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Constraints on placements

In-State Placements

The federal Family First Prevention Services Act (FFPSA) was signed into law as part of the Bipartisan Budget Act on February 9, 2018. It reformed child welfare financing streams under Title IV-E and Title IV-B of the Social Security Act to provide services to families aimed at preventing children's entry into foster care. Family First also limits funding for child placements in non-foster family homes except when the placement is in a qualified residential treatment program (QRTP).

Oregon's Senate Bill 171 (2019) aligned the state's use of QRTPs with federal requirements, but also went beyond FFPSA directives by limiting any congregate care placements to QRTP settings with few exceptions, namely:

- Programs serving prenatal/postpartum youth or providing parenting supports,
- Programs supporting victims of sex trafficking, or
- Independent residence facilities.

Oregon statute enacted further regulations such as time restrictions for the placement of children in CCA residential care agencies or shelter care homes that are not QRTPs; homeless, runaway, or transitional living shelters that are not part of a QRTP; and placements serving adjudicated youth or youth served by the Oregon Youth Authority or county juvenile departments.

Problem 1: Barriers to Securing Clinically Indicated or Culturally Appropriate Placements

At times, a young person's unique needs warrant placement in non-CCA settings. For instance, if the needs of a 17-year-old with severe mental illness and diabetes can't be met by a CCA, the best choice – and the one that may prevent this youth's entry into temporary lodging – might be an adult foster home that has an approved licensing variance and the staff skill set to meet the youth's specific medical needs. Similarly, a 17-year-old unaccompanied minor from Central America may need residential treatment for a substance use disorder, but if no youth residential programs are available that can accommodate the youth's language needs, a bilingual residential program for adults may be the best placement option.

However, SB 171 prevents ODHS from placing children in non-CCA settings, even when the provider and treatment setting is determined to be necessary to address the youth's behavioral health or medical needs.

Solution

The proposed LC would allow for placement in non-CCA licensed settings when the responsible Medicaid entity has approved the placement as medically necessary and appropriate. This statutory

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refinement would ensure ODHS has the critically important flexibility to make child-centered placement decisions that support their well-being, helping to avoid or resolve stays in temporary lodging.

Problem 2: **Time Limits on Non-QRTP Placements**

SB 171 limited the duration of placements to 60 consecutive days or 90 cumulative days in a 12-month period in non-QRTP residential care facilities, shelter care homes, and homeless, runaway or transitional living shelters.

The chief aim of the legislation is to expedite permanent placements for youth. However, youth with lived experience as well as providers, case workers and subject matter experts have raised significant concerns about its time restrictions. In particular, the policy has increased the risk of a child experiencing temporary lodging in a hotel with ODHS staff or children bouncing from temporary placement to temporary placement inhibiting their stability as they wait for a well-suited permanent placement.

"Non-QRTPs…are part of the continuum of services for Child Welfare and the time restriction may **limit options for crisis placements which are necessary to avoid temporary lodging and other inappropriate placement settings**."

– SB 171 Legislative Report to the Interim Committees of the Legislative Assembly Relating to Children, ODHS and OHA, August 2019

Oliver's Story

During the initial 60 day stay, he was doing extremely well and there had been no placement found for him. We gave a 30-day extension after discharging him for a day. During that extension it was determined that he may benefit from a child specific contract to not disrupt the progress he was making at Youth Tides. Oliver ended up staying at Youth Tides for one year, 10 months. During this time, he was able to graduate high school, obtain employment, apply and get accepted into college, begin hormone therapy for his transition, learn important life skills around budgeting, public transportation, shopping, cooking, etc. Oliver also gained confidence in himself, and he was able to create meaningful relationships with adult staff that really cared for him.

Oliver still calls Youth Tides from time to time to check in and update us on his life. He is doing well in

school, he's in a committed healthy relationship, and he now has a cat at his home. He's excelling at his responsibilities with his growing independence.

Disruption to youths' placements can cause harm to their stability. Frequently when youth have had to leave Youth Tides at the 60/90 day deadline, I've seen them feeling comfortable with staff and real progress being made for it to be disrupted and often times they're not being moved to a foster placement or reunified with guardian but moved to another shelter where the youth have to start the process all over again. I believe in a lot of cases that longer stays at shelters can be very beneficial for the youth.

-Jordan Gabilondo, Youth Tides Supervisor

"We have had to turn away or prematurely transition youth who desperately needed more time – time to heal, time to stabilize, and time to trust the adults trying to help them.

