POLICY OVERVIEW OF HB 3835 & THE A13 AMENDMENT

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Table of Contents

Child Abuse 3

Abuse of a Child in Care (ORS 418.257) 4

Child Abuse (General) 7

Restraint and Involuntary Seclusion 8

Corporate status of CCAs 17

Criminal Background Checks ..... Error! Bookmark not defined.

Placement of Children 17

Out of State Placements 22

Secure transportation 37

Developmental Disability Services 38

ODHS Accountability and Authority 40

Obligation to investigate child abuse 41

Obligation to consider risk to a child when entity is under state or federal investigation 42

SOCAC Scope and Authority 43

Legislative Oversight and Public Transparency 44

BRS Services and capacity 46

Appendix 1: Abuse Definitions 49

Appendix 2: Prohibited Restraints 52

Appendix 3: 53

Appendix 4: Restraint Training Programs 57

Appendix 5: Josie's Story 58

Appendix 6: BRS 63

What is HB 3835A? An Overview

(Compiled by Senator Sara Gelser Blouin, May 2025, updated June 2025)

HB 3835A with the -A13 amendment substantially revises Oregon law related to the safety, placement and wellbeing of children in the care of the Oregon Department of Human Services and those privately placed in residential care by their parents.

The issues covered by this measure span nearly a dozen pieces of legislation passed with significant public process over the last decade. It also makes significant changes to laws that stretch back to the last century, circumvents regulations and recommendations from Congress and federal agencies, weakens the implementation of the federal Family First Act and substantially expands the power and reach of the System of Care Advisory Council.

The measure does not create any new treatment options.

It does not provide any new funding to support kids with significant needs.

It further blurs the lines between behavioral modification programs and evidence-based treatment for children and youth with psychiatric diagnoses, eating disorders and substance use disorders.

It puts Oregon's most vulnerable children at heightened risk of placement in inappropriate institutional placements far from family and the protections Oregonians designed for them.

HB 3835 significantly impacts Oregon's Developmental Disabilities Service system and will have ripple effects that reduce capacity for individuals with IDD. It will also influence the safety, culture, rights and access to community-based support services for children and adults with IDD who have never even touched the Child Welfare System.

Because some sections of the bill impact multiple issue areas, this overview is organized by topic rather than by section. However, section references are included for ease of using this document alongside the -A13 Amendment. Any reference to HB 3835 is to the A13 amendment.

Any errors in this document are my own. I will make corrections if I become aware of them, and any such errors should not reflect upon anyone but me.

One final note: Oregon's licensing statute was written decades ago and retains language that is no longer used today. The cumulative impact of decades of amendments to ORS 418 creates redundancies and many substantive portions of the statute are incorporated into

definitions. Throughout HB 3835A (and SB 1113, which was an alternative proposal introduced in the Senate) the Legislative Counsel worked to address this. As a result, the bill appears to substantially alter some portions of statute that are simply reorganized to make it easier to read. For example, the new Section 10 includes much of the existing content of Section 11 in addition to the changes proposed by the measure. This document does not include every provision of HB 3835 and it specifically does not explain each section that reflects reorganization.

Child Abuse

Relevant Sections: 1, 10, 11, 17, 21, 22, 31, 32, 26

Background: Abuse of a child in care is defined in ORS 418.257. This definition was established in 2016 to align with other non-family or institutional settings in which abuse is investigated. A comparison of the 418.257 and 419.005 definitions of abuse can be found in Appendix 1. The separate definition of child abuse was needed for four reasons:

→ *To recognize the sacred responsibility ODHS has to the children it has removed from their families. If ODHS removes a child from their family and places them in substitute care, ODHS must hold that substitute provider to the highest standard of care. Separating families causes profound trauma and real harm. Because of this, ODHS must maintain a standard of care that is substantially safer than the situation from which the child was removed.*

→ *When ODHS grants a license, endorsement or certification to a provider, the public trusts that ODHS has affirmed the services are safe, professional and appropriate. When families entrust their families to a residential program to address significant needs, they expect that their children are safe, free from abuse and staffed with professionals that can safely meet the child's needs.*

→ The standard child abuse definition in ORS 419.005 applies only to children under the age of 18. The "child in care" definition of abuse in ORS 418.257 is necessary to protect 18–20-year-olds receiving foster care or other substitute care services.

→ Children and youth who are living in a substitute care environment are especially vulnerable and generally have already experienced trauma. In addition, there are certain abuse types in institutional settings that do not apply to children when they are with their families, including wrongful restraint and seclusion, specific elements of neglect, financial exploitation and some kinds of sexual contact.

What the measure changes:

Abuse of a Child in Care (ORS 418.257)

This measure makes several changes to the definitions of abuse of a child in care.

- Adds children and youth served in adjudicated youth foster homes to the definition of "child in care" for the purpose of investigations of abuse under ORS 418.257. *(Reference: This language is added in throughout the measure)*

  Why this matters: Currently, children in foster care that is authorized by the Oregon Youth Authority are not covered by the Child in Care Abuse statute even though the provisions are applicable to their placements. This addition ensures these youth have similar protections to kids in other non-correctional institution settings.

- HB 3835 narrows the universe of people who will be investigated for abuse of a child in care which has significant consequences- especially for older youth. *(Reference: Page 1, lines 21-27 and Page 6 line 27 through page 7 line 2)*

  Why this matters:
  - *A relative that lives in or visits the foster home or residential care facility and takes a child in care's clothing, electronics or money*

would no longer be investigated for financially exploiting a child in care. Because these children have items without significant monetary value, these things are also unlikely to be prosecuted as crimes.

- *A friend or intimate partner that has access to the foster home or residential facility would not be investigated for abuse if they punched, kicked or restrained an 18-year-old in treatment foster care. Because this would no longer be considered abuse, such incidents would not be covered by the mandatory child abuse reporting statute. They would not be included in the state's accounting of incidents of abuse of children in care and the requirement to notify the children's CASAs, attorneys and others would not apply.*
- *These actions would no longer be covered by the mandatory reporting law making it less likely for the agency to be aware of and address these issues.*

- Substantially narrows the circumstances under which a **program** can be substantiated for abuse, rather than an individual staff member.