The 90-day limit may be well-intentioned, but it fails to take into account the individual needs of the youth we serve. It assumes that all children can be moved into permanent placements within that timeframe, but the reality is far more complex. These youth have endured unimaginable trauma, and the path to healing is not a straight line. For many, 90 days is simply not enough. These young people often come to us after years of instability, abuse, neglect, and trauma. To then impose arbitrary time limits on their care is, in many cases, a further form of abandonment."

Bryan Wenzel, Shelter Coordinator, HWAM

FACT

ODHS Child Welfare's Treatment Services team estimates that on average, 12 youth ranging from 15.5 to 17 years old are placed statewide in non-QRTP settings on any given day in Oregon.

Solutions

- **Extend Time Limitations on Non-QRTP Placements** to permit stays beyond the current limits of 60 consecutive or 90 cumulative days. This includes an approved extension of up to 30 consecutive and 30 cumulative days within a 12-month period when deemed to be in the best interest of the child.
- **Allow Self-Advocacy for Extended Placement,** enabling non-QRTP placements to extend beyond the limits if the child or ward wishes to remain in the placement.

Out-of-State Placements

Senate Bill 1605 (2020) was an omnibus bill designed to address foster care placements, out-of-state child-caring agencies, and the implementation of SB 171, described above.

Key provisions of SB 1605 included:

- **Restrictions on Out-of-State Placements:** Prohibiting ODHS from placing children in out-of-state child-caring agencies unless the provider is licensed as a CCA by Oregon's licensing requirements, ODHS has a contract with the provider that meets specific criteria, and all in-state resources have been exhausted prior to the placement.
- **Investigation Requirements** for ODHS to initiate an investigation of the suspected child abuse, as defined by Oregon statutes, when it occurred in an out-of-state agency involving an Oregon child.
- **Prohibition on Certain Placements** of children in Child Welfare custody at agencies primarily serving youth committed to the Oregon Youth Authority or its equivalent in other states.
- **Delayed Implementation** of SB 171 (2019) until December 1, 2020.

Problem 3: **Barriers to appropriate treatment**

At any given time, there are more than 4,500 children and youth in foster care. A small number (fewer than 6 percent) have complex needs and require specialized services to stay safe and healthy. When clinically or medically recommended, these services may be best provided in a residential care setting. While Oregon provides residential services for children and youth, there are rare circumstances when necessary specialized services are not available in Oregon or when a child who needs specialized services is living with a family in another state.

The Oregon Heath Authority's Ombuds Office has recognized that out-of-state placements are necessary in rare instances to provide children in care with timely, medically necessary and appropriate treatment. They provided the following composite member story to illustrate a situation in which a child may need an out-of-state placement:

The OHA Ombuds Office was contacted by a hospital who was caring for an adolescent Oregon Health Plan patient admitted with an advanced eating disorder. The hospital provided care for the physical aspects of the member's symptoms but was not equipped to provide the kind of behavioral health treatment the member needed to address their condition. The hospital reported that while they were able to assure the member's physiological safety was maintained, their mental health was declining in the absence of the necessary psychological care. The member was unable to be admitted to any behavioral health facilities in Oregon to receive those therapies because they required an ongoing high level of medical care. It was determined that no facility in Oregon could provide the level of

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simultaneous medical and psychological care the member required and that, in its absence, the member was at highly elevated risk of mortality. The Ombuds Office convened members of the treatment team, family, and the CCO, and ultimately arranged for the member to be sent to an out of state care facility that could provide all the treatment the member required in one location. After a period of treatment at that facility, the member was able to be returned home to their community and maintained with outpatient care appropriate to their needs.

Solution

Allow exception to the out-of-state regulations when the placement is determined by the responsible Medicaid entity to be medically necessary and appropriate to address the inequity in access to treatment that is more easily accessible to other children on the Oregon Health Plan, private insurance, and youth involved with the juvenile justice system.

Anticipated Impact to the nine federally recognized of Tribes of Oregon: This LC provides added flexibility for permitting children in ODHS custody to be placed in out of state treatment facilities when appropriate facilities for medically necessary and appropriate treatment is not available in Oregon. These flexibilities also extend to Indian Child Welfare (ICWA) eligible youth being served by ODHS.

Problem 4: ICPC placement disruption

When children from Oregon are placed out of state with relatives under the Interstate Compact on the Placement of Children (ICPC), current statutory restrictions limit the Oregon Department of Human Services (ODHS) from accessing necessary behavioral health services in the state where the child is residing. If the child requires residential behavioral health treatment to stabilize, they are often required to return to Oregon for care at a licensed Child Care Agency (CCA). This disrupts the child's relationship with their relatives and creates significant challenges in transitioning the child back to their relative placement and connecting them with local community behavioral health supports—services that would be more readily available if the child received continuous care within the state of their ICPC placement.

Solution

Allow exception to the out-of-state regulations when behavioral health services are determined to be medically necessary and appropriate, and when remaining in the state of the ICPC placement would support the stability of the child's placement after discharge.

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Problem 5: **Noncompliance with ICWA and Tribe-requested placements**

In October 2024, a Tribe in California requested the placement of an Indian Child Welfare (ICWA) eligible youth being served by ODHS into a substance use disorder facility near their community. However, Child Welfare is restricted from placing, contracting with, or funding this placement unless the facility becomes a licensed Oregon child-caring agency (CCA). This case highlighted the need for an exception to ensure timely compliance with the Indian Child Welfare Act (ICWA) and to honor Tribal decisions about the interests of their youth.

Solution

Allow exception to out-of-state regulations when the placement of a child in the custody of ODHS is in compliance with ICWA placement preferences or to fulfill a Tribe's request for their youth.

> "Our county borders Washington and Idaho…. Any kids that may move to Idaho just come back into Malheur County to finish off their probation or, Juvenile Justice works with the Juvenile Justice of the town where kids may be moving to finish off probation. I would say any issues we have has been with DHS and kids needing higher levels of care and Idaho and Washington both have acute placements we use but that is really hard to do with DHS kids."
>
> – Chris Barnes, GOBHI System of Care Manager

Problem 6: **Barrier to Regionally Accessible Placements**

Keeping children within their communities, where they have established support systems, is often in their best interest. Currently, due to statutory restrictions on out-of-state placements, children in rural eastern Oregon have limit access to services in nearby cities like Boise, Idaho, and Walla Walla, Washington. As a result, these children are frequently relocated to placements along the I-5 corridor, far from family and other vital supports.

Solution

Allow exception to out-of-state regulations to enable children in rural areas to more easily access placements and treatment in neighboring states, ensuring they remain connected to their communities.

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Problem 7: **Barrier to ICPC Placements**

Statutory requirements for out-of-state placements currently apply to adoption and foster care agencies, requiring them to be licensed CCAs by Oregon. However, some states lack state or county certification entities and rely on private adoption and foster care agencies to certify homes. Given the urgent need to place children with relatives or adoptive resources, requiring Oregon to license these providers as CCAs is impractical and also may prevent some placements altogether as agencies who are licensed in their own states may not be interested in being licensed by Oregon. An exception is needed to prioritize placements with relatives and timely adoptions while ensuring safety through a requirement that these agencies maintain good standing for the duration of the ICPC placement in the state where they are licensed or approved to operate.

Solution

Amend out-of-state licensure requirements to exempt adoption and foster care agencies from being required to be licensed as a CCA by Oregon.

A Reporting Requirement

This LC requires ODHS to report quarterly all approved exceptions to placement regulations to the System of Care Advisory Council, with a narrative description of the circumstances to ensure there is oversight of these decisions and analysis of Oregon capacity issues or other system needs. This requirement replaces the current statute for ODHS to publicly post on a website.

FACT

In October 2024, there were nearly 170 children placed outside Oregon in ICPC placements, with the majority placed with relatives or in pre-adoptive homes.

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Regulating the use of restraint and seclusion

CCAs, foster homes, and I/DD settings

Before 2021, the use of restraint and involuntary seclusion by CCAs, foster homes, and developmental disabilities residential facilities was primarily governed by Oregon Health Authority (OHA) and ODHS rules. Catalyzed in part by the tragic death of 16-year-old who suffered cardiac arrest and later died after being restrained by staff at Lakeside Academy in Michigan, Senate Bill 710 (2021) strengthened regulations by replicating existing regulations that apply to school settings into law and designated any violations as child abuse.