Why this matters:

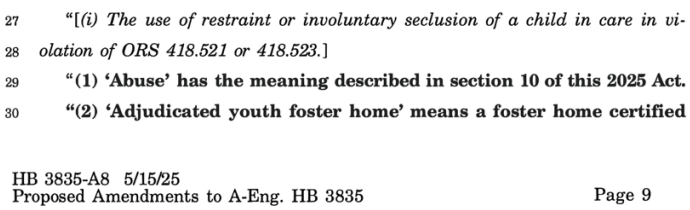
Under current law, when OTIS investigates abuse at a child caring agency, it determines whether abuse occurred and who was responsible for the abuse. In many cases, OTIS assigns responsibility for abuse to the agency. This occurs when there is lack of adequate staffing that leads to neglect of a child. It also occurred in a single instance in a day treatment program were staff imposed a restraint without being trained. This practice allows challenges within the agency to be identified, recognizes the abuse experienced by the child in care and ensures front line staff are not saddled with substantiated allegations of abuse due to failures of program management.

In addition, the flexibility in current law allows OTIS to open an investigation first with the agency as the subject of the investigating, adding individuals only as they find evidence suggesting that the individual was involved. This prevents individuals from being saddled with the stress of an abuse investigation that may not be about them, and relieves the agency of the consideration of whether or not to place staff on administrative leave for allegations that aren't directly related to their behavior.

HB 3835A (-8) narrows the circumstances in which an agency can be found responsible ONLY to situations where the agency failed to protect the child in care for abuse. If passed, HB 3835A (-8) would shift all responsibility for wrongful restraint or involuntary seclusion, neglect, abandonment, failure to supervise, etc. directly to frontline staff. It would also

eliminate the ability for OTIS to delay naming individual staff in broader investigations prior to having evidence to suggest their responsibility.

- Removes the use of restraint or involuntary seclusion in violation of state law from the definition of abuse of a child in care. *(References: Removed from statute on page 9, lines 27-28. This is not replaced in Section 10 which has the new definitions for abuse of a child in care.)*



"[*(i) The use of restraint or involuntary seclusion of a child in care in violation of ORS 418.521 or 418.523.*]

"**(1) 'Abuse' has the meaning described in section 10 of this 2025 Act.**

"**(2) 'Adjudicated youth foster home' means a foster home certified**

HB 3835-A8 5/15/25
Proposed Amendments to A-Eng. HB 3835 Page 9

Why this matters: Under current law, if an individual imposes unjustified or unlawful use of force upon a child through the imposition of a physical restraint or involuntary seclusion, it is child abuse. The explicit list of unlawful restraints describes actions that would not be used in other settings and which are known to create a risk of injury, death and trauma to those imposing the restraints and those receiving these restraints. The actions described in that list of unlawful restraints would be likely be considered criminal (not just abusive) if imposed on a child by an adult in the community. The list of unlawful restraints can be found in Appendix *2*.

The new definition of an abusive restraint applies ***only when there is significant physical harm or likely significant physical harm*** *to a child in care. A restraint that can be proven to be used for discipline, retaliation, convenience or punishment is also considered abuse. However, the use of dangerous unlawful restraints would no longer fall under the mandatory child abuse reporting law. In addition, imposing a restraint when there is no emergency would also no longer be considered abuse.*

This also creates a curious inequity in the statute. Spanking a child in care, regardless of whether it causes injury or pain, would be substantiated as physical abuse of a child in care and subject to a mandatory abuse report. However, three people holding a child face down on the ground, locking them in a dark closet from which they can't exit, or confining them into a chair with chains, duct tape, straps or rope would NOT be defined as abuse and would not be subject to mandatory child abuse reporting requirements. (Note: This comparison is simply used to demonstrate the inequity and is not an

argument to turn back decades of policy that prohibit the use of corporal punishment in schools, daycare or substitute care settings.) Each of these types of incidents occurred in Oregon child serving settings in recent years.

Child Abuse (General)

HB 3835 also makes changes to the general child abuse definition found in ORS 419.005.

- Adds the newly defined "abusive restraint or abusive seclusion" to the definitions of abuse found in ORS 419.005. (*Reference: Page 31, lines 20-22; and Page 36, lines 15-17.*)

  Why this matters: It is unclear why this allegation, that applies only to children in care, is separated from the rest of the child in care abuse definition. Searching through multiple chapters of statute could lead to confusion and complicate training for advocates, providers and regulatory staff. In addition, the terms "abusive restraint" or "abusive seclusion" are not used in any other known state or federal description of restraint. They can inadvertently leave the impression that restraints that do not meet the narrow new definition of "abusive seclusion" or "abusive restraint" do not cause harm. This raises particularly concerns for youth of color and those with disabilities, whose history includes frequent unjustified use of restraint and seclusion for control and punishment.

- Adds "Subjecting a child to involuntary servitude or trafficking" to the definition of child abuse found in ORS 419.005. (*References: Page 32, lines 2-3; and Page 36, lines 27-28*)

  Why this matters: Oregon currently lacks a specific allegation for these actions.

- Preserves existing sunset on separate allegations for restraint and seclusion in school-based child abuse investigations. The sunset is reflected at Page 31, lines 20-22 compared to Page 36, where it is no longer included at "M." *(References: Section 21 and Section 22)*

- *Why this matters: When SB 790 passed in 2023, the Legislature put a five-year sunset on investigations of restraint and seclusion in schools. This sunset was enacted so that the Legislature could*

monitor how these new allegations worked in schools, whether the definitions would lead to founded allegations for incidents that do not constitute abuse and whether new protections for staff who do not have adequate training or information about duties from allegations of neglect, restraint or seclusion were working as intended. SB 790 included quarterly reporting of all substantiated allegations of abuse in schools to provide transparency for this evaluation. Some interested parties have expressed a willingness to move forward with new language that provides better clarity about actions that are not restraints this session rather than waiting until 2027 to make adjustments and remove the sunset as originally planned.

Restraint and Involuntary Seclusion

Relevant Sections: 1, 12, 13, 14, 15, 17, 16, 21, 22, 23, 27, 32

HB 3835 proposes significant changes to Oregon's regulations regarding the use of restraint and involuntary seclusion of children in all children's care settings regulated by ODHS.