The bill established the following key provisions:

- Comprehensive prohibitions on the restraint and involuntary seclusion of children in care, with limited exceptions.
- Guidelines outlining the permissible use of restraint or involuntary seclusion for children in care.
- Requirements for program procedures, including record-keeping, notifications, reporting, and the use of video recording.
- Detailed mandates for public quarterly reports to enhance transparency and accountability.
- Regulations for training standards and certification related to restraint and seclusion, including instructor qualifications and ongoing education requirements.
- Mandatory notices to children in care to ensure they are informed of their rights regarding the use of restraint and seclusion.
- New regulations for secure transportation providers, requiring them to be licensed as CCAs if they operate in connection with Oregon. This measure aimed to enhance accountability and safety for vulnerable youth during transport.

After the passage of the bill and prior to its signing into law, a coalition of providers wrote to then-Governor Brown, stating:

> *"Mental health treatment programs, providers and hospitals that serve Oregon children with severe mental health disorders have serious concerns about the impact of Senate Bill 710 (2021) on our system of care. While we strongly support efforts to reduce the use of restraints across child serving programs, the challenge we have with Senate Bill 710 is that it doesn't address all of the root issues at hand, and instead may exacerbate existing systematic problems."*

In response, Governor Brown issued a letter acknowledging the coalition's concerns that children with complex needs would increasingly be turned away from services as a result of the new law and that the

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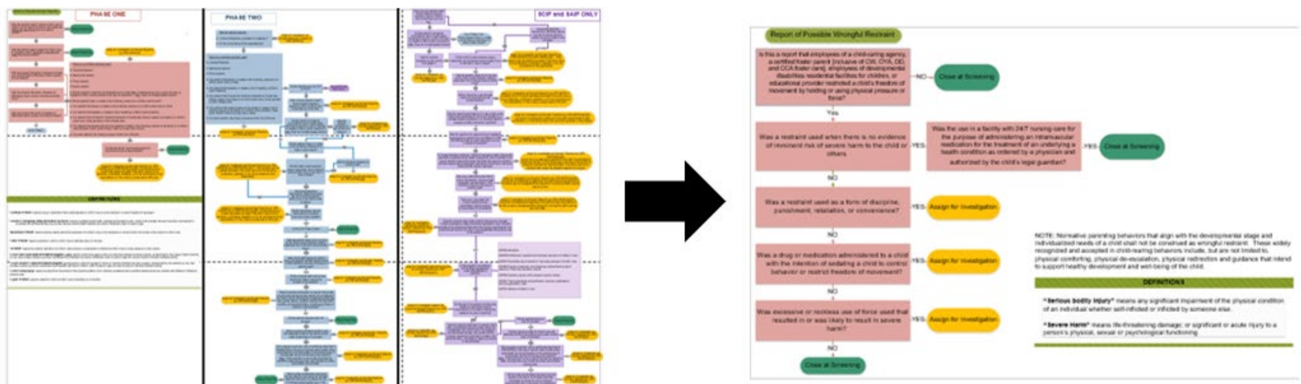
provider community would face additional challenges hiring and retaining staff. Governor Brown tasked ODHS and OHA with tracking and reporting any impact to placement and treatment capacity that results from SB 710. ODHS was also tasked with convening child advocates and providers to participate in the development of rulemaking, policies and procedures to implement SB 710.

Problem 1: **Complicated Definitions**

Currently, there are between 16 and 32 different mandatory decision points that require ODHS Office of Training Investigations and Safety (OTIS) screeners to assign investigations of wrongful restraint involving child-caring agencies or developmental disabilities residential facilities. This complexity places a significant workload on ODHS screeners when determining whether a report constitutes an allegation of child abuse under the existing law. It also imposes a substantial administrative burden on providers, who must supply records and documentation within tight timelines to assist screeners in their decision-making. This situation raises safety concerns for children as valuable time and resources are spent on screening reports which can crowd out genuine child abuse concerns involving a restraint that need urgent attention.



Oregon's children who need residential treatment services deserve one clear and consistent definition of child abuse. It is not trauma informed to expect young people to understand that an action by an adult is child abuse when it occurs in one setting but not in other similar settings.

Solution

The proposed LC would amend wrongful restraint and seclusion definitions, in line with the recommendations from the System of Care Advisory Council's Safety Workgroup, to establish simple definitions for "wrongful restraint" and "wrongful seclusion." These definitions would apply equally across the system for foster parents, employees, contractors, volunteers of child-caring agencies, developmental disabilities residential facilities, and educational providers. By reducing the key elements of use of a restraint or seclusion that trigger a child abuse investigation, it is anticipated there will be a decrease in the number of administratively required reports made to the child abuse hotline and a subsequent reduction in screenings.

In terms of impact to assigned investigations, after a comprehensive data review, the Office of Training Investigations and Safety (OTIS) anticipates a 50% reduction in assigned investigations related to wrongful seclusion, wrongful restraint, and corporal punishment, **with no adverse impact to child safety.** This is expected to result in nearly 100 fewer investigations per year, equivalent to the workload of one and a half full-time OTIS investigators.

Child Welfare anticipates a reduction in child protective service assignments, forecasting a 1% decrease in investigations of wrongful restraint and wrongful seclusion in Child Welfare certified foster homes, with no compromise to child safety.

Problem 2: **Fearful Workforce and Placement Instability**

The community of Child-Caring Agencies (CCA) reports that the increase in investigations, along with heightened penalties, stemming from SB 710 have significantly affected workforce morale. Staff members are concerned about being investigated or potentially substantiated for child abuse or neglect due to technical violations. These violations could be a documentation error, delay in authorization time requirements, or a lapse in recertification. For this predominantly young workforce, there is significant concern about the heightened risk of having a substantiated allegation of child abuse on their record, which could adversely affect future employment opportunities.

Since the implementation of SB 710, Oregon has seen upward trends in denials and unplanned discharges from Behavioral Rehabilitative Services (BRS) and Psychiatric Residential Treatment Facility (PRTF) programs. For example, Looking Glass in Eugene, Oregon, reported 48 unplanned discharges since the implementation of SB 710, and identified that 46 were specifically due to liability and workforce concerns that would not have occurred prior to SB 710. For providers like Looking Glass, the prohibition on the use of prone restraints creates safety issues for children and staff, making it difficult to take on and care for children with complex behavioral needs.

Unplanned discharges create an urgent need for ODHS to find alternative placements with the appropriate level of care, typically under significant time constraints, which in turn increases the likelihood that a young person will experience an unnecessary hospital stay, multiple short-term placements, inappropriate levels of care, or temporary lodging.

Solution

Amend Wrongful Restraint and Wrongful Seclusion Definitions to reduce the workforce's fear of being investigated or substantiated for child abuse due to a technical violation of law. The regulations in existing statute regarding restraints and seclusion—including procedures, record-keeping, notifications, and training standards—remain unchanged, as they are essential for protecting child safety. The key difference is that these violations will no longer automatically trigger allegations of child abuse; instead, they can be appropriately addressed through licensing and certification actions. This amendment is expected to strengthen workforce stability, in turn enhancing placement and treatment

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capacity among providers, and ultimately improving the quality of care available for Oregon's at-risk youth. Several CCAs have indicated that this crucial amendment would encourage them to retain for longer durations children exhibiting aggressive behaviors, ultimately reducing the frequency of unplanned discharges.

Problem 3: **Reduced Use of Video Recording**

SB 710 requires providers to maintain copies of all videos of the use of restraint or seclusion that resulted in an injury to the child. Providers are further required to provide copies of these videos to children's attorneys, court appointed special advocates, parents or guardians if they request it.

Since the bill's implementation, multiple providers have turned off the recording feature of their camera systems, citing as key reasons:

- The costs of video storage and technology to blur the faces of youth to maintain their confidentiality,
- Concerns about potential violations of the federal Health Insurance Portability and Accountability Act (HIPAA), and
- Increased liability associated with public disclosure of videos of youth in behavioral health crises.

The reduced use of video recording by providers has translated into fewer sources of impartial evidence related to incidents involving restraint and seclusion, which in turn may be driving the increase in allegations assigned for investigation and extending investigation durations as more interviews are necessary to confirm what occurred.

In 2023, an amendment was made in SB 1024 to partially address this problem by shifting the responsibility to ODHS to redact video and manage requests for copies of these videos made by a child-in-care's attorney, court appointed special advocate, parent or guardian. But this amendment did not mitigate concerns about the child's rights and increased liability of public disclosure.

Solution

Provide an Opportunity to Review video and require the consent of the involved young person before the video is shared with eligible parties.