- Creates a new and very narrow definition of "abusive restraint" *(Reference: Page 3, lines 5-13)*

  Why this matters: Under current law, a restraint is considered abuse if:

  - *A person imposes an unlawful restraint on a child (an explicit list of types of restraints that are prohibited for use on a child under Oregon law).*
  - *A restraint is imposed when there is no reasonable risk of imminent serious bodily injury or if there are other ways to resolve an emergency.*
  - *In ODDS settings a restraint that is imposed in violation of state and federal regulations that apply to that setting*
  - *If it is imposed for the purpose of retaliation, punishment, discipline or for the convenience of others*

  HB 3835A substantially narrows this definition. Under HB 3835, a restraint is abuse only if:

- *It is imposed for the purpose of retaliation, punishment, discipline or for the convenience of others (Reference: Page 3, lines 5-7)*
- *It is a chemical restraint (Reference: Page 3, line 8-10)*
- *It is imposed with excessive or reckless force that results in, or is likely to result in, serious physical harm to the child (Reference: Page 3, lines 11-14)*

The following would no longer be considered abuse:

- *Imposing a restraint when there is no emergency. Because this is not defined as abuse, restraints imposed without an emergency will not be reported to the child abuse hotline.*
- *Imposing a prohibited restraint, including prone, supine and mechanical restraints (see* Appendix *2) Because this is not defined as abuse, restraints imposed in violation of law will not be reported to the child abuse hotline.*
- *ODDS settings would no longer be able to enforce its existing rules related to involuntary seclusion, prone, supine and lateral restraints. Violations of federal regulations related to restraint and seclusion would also no longer be considered abuse. All these things would continue to be considered abuse in adult settings, but would not even be required to be reported to the child abuse hotline in child settings.*

- HB 3835 changes the legal threshold for a use of a restrained from the defined "serious bodily injury" to the undefined "serious physical harm." *(Reference: Page 14, lines 16-18; Page 16, line 6)*

  Why this matters: Under current statute, the threshold for imposing a restraint or involuntary seclusion is "reasonable risk of imminent serious bodily injury to the child in care or others" which is defined as "any significant impairment of the physical condition of an individual, as determined by qualified medical personnel, whether self-inflicted or inflicted by someone else."

  HB 3835 changes the term to "imminent serious physical harm." Although it deletes the current definition, it does not create any new definition. In other words, this threshold is undefined and will be subject to interpretation and litigation. (Page 14, lines 21-23; Page 16, lines 10-12)

- HB 3835 adds risk of harm to animals to the threshold for the use of physical restraint or involuntary seclusion of a child. (Reference: Page 16, line 7)

  Why this matters: This exceeds the threshold established by federal law and no other state or organization is known to allow the safety of an animal to be balanced against the safety of a child. A child that is not safe with animals should be matched with a placement that does not provide access to animals.

- Although HB 3835 prohibits the use of restraint or involuntary seclusion for discipline in all settings and prohibits the use of restraint or involuntary seclusion in certified foster homes, it allows expanded use of restraint and involuntary seclusion in proctor care and certified foster care. The Department is given the authority to establish rules allowing the use of restraint and involuntary seclusion for discipline in certified foster homes and in proctor foster homes. *(Reference: Page 16, 21-28).*

> "(b)(A) Notwithstanding subsection (1) of this section or paragraph (a) of this subsection, a certified foster home or a proctor foster home may, consistent with the reasonable and prudent parent standard:
> "(i) Temporarily restrict a child in care's freedom of movement, including by physically consoling the child in care; or
> "(ii) Place a child in care in involuntary seclusion as a form of age-appropriate discipline, as defined by the Department of Human Services by rule, including placing the child in care in a time-out.

Why this matters: This creates confusion about what a restraint and involuntary seclusion are, and about whether physical restraint or involuntary seclusion can be used for discipline.

This type of language describing how seclusion and restraint can be used was not requested or required prior to SB 710. At that time, the use of restraint and involuntary seclusion was prohibited in certified foster homes ***unless it was included in a specific written plan of care and the foster parents had attended a required training****. ODHS had not offered that training in years leading to the passage of SB 710, so the use of physical restraint and seclusion was theoretically already prohibited. This also allows certified foster homes to use restraint and seclusion at a* ***lower threshold*** *than organizations with more oversight and training.*

The Department must use a reasonable and prudent parenting standard in establishing these rules. However, the included definition in lines 4-8 on page 17 is vague, could be inconsistently applied across the state and between homes and could be open to significant appeal if ODHS does substantiate an allegation of abuse.

"(B) As used in this paragraph, 'reasonable and prudent parent standard' means the standard characterized by careful and sensible parental decisions that maintain the health, safety and best interests of a child in care while encouraging the emotional and developmental growth of the child in care.

It also fails to take into consideration the unique needs of children who are in substitute care due to abuse, heightened complex needs or historic trauma. The prudent parenting standard appropriate for a typically developing child living with their family of origin would be different than for a youth with complex needs and a history of physical abuse, sexual abuse and multiple placement disruptions.

- HB 3835 exempts the use of restraint and seclusion in certified foster homes from established incident reporting requirements. (Page 17, lines 4-6)

"(C) Actions taken by a certified foster home or proctor foster home consistent with this paragraph are not subject to the incident reporting requirements under ORS 418.526.

*Why this matters: This puts the determination of whether a restraint meets the "reasonable and prudent parenting standard" solely at the discretion of the certified foster parent. Because there is no longer even **incident reporting** of these actions, there will be no ODHS oversight of physical interventions with children. This could allow unlawful restraint and seclusion to be imposed on children without consequence from or knowledge of the Department. (Note: Incident reporting is NOT abuse reporting. Substitute care providers are required to report incidents to the agency, including injuries, illnesses, hospitalizations, use of restraint, etc. Incident reports do not cause an abuse investigation unless ODHS personnel determines the report describes suspected abuse as defined in statute.)*

- HB 3835 repeals a policy that limits the number of programs that train staff to impose physical restraint on children. (*Reference: Page 23, line 8*)

Why this matters: Under current law, ODHS must authorize 2 or 3 nationally recognized providers of training that qualifies individuals to impose physical restraint upon youth. This number was established to create consistency across programs and to ensure that youth, staff, abuse investigators and licensing staff have a common understanding of terminology, techniques, philosophy and practice. Funding was allocated in 2021 to ensure all programs had the opportunity to establish a cadre of individuals eligible to provide training to CCA staff to come into compliance with the law. The programs selected by ODHS are highly regarded programs and represent the programs most often used by the vast majority Oregon facilities and schools prior to the passage of SB 710. In addition, each of the 3 programs has training specifically aligned to Oregon's service system and requirements (please see Appendix 4).

ODE recently narrowed its list of approved programs to only five. Of those five, 2 (OIS and CPI) require no modifications to meet Oregon standards for child serving programs; 1 (Mandt) requires a modest modification unlikely to impact any program; and 2 (Pro-Act and Safety Care) require substantial modifications because their standard curriculum includes training in several prohibited forms of restraint and are not necessarily tailored to children.

Expanding the list to an unlimited number of programs will create inconsistency in the system, reduce the accuracy of investigations by abuse and licensing investigators and negate the value of the investment made in bringing Oregon programs under a common umbrella of training programs. It also increases the risk of abuse allegations against staff who impose an unlawful restraint mistakenly thinking it was okay because it was part of the curriculum through which they received training.