Problem 4: **Limited Models of Crisis Intervention**

As part of the implementation of SB 710, ODHS conducted a review and analysis of crisis intervention models used by CCA providers. In total, 11 models were reviewed and three were ultimately selected as options for CCAs to use. The approved models are Oregon Intervention Systems (used by ODDS

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providers), Crisis Prevention Institute (CPI), and the Mandt System. CCA providers transitioned to the new models with partial support from American Rescue Plan Act (ARPA) funds. Since that time, ODHS and the provider community have identified that the limitation to three models is a barrier for new providers who are considering operating in Oregon and use other, nationally recognized models that meet the same criteria Oregon used to select its three models.

Solution

The proposed LC increases the number of available crisis intervention models: The number of allowed and ODHS approved crisis intervention models would be increased from three to six to support growth in the continuum of care for children in Oregon while fostering innovation and diversity of clinical practices.

Problem 5: **Enmeshed Regulations of Medical and Non-Medical Transportation Providers**

SB 710 aimed to regulate all secure transportation providers serving any child in Oregon. Inadvertently, however, the regulations spurred a complete shutdown of secure, non-emergency medical transportation services to children in Oregon. This meant children were stuck in hospitals and CCAs as they could not be legally transported by OHA regulated secure medical transportation services, including ambulance services as they were not also licensed CCAs. s While Senate Bill 1547 in 2022 made nuanced statutory amendments, it did not entirely resolve the complicated overlapping regulations for medical transportation providers.

Solution

Remove Medical Transportation Providers from CCA Regulations. This amendment reduces confusion arising from the current nuanced overlap between medical transport providers, who are regulated by OHA and child-caring agencies. By making this clarification medical transportation providers can more confidently serve children in need of their services.

Problem 6: **Restrictions on CCA secure transportation providers**

Secure transportation providers contracted by ODHS have been hampered by the current regulations on the use of restraint and the heightened potential for a child abuse investigation related to wrongful restraint. The regulations have restricted providers from physically escorting a child to the vehicle in the incidents when a child refuses to cooperate with a planned secure transport. This results in children not being transported and remaining in an unapproved placement or other unsafe situations.

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Provider Perspective

For over twenty years, Right Direction Crisis Intervention has been assisting families access higher levels of mental health care for their children. As the first licensed transport company under SB 710, we embrace the law's accountability and transparency measures, which will promote good outcomes and help eliminate companies that do not employ a trauma-informed or respect-based approach to their services.

The problem with the law, in our opinion, is that it has essentially removed access to care for many families who have exhausted all of their outpatient options and need our services to, in some cases, prevent suicide or other catastrophic outcomes. Our data show this decline of access to be approximately 95% versus historical trends within Oregon. The law no longer allows us to provide these services if the adolescent resists transport.

Solution

Clarify Secure Transportation Regulations: The LC includes an amendment that specifies that secure transportation service providers licensed as CCAs are authorized to use a restraint, such as a CPI Transportation Position, on a child when a successful transport is necessary to ensure the health or safety of the child in care.

FACT

There are only two CCA-licensed, secure transportation service providers authorized to operate in Oregon. Both are based out of state and travel to Oregon to provide these services.

Other Related Amendments

- **Clear and Consistent Use of Terminology**: Clearly differentiates use of the term "physical intervention" and actions classified as a "restraint."
- **Definition of Severe Harm**: Alongside the new definitions, a clear and clinically based definition of "Severe Harm" will replace "serious bodily injury" as the new threshold.
- **Corporal Punishment Definition**: The concept introduces a unified definition of corporal punishment, defined as the willful infliction of pain. The definition would apply equally to allegations against foster parents and employees, contractors, volunteers of child-caring agencies, developmental disabilities residential facilities, and educational providers.

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School Settings

In 2015, Congress enacted the Every Student Succeeds Act (ESSA), which included provisions that prohibit school districts, state education departments, school employees, contractors, and agents from helping those investigated for sexual misconduct secure new employment unless specific reporting requirements are fulfilled. Following this, in 2018, Portland Public Schools (PPS) released a report revealing that several former teachers remained employed despite multiple allegations of sexual misconduct. In response, the 2019 Senate Education Committee drafted Senate Bill 155 to align Oregon law with federal standards and implement the recommendations from the PPS report. SB 155 successfully brought Oregon law into compliance with ESSA and expanded the responsibilities of ODHS to investigate allegations of child abuse occurring in schools.

In 2023, ODHS highlighted the need for authority to investigate some incidents of wrongful restraint and wrongful seclusion in schools. What was considered an allegation of child abuse in a CCA or developmental disabilities residential facility had no consequence when it occurred in a school. ODHS' hope was to create universal definitions of wrongful restraint and wrongful seclusion but instead, Senate Bill 790 made any violation of the existing regulations on restraint and seclusion in schools, created by HB 2939 (2011), an allegation of child abuse to be investigated by ODHS.