- HB 3835 creates new barriers to youth, parents, attorneys and Court Appointed Special Advocates seeking to access records about restraints that resulted in an injury. *(Reference: Page 21, lines 2-8)*

  Why this matters: Under current law, ***if a child in care is injured as the result of a physical restraint*** *and there is a video or audio recording of the incident, ODHS is required to inform the child's attorney, the child's parents the child's case manager and the child's CASA If these individuals request*

access to the video following that notification, ODHS must provide them with a copy of the record.

HB 3835 restricts access to these records, significantly reducing the child's access to information about the child's own case. If the child is at least 18, she can consent for her own records. However, if the child is under 18, the parent or guardian would have to consent. ***In the case of a child in the legal custody of ODHS that parent or guardian is ODHS****. This could have the effect of slowing access to this critical information to the child's advocates--- the CASA and the child's attorney, as well as the case worker responsible for making planning and placement decisions for the child or youth. Although the statute includes a provision allowing the records to be released when required by law, this will likely delay access to the information if the attorney or CASA is required to seek a court order to access these materials to support a motion to move the child from a placement in which they were harmed. This increases costs, slows access to records important to maintaining the child's safety and disrupts relationships.*

HB 3835 also restricts HOW the child's advocates will access the records. No longer will they have a copy of the video to include in the child's own records. Instead, these legal parties (including the child herself!) will only have the "opportunity to review" the film.

Some have argued that if these records are provided to these legal parties, there is a risk they will end up on the internet. There is no example of this having occurred. In addition, these are confidential records protected by statute with significant consequences for those who redisclose the records without authorization.

- HB 3835 removes requirements for comprehensive investigations following the use of unlawful restraints. *(Reference: Page 68, lines 20-22)*

  Why this matters: Current law requires the agency to take specified actions as part of an investigation of a wrongful restraint, including investigations of restraints prohibited by law. This includes reviewing video and audio records, looking at relevant incident reports for prior incidents of restraint or seclusion of the child, interviewing the child in care including about whether the child experienced reportable injuries

or pain, review the training records of those that imposed the restraint and interview all witnesses to the restraint, including child witnesses.

If passed, HB 3835 would eliminate this requirement for most restraint investigations and only require child interviews and a thorough record review if the allegation was of the narrowly defined "abusive restraint." The law would ***no longer require that children be interviewed*** *about what they saw or experienced if they were subject to a prohibited restraint or any restraint that didn't lead to serious physical harm. The requirement to review prior incidents of restraint and involuntary seclusion would also be limited to those incidents in which there was serious physical harm or known and reported risk of serious physical harm.*

Licensing of Child Caring Agencies

Relevant Sections: 8, 11, 24, 25, 26, 27, 28, 29, 33, 24, 36, 40

- HB 3835 removes a variety of redundancies in the statute and reorganizes definitions within the licensing statutes for ease of reading. These non-substantive changes will not be articulated in this document but this is the reason for what appear to be substantial deletions and additions in Sections 24-26.

  Why this matters: These changes will ultimately make the statute easier to read and reduce frequent misunderstandings about what the statute does and does not say.

- HB 3835 adds compliance with statutory requirements related to the use of restraint and involuntary seclusion to the list of regulatory standards that must be met for a program to be licensed or relicensed as a CCA. (*Reference: Page 48, lines 28-30*)

  Why this matters: Current law does not require licensers to consider an agencies compliance with regulations related to restraint and seclusion to be considered for an initial or renewed license. That makes it unclear whether the agency has authority to take license actions for violations. This provision corrects that problem.

- HB 3835 amends statutes that govern the imposition of sanctions and civil penalties on child caring agencies to clarify that ODHS can impose a sanction if a program violates the requirements related to abuse of a child in care but does not explicitly

authorize a civil penalty for the use of restraints that are prohibited by law. *(Reference: Page 28, line 20; Section 19 beginning on page 28)*.

Why this matters: This change gives ODHS clear authority to impose a licensing sanction on a child caring agency that violates regulations related to restraint or seclusion. However, it does not explicitly provide authority to impose a civil penalty nor does it identify any required civil penalty for violations such as the use of a restraint prohibited by law.

- HB 3835 removes mandate for ODHS to suspend or revoke a license following severe acts of regulatory noncompliance. *(Reference: Page 49, line 5)*

Why this matters: Current law requires ODHS to take immediate action to suspend or revoke the license of a CCA if:

- *A child dies due to abuse.*
- *A CCA is aware that a child is being abused but fails to report the abuse and ensure the child's safety.*
- *The agency fails to cooperate with an investigation.*
- *The agency fails to provide required financial documents. (ORS 418.240(2)(b)*

HB 3835 allows ODHS to place a ***condition*** *on a license instead of* ***revoking or suspending*** *a license. A condition could be anything from the requirement to attend a new training to a restriction of admissions. HB 3835 repeals this critical statutory provision that empowers ODHS to take immediate action to protect children in the most severe situations. Without such explicit authority, the agency would likely be hesitant to take strong action--- which was demonstrated when the agency allowed multiple programs to continue operating despite significant safety issues between 2010 and 2015. Delayed action not only led to harm to countless children, it led to a cascading loss of providers that had become so dangerous they had to be closed with little notice. This negatively impacted capacity.*

  - HB 3835 limits actions on a license to circumstances where the violations are committed by the "agency's managers" (*Reference: Page 54, lines 7, 10 and 13.*) The definition of "agency's managers" is: ***"the individuals at the highest levels of an organization's leadership who have significant***

responsibility for the operations, finances or overall governance of the organization." (*Reference: Page 42, lines 12-14*)

Why this matters: Individuals that are managers as defined in this legislation, particularly in large organizations, are unlikely to have direct contact with youth, staff or even with licensing or abuse investigators. Because they are so far removed from the front-line work, this would be a nearly impossible standard to meet. This insulates agencies from regulatory action based on the bad acts of individual employees. This could create a situation where ODHS is unable to act on severe compliance issues simply because the agency cannot tie those compliance issues to the direct actions or omissions of the "agency's managers." Shift and unit managers are focused on their part of the work, but will not meet the definition of "significant responsibility" for operations, finance or overall management.

If HB 3835 also allows LLCs to operate as child caring agencies in Oregon, it could make it impossible to even identify the individuals who meet the definition of management.

- HB 3835 weakens Oregon's statute prohibiting the use of non-disclosure agreements in child caring agencies. (*Reference: Page 57, line 21 and beginning on line 30)*

Why this matters: Current law prohibits child caring agencies from interfering with good faith disclosures by employees or volunteers regarding violations, criminal activity, mistreatment, abuse and related issues at a child caring agency. It also prohibits the agency from requiring staff and volunteers to sign a non-disclosure agreement or cause them to believe they are subject to a nondisclosure agreement. This language was adopted in 2019 as one part of a piece of nondisclosure legislation. That bill established the same provisions in all publicly funded or regulated programs, including days cares, assisted living programs, DD facilities, nursing homes, etc., that serve vulnerable individuals.

HB 3835 takes child caring agencies out of alignment with all other Oregon programs covered by these requirements.

HB 3835 also removes "mistreatment" that does not constitute abuse from the information an individual cannot be prevented from disclosing. It also requires that the individual interfering with disclosure of information acts with an "intent

to dissuade". (Page 57, line 30). Intent is known to be an incredibly challenging standard to meet.

Corporate status of CCAs

Relevant Sections: Section 27

- HB 3835 allows child caring agencies to operate in Oregon without being incorporated under the law of any state. *(Reference: Page 47, lines 14-19)*

  Why this matters: Since at least the 1920s, Oregon has required all child caring agencies to be corporations. Current law prohibits LLCs from operating child caring agencies in Oregon, though LLCs do operate in other sectors. For instance, ODDS programs have several providers that operate under an LLC status. This has created issues with transparency regarding the use of public funds and the ability to stop bad providers from reorganizing under new names. To combat this, Oregon has passed a series of laws requiring increased reporting from all agencies—including fully incorporated entities. This increases cost and administrative burden.

  Allowing LLCs to operate in Oregon will weaken oversight of these programs, obscure the use of tens millions of dollars of public funds each year, allow private equity firms to move into Oregon, require additional reporting requirements from all child caring agencies and make it easier for bad providers to open back up under new names. In addition, because Oregon law prohibits charging any fee to Child Caring Agencies to obtain an initial license or to renew a license (page 51 lines 24-27), Oregon would become a very attractive place for profit hungry private equity firms seeking to move into the child caring space.

Placement of Children

Relevant Sections: 36, 37

Background: Current law requires that Child Welfare only place children in family settings, unless it is a facility licensed by the Oregon Health Authority, a hospital, a qualified residential treatment facility, a children's developmental disability facility or a handful of specialized program types for children. The specialized program types include SUD treatment facilities, psychiatric residential treatment facilities, programs for sex trafficked

youth and programs for pregnant and parenting teenagers. ODHS can place a child in a non-QRTP residential setting, including a homeless shelter or short-term stabilization and assessment center, for up to 60 consecutive or 90 cumulative days in a year.

These restrictions are required for any placement supported with federal Title IV E funds by child welfare under the Family First Act, championed by Senator Ron Wyden and passed by Congress in 2018. Oregon's regulations were developed through a rigorous and large workgroup process that began immediately after the passage of FFSPA. This allowed Oregon to be the first state with an approved Family First plan that opened the door to funding that allows prevention services to be funded before children are removed from the home.

Oregon, like many states, applied these requirements to all placements in order to avoid a two-tier system that treated IV-E eligible kids differently than non IV-E eligible kids. These requirements went into effect in 2021.

HB 3835 makes several significant changes to Child Welfare's placement authority and proposes substantially expanding the use of congregate care rather than family placements.

- HB 3835 explicitly removes the medical necessity requirement from a congregate care placement that is not made in compliance with the federal Family First Services and Prevention Act requirements. (Page 83, lines 22-23).

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

*Why this matters: HB 3835 would allow Child Welfare to place a child in setting that offers **a single service** needed by the child even if that service could be accessed in the community or if the program does not offer the primary services and treatment needed by the child. For instance, Child Welfare would be authorized to place a child with a substance use disorder in a psychiatric treatment facility that offers no substance use disorder treatment simply because the facility provides access to medication management needed by the youth. There would no longer be a requirement for **the placement itself** to be medically necessary.*

- HB 3835 allows Child Welfare to place a foster child in any congregate care facility if the CCO approves of the placement. However, that same provision does not require that Medicaid dollars pay for the placement. It also does not require the CCO to approve the placement itself. *(References: Page 84, lines 17-18)*

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

  Why this matters: This provision gives CCOs the authority to override all state and federal laws about placement of children in congregate care. Because CCOs can blend state and federal funds, there is no requirement that these services be reimbursable or even permitted under Medicaid rules. This could subject children to placement in settings and institutions that are unnecessary and inappropriate simply because there is an open bed.

- HB 3835 allows Child Welfare to place foster children in ***any adult setting*** that is licensed, certified or otherwise authorized by the Oregon Department of Human Services or the Oregon Health Authority (Reference: Page 84, lines 19-25).

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

  *Why this matters: Children don't belong in adult placements. In addition, this provision does not even require the adult setting to offer the specific specialized supports the child needs. The proposed legislation only requires that the adult setting provide a service **OR** treatment that is medically necessary and medically appropriate for the child or ward. Because all adult settings licensed by ODHS or OHA are required to offer services that are medically necessary and medically appropriate to residents, there is effectively no limitation to which settings could be used or when, why or how a child would be placed in an adult setting.*

  There is no provision requiring these settings to demonstrate any ability to understand the prudent parenting standard, to ensure access to education or to provide age and developmentally appropriate activities and experiences for these children. There is also no language describing how these adult settings would be trained to provide trauma responsive services to children who have experienced abuse and neglect or to support them through the

court, visitation, reunification and other requirements unique to child welfare and completely absent in adult settings.

These settings could include everything from adult DD group homes, adult Stabilization and Crisis Unit (SACU) settings, nursing homes, assisted living facilities, adult foster homes, adult secure residential homes, etc. These programs would not be required to provide any type of treatment and ODHS is not required to demonstrate that a child setting is not available to serve the child or youth.

*It is worth noting that ODDS settings **only** offer **services**. ODDS providers do not offer treatment. This is because there is no "treatment" for intellectual or developmental disabilities. Intellectual and developmental disabilities are a natural and positive part of the human experience that do not need to be "fixed" or "treated."*

Finally, this provision creates inequity and raises concerns about discrimination related to disability. This is because only children with disabilities could be approved for placement in adult settings under these provisions, while children without physical, mental or developmental disabilities would be protected by requirements that all placements be within child specific settings.

- HB 3835 would allow ODHS to leave children in short term congregate care settings for long periods of time. Child Welfare would be permitted to extend placement in these settings for up to 30 days each year if the Department determines it is in the child's best interest. (*Reference: Page 85, lines 10-12*)

  Why this matters: Settings licensed to be short term settings are not required to provide the type of care, support and consistency required in long term placements. These provisions could leave a child in a short-term placement for 6 months of each year without approval of the court or the opportunity for the child to object. HB 3835 provides no criteria to describe what constitutes the "best interest" of the youth.

- HB 3835 would also allow ODHS to place a child in a short-term stabilization and assessment center or shelter-care home ***indefinitely*** if the child "requests" the extension. *(Reference: Page 85, line 9)*

  Why this matters: There is no explanation of how a child will make this request. For instance, it is not clear whether it is written or verbal. It's not clear if any option counseling must be provided, if the child's attorney will be able to counsel the child about their options, if the child can revoke the request or if Child Welfare is allowed to urge the child to make this "request."

- HB 3835 allows ODHS to leave foster children in settings designed for adjudicated youth. *(Page 85, lines 2-5 and 6-12)*

  Why this matters: This provision allows Child Welfare to circumvent state laws enacted to end the practice of placing foster children in settings intended for adjudicated youth, including refurbished detention facilities where children slept in former jail cells as recently as 2019. Under this measure, if ODHS determines it is in the child's "best interest" they could place a child in a facility designed for adjudicated youth for up to 30 days. This practice is currently prohibited in all circumstances.

- Child Welfare could also place a foster child in a congregate care facility designed for juvenile offenders if the foster child "requests" such placement as described in a prior paragraph. *(Page 85 lines 20-22 and line 9)*. It is again unclear how a child's request would be made or if the Department is allowed to "suggest" or "urge" such a request from the child.

- There is no clarity about who will have authority to approve out of state placements, placements in adult settings, extended placements in short term programs or programs designed to serve adjudicated youth. (*References: Page 90, line 19 and 22*).

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

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

Why this matters: ODHS argues that placements in adult settings, non-QRTP settings, settings designed for juvenile offenders and short-term shelter-homes and stabilization centers will only be done with oversight from top leadership at ODHS and OHA. Although ODHS told members these placements will only be approved by the Director of Child Welfare and the State Medicaid Director, the statute does not require this. Approval can be made by ***any person*** *these administrators designate. There is no requirement for this decision to be made at the central office, or even discussed with the directors.*

In August of 2019, ODHS and OHA, with the help of a multi-million-dollar contract with Alvarez and Marsel, established new requirements for out of state placements. This included a requirement for the Director of Child Welfare to approve each of these placements before they occurred. No delegated authority was offered at that time, and the single point of authorization was touted as necessary to ensure that out of state placements were rare and that a single person had clear authority and accountability for determining whether the placement was appropriate for the child.

Out of State Placements

Relevant Sections: 36, 37, 38, 39

Under current law, Oregon DHS may place a child in an out of state congregate care placement if the agency licenses the facility consistent with Oregon standards, ensures specific provisions are included in the contract to protect Oregon youth and the state follows specific protocols to protect the unique needs of children with disabilities and those traveling far from home. These protocols were established following significant harm experienced by children placed out of state between 2017 and 2020 and were informed by

hours of public hearing and recommendations from a consultant brought in by the Governor under a multi-million-dollar contract.

HB 3835 sidesteps these requirements, allowing ODHS to return to its prior practice of placing children in out of state facilities without a license from Oregon and without following statutory protocols or requiring key contract provisions.

- HB 3835 allows ODHS to deliver Oregon foster children to adoption agencies and foster care agencies that do not meet Oregon standards. (Page 73, lines 12-16 and Page 77 lines 20-24). It would also give these agencies unlimited authority to place Oregon children in congregate care settings in other states ***without any contract or licensing requirements*** from ODHS (Page 78, lines 20-24).
-

> **"(D) The out-of-state placement is approved by an adoption agency or foster care agency, or provider of similar services, in the state of placement and the adoption agency or foster care agency provides licensing services in compliance with paragraph (b) of Article V of the Interstate Compact on the Placement of Children and ORS 417.230; or**

Why this matters: Children are vulnerable, particularly when they cross state lines. Allowing ODHS to delegate their responsibilities as "parent" to children in care to unknown agencies in other states, including the authority to choose adoptive and foster placements is risky for children and for the state insurance fund. It is just as risky to allow such agencies to decide when and whether to place children in out of state congregate care facilities that do not meet Oregon standards.

- HB 3835 allows Child Welfare to place children in out of state settings without ensuring they meet the child's assessed needs, or that the facility provides any treatment at all. (Reference: Page 77, lines 22-24)

> **"(7)(a) Notwithstanding ORS 418.322, the department may place a child in an out-of-state placement without requiring the placement to be licensed or under contract, as described in subsection (1) of this section, or to be a qualified residential treatment program as described in ORS 418.323 if:**
> **"(A)(i) No child-caring agency placements are available in this state that are suitable for the child and that provide the services and treatments that are medically necessary and medically appropriate for the child; and**
> **"(ii) The services and treatments are approved by the responsible Medicaid entity for coverage by Medicaid;**

Why this matters: This measure creates a loophole allowing ODHS to circumvent federal and state requirements related to placement of a foster child in congregate care. Under current law, a youth cannot be placed in a

congregate care setting unless an independent assessor evaluates the youth, determines the youth needs treatment in a residential facility (called a QRTP, or qualified residential treatment program) and the placement is approved by the court. HB 3835 allows ODHS to place a child in a congregate care facility out of state without going through this process. This makes it easier to place children in out of state institutions that don't meet their needs than to place children in Oregon programs.

In addition, the statute does not require that the placement be any sort of medical facility. It also does not require that the facility itself provide any treatment or services the child needs. The only trigger is that the child needs treatment and services, Medicaid approved that the treatment and services were necessary and appropriate and there was no placement available in Oregon. The statute places NO requirements on the out of state agency and it references the admission of the youth as "placement"- not as treatment.

Although the proponents of the bill argue this is necessary to ensure youth have access to high quality, specialized treatment that is only available in other states, there is nothing in the proposal that requires any placement to be a licensed health care facility or to offer clinical services.

- HB 3835 allows ODHS to place children out of state without licensing the placement and allows ODHS to decide by rule whether a facility is significantly aligned with Oregon requirements. *(References: Page 79, lines 14-20; Page 80, lines 23-24)*

  Why this matters: There is no statutory guidance for minimum criteria for regulatory alignment would be. The statute simply asks the legislature and the public to trust ODHS. From 2017-2020, Child Welfare placed nearly over 150 children out of state without notifying the Legislature and without even visiting the facilities before the children were placed. Many children were harmed. Many of the programs are now shuttered due to rampant abuse and poor quality. ODHS repeatedly assured the Legislature that all these facilities were carefully assessed prior to placing Oregon youth and that each were high quality programs in good standing with their state licensing agencies, and that all met appropriate standards to serve Oregon youth. That was not true. The same leaders that oversaw those placements will oversee these new proposed out of state placements.

- HB 3835 relieves ODHS of duty to execute appropriate contracts that protect children and youth in out of state facilities. (References: Page 77, line 22; Page 73 line 20 through page 75 line 28. Please see Appendix *3* for all waived requirements.)

> "(7)(a) Notwithstanding ORS 418.322, the department may place a child in an out-of-state placement without requiring the placement to be licensed or under contract, as described in subsection (1) of this section, or to be a qualified residential treatment program as described

Why this matters: Following the harm experienced by children placed out of state prior to 2020, it became clear strong contracts were essential to protecting youth and ensuring quality in out of state placements. Although adopted by the Legislature in statute in 2020, ODHS and OHA began to revise the contracts with the factors included in the statute in the fall of 2019. This was a result of the recommendations made by the consultant brought in by the Governor and in response to the gaps identified through prior out of state placements. Because Oregon cannot enforce its laws in other states, it needs the combined authorities of a contract AND licensing authority to ensure Oregon children's needs are met while in other states.

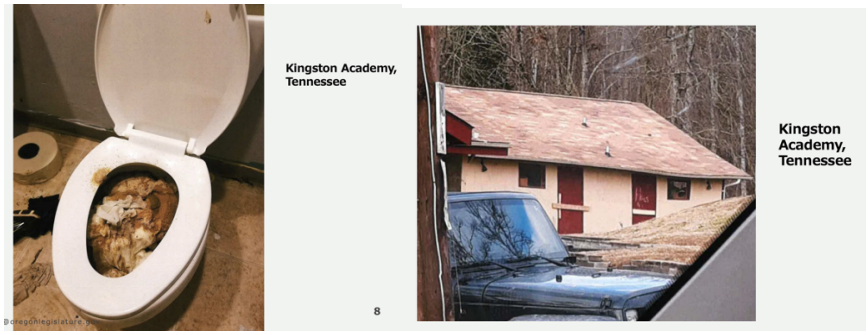
HB 3835 simply dismisses this work. It removes all contract related requirements for out of state placements and even removes any requirement to have any contract at all. The full list of waived requirements can be found in Appendix 3, but they include:

- Mandatory child abuse reporting
- Prohibition on non-disclosure agreements
- Protecting child rights
- Reporting related to the use of psychotropic drugs
- Informing ODHS about abuse or hospitalization of an Oregon youth

- HB 3835 allows ODHS to disregard the statutory requirement to ensure an ODHS employee travels with a child to an out of state placement. (*Reference: Page 76 lines 14-18*)

Why this matters: When ODHS staff don't travel with kids, there is no way to see where the child will sleep or what the conditions of the facility are. It is

also very traumatic for children to travel to far away states with strangers. When children were sent away between 2017 and 2020, the failure to travel with the children led to dismal outcomes. For instance, a child was placed at Kingston Academy just days after these photos were taken:



That very week, ODHS assured the Legislature and the public through news articles and an opinion column that each placement was carefully considered and vetted prior to placement and that these facilities met the highest standards. (See Appendix 5, Josie's Story)

- HB 3835 waives protections for children with IDD considered for out of state placements. *(References: Page 75, line 29 through Page 76, line 13)*

  Why this matters: When ODHS sent kids away from 2017-2020, a disproportionate number were children with intellectual and developmental disabilities. In most cases, ODDS and county programs were not even notified about the placements. As a result, the Legislature enacted statutory provisions to ensure such collaboration. The requirements waived by HB 3835 for children with disabilities include:
  - *Any decision to place a child with ID/D out of state is reviewed by ODDS leadership.*
  - *ODDS eligibility processes be expedited to avoid the need for out of state placement*
  - *A team that includes people knowledgeable about children with IDD monitor the child's experience in the out of state placement.*

  In addition, the current statute requires that children with IDD that are placed out of state have the same rights they have in Oregon. Oregon's IDD system is one based on self-determination and all placement settings are non-institutional. Children, youth and adults with IDD in Oregon have the right to

access the community, live in non-locked settings, live in settings that serve no more than five total individuals and be free to make choices. In addition, the use of involuntary seclusion, prone restraint and supine restraint are prohibited in Oregon IDD settings. The places to which Oregon youth with IDD were sent leading up to 2020 did not meet these standards, and these provisions were added to ensure that out-of-state placements did not become a way to roll the clock back to the early 1990s when Oregon eliminated institutional settings for children with disabilities.

- HB 3835 waives the requirement that ODHS ensure that children in out of state placements have the same rights and protections that would be afforded to the child if they were placed in Oregon. This is replaced with a requirement that ODHS "ensure" that the rights in the placement are "in significant alignment" with the rights they would have in Oregon. However, there is no definition of this and no explanation of what authority Oregon would have to enforce the child's rights once the child crosses state lines.

  Why this is important: Child rights were consistently violated in out of state placements from 2018-2020.
  - *In one particularly striking case, a foster youth was transported to Utah by a secure transport agent. Upon arrival at the facility (Red Rock Canyon Academy), she was ordered to turn all over her belongings and have her body examined for contraband through a pat down, including of her intimate parts. In her possession was a photo of her recently deceased brother. When she refused to relinquish the photo to the staff, she was taken to the ground and held in a supine restraint for nearly 20 minutes even though she posed no risk of injury and was not engaging in any physical behavior at the time. The staff ultimately took possession of the photo. When she asked to call her caseworker or her mother, staff refused. She was informed contact with the outside world was strictly prohibited for the first month of the program, without exception.*
  - *At another facility (Provo Canyon School), a youth was denied access to education, put in involuntary seclusion on a nearly daily basis and repeatedly injected with psychotropic drugs that were not approved for a child her age and that were not needed for any medical condition. When she was beaten so badly by other children that her jaw was broken and it was unclear if she would be able to eat again,*

she was told that if she worked on being a nicer girl people wouldn't beat her up. She told her caseworker she believed she was going to die in the facility.

- *At a third facility (Clarinda), youth were denied access to unmonitored phone calls. They had inadequate access to food and were not provided tables and chairs for their meals. They were required to sit on the floor to eat their food, all of which was prepared at the neighboring prison.*
- *At a fourth facility (Mountain Home), youth were hooked up to a polygraph and required to disclose all their sexual activities, thoughts or any sexual action they believed may have been wrong. They were told they could not "graduate" from the facility until they shared everything. These examinations were not done in the presence of the children's attorneys, even though some were in the process of adjudication and such admissions might impair their case. In some cases, children were subject to penile plethysmography to measure the youth's reaction to sexually provocative materials or ideas.*

- HB 3835 waives requirements to ensure foster children are not placed in out of state facilities designed for juvenile offenders if they are not themselves involved in the juvenile justice system. (Reference: Page 77, 3-19)

- *Why this matters: Foster care is not a punishment. Oregon foster youth should not be placed in programs where they are greeted by staff who tell them they need to make amends for the actions that got them placed in the facility. To be clear, this does not mean that children can never be placed with youth who have been adjudicated. It simply means that children in foster care should not be placed in detention programs. Unfortunately, this happened to several children placed out of state prior to 2020.*

- HB 3835 allows children to be placed in facilities that are not licensed by any health authority and that do not provide treatment. Instead, placements can simply be in a facility that provides "services."

  Why this matters: ODHS argues that this bill is about getting kids access to high quality, specialized services. Nothing in this bill requires that any out of state placement provide such mental health services. In fact, the measure

waives existing requirements to ensure any congregate care placement of a child in foster care is aligned with the child's needs. (Reference: Page 84, lines 1-4).

- Out of state placements under this measure could be made through a contract with a local CCO instead of through the Oregon Health Authority. (Reference: Page 80, lines 24-25)

  Why this matters: CCOs operate under our 1115 waiver, which allows them to approve services that are not otherwise eligible for Medicaid reimbursement. If a CCO is approving a placement, a child could be sent to a non-clinical placement that is not enrolled with any state Medicaid program. In other words, there is no provision to ensure children are only placed in licensed or certified health care facilities that deliver treatment provided by licensed health professionals.

  In addition, the bill requires that contracts be established with CCOs to establish "basic standards for quality assurance and oversight" of out of state placements. It is not clear if it is intended that the CCOs will take on the responsibility of monitoring these placements or if it will be a shared responsibility with ODHS. There is also no guidance as to what constitutes "basic standards."

- The definition of "medically necessary and medically appropriate" is not tied to the state Medicaid plan. Instead, these can be non-medical services that are included in the state's "program providing benefits for children and young adults with special health needs." (Page 78 lines 18-19 and Page 79, lines 1-4).

"(iii) The child-caring agency provides the types of treatment or services that are medically necessary and medically appropriate for the child, consistent with rules adopted by the Oregon Health Authority for the administration of the authority's program providing benefits for children and young adults with special health needs;

This section applies ONLY to placement of a child already residing out of state in a foster or pre-adoptive placement.

"(iii) The services or treatment are consistent with rules adopted by the Oregon Health Authority for the administration of the authority's program providing benefits for children and young adults with special health needs.

This section applies ONLY to placements in neighboring states of Oregon that are nearest to the child.

Why this matters: Oregon has a waiver that allows Medicaid funding for services under the "rehabilitation option." These services are called Behavioral Rehabilitation Services. BRS services are not treatment. They are not therapy. They are not required to be provided at licensed health facilities or by licensed health professionals. Even though this meets "medically necessary and medically appropriate" definitions for waivered non-medical services, it does not ensure children are only sent out of state for high quality, evidence-based treatment services provided by licensed health professionals. Instead, this language could allow youth to be sent to out of state behavioral modification programs.

- Nothing in HB 3835 requires that these placements actually be funded by Medicaid. Although there are many references to "medically appropriate" or "medically necessary," the proposed law does not require these facilities to be enrolled providers that are eligible to receive Medicaid payments.

  Why this matters: Between 2018 and early 2020, Oregon spent nearly $28 million in General Fund to pay for out of state placements. In most cases, ODHS believed that the Medicaid payments would be coming. However, none of the providers were eligible to be paid by Medicaid as they failed to meet federal standards. As a result, the Legislature had to backfill the Child Welfare budget to make up for the tens of millions of dollars spent on out of state placements. This spending was never discussed or approved by the Legislature prior to ODHS entering contracts with these facilities.

  In addition to the financial risk, the regulation of these entities is opaque. What limited protection there is comes from CMS regulations. These regulations do not apply if the program does not meet CMS standards.

  Finally, CMS has resource management tools that ensure children aren't admitted to facilities for longer than they need to be. When placements are paid for with general fund only, the length of stay increases even if it is not appropriate for the child.

- Although HB 3835 requires that licensing staff "verify" that a placement is safe through an in-person inspection, it does not give the licensing staff authority to deny approval to a facility. (Clarification: Page 84, lines 14-20)

Why this matters: This leaves Child Welfare in control of whether children are sent to programs that do not meet Oregon standards and whether they are removed from those programs if there are problems. Although Child Welfare officials are dedicated to the well-being of children, they are also responsible for finding placements for all children which sometimes leads to decisions being influenced by capacity- or lack thereof. This was the case in 2018-2020 when children were harmed. Some examples:

- *A 12-year-old endured dozens of lengthy prone and supine restraints at a facility that was located inside a refurbished office park (Northern Illinois Academy). In the summer of 2019, ODHS was notified that staff punched the girl in the face. She disclosed to an ODHS licensing employee that program staff regularly put hands on her and put her in rooms that had been peed on. She also disclosed that one staff member punched her in the face. In August, she was sent to the hospital after a staff member's leg "made contact with" her face leaving her visibly injured on the day Director Pakseresht visited the facility regarding complaints I made following my own unannounced visit to the facility. At that visit I witnessed unsanitary conditions, cruel treatment of children, inappropriate restraints and general disarray. Despite multiple injuries and frequent dangerous restraints, this child was not removed from the facility until December 20. This was only after CMS conducted an unannounced visit (with my prompting) that resulted in an immediate jeopardy finding against the facility.*
- *A teenaged boy was left in an Idaho facility (Mountain Home) for two years after a local CASA raised concerns with ODHS that he was being sexually abused by staff. That CASA also informed ODHS that he had learned Idaho juvenile authorities would not place children in the program due to concerns about safety and quality. The child was not removed until years later- after I relayed concerns provided to me by whistleblowers in the facility. At an unannounced visit following my complaint, ODHS staff found that kids were being regularly restrained, given inadequate access to food and that the allegations made two years prior were true and had been unaddressed. Licensing refused to allow the children to stay, which is the only reason those kids came home. He was among the very last children to be returned from Out of State facilities in 2020. The longest length of stay at this facility was 772 days.*

- HB 3835 relies on the judgement and transparency of other state licensing programs. (Page 79, line 11)

> **"(d) The department may not place a child in an out-of-state placement under this subsection unless the department has verified that the placement is in good standing with the licensing authority in the state in which the placement will provide services or treatment to the child.**

Why this matters: The US Inspector General recently released a report about the failure and inability of state agencies to monitor the safety of residential programs