Problem 7: **Complicated Definitions of Wrongful Restraint and Seclusion**

Similar to the implementation of SB 710 on CCAs, residential facilities for children with developmental disabilities and foster care, school personnel have also reported the negative impacts of the complicated definition of wrongful restraint created by SB 790 and the need for amendments.

As described in the discussion of SB 710 above, there are 13 different decision points that require Office of Training Investigations and Safety (OTIS) screeners to assign investigations of wrongful restraint involving a school.

The Oregon School Employees Association shared the following example:
A highly agitated elementary school student climbed onto a lunch table, distressing their peers. A classified educator with 20 years of experience observed the situation but had been instructed not to restrain or limit a student's freedom of movement unless there was a clear threat to life. Despite attempts at verbal redirection, the educator became concerned about the risk of the student falling or escalating conflict among the other students. In a split-second decision, the educator chose to lift the student off the table, effectively defusing the situation.

However, under the current statutory definition of wrongful restraint applicable to education providers, this intervention technically violated statute and triggered a child abuse investigation. Amending the definition of wrongful restraint in LC 346 would help protect educators like her, allowing them to act in the best interest of student safety without fearing unjust

FACT

In the 2022-2023 school year 4976 restraints in schools involved 1166 students.

Source: School Restraint and Seclusion Data

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child abuse allegations that could jeopardize their current or future employment.

Solution

Amend wrongful restraint and wrongful seclusion definitions in line with the recommendations from the System of Care Advisory Council's Safety Workgroup, to establish simple definitions for "wrongful restraint" and "wrongful seclusion." These definitions would apply equally across the system for foster parents, employees, contractors, volunteers of child-caring agencies, developmental disabilities residential facilities, and educational providers. By reducing the key elements of use of a restraint or seclusion that trigger a child abuse investigation, it is anticipated there will be a decrease in the number of reports made to the child abuse hotline and a subsequent reduction in screenings and assigned investigations, with no negative impact on child safety.

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Other Proposed Amendments

Human Trafficking
While Oregon already has a definition of child abuse for commercial sex trafficking of children, this amendment adds human trafficking of a child as an allegation of child abuse, aligning Oregon statute with federal law.

Electronic Reporting
ORS 418.190 is amended from "shall" to "may" regarding the requirement for mandatory reporters to have an electronic reporting system.

Background Check Requirements for Children in Care
This change establishes in statute the long-standing practice of exempting young people aged 18 and older, who are aging out of foster care, from unnecessary criminal history checks—including FBI fingerprint checks—when they continue to reside in a foster home with another child.

Reducing Housing Barriers for Older Youth
The requirement for children in independent living facilities to contribute to housing expenses and support costs is removed. The Oregon Department of Human Services (ODHS) is already funding the full placement rate for youth in Independent Living Program (ILP) settings through Treatment Services, as this previous requirement created unnecessary barriers to accessing essential services.

SOCAC Reporting Requirement

While child safety legislation has evolved considerably over the last decade, it has often been enacted without clear requirements or mechanisms for evaluation by and feedback from the child-serving system. With the passage of this legislative concept, the System of Care Advisory Council will be mandated to submit a report to the legislative committees on health care in September 2026, detailing the implementation and effects of this legislation on state agencies, providers, and most importantly, children and their families.

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Frequently Asked Questions

[Pending feedback]

Forthcoming Amendments

1. Amend Section 32 of the LC to allow for placements in non-CCA settings when medically necessary and appropriate.

2. Amend Section 1 (1)(a), Section 3 (2) (a) and Section 8 (2) of the LC to align language with the federal definition of “Chemical Restraint”:

   “A chemical restraint is a medication used to control behavior or to restrict the participant's freedom of movement and is not a standard treatment for the participant's medical or psychiatric condition.”

Policy Under Consideration

1. Additional amendments to the regulation and accessibility of video recordings to increase the use of video recording by providers.

2. Alignment on the threshold for initiating a restraint with that of the Oregon State Hospital which is, ““Imminent danger of harm” in this policy means a substantial likelihood of immediate physical harm to the patient or others, an immediate and substantial likelihood of significant property damage, or an immediate and serious disruption of the activities of other patients in the area.

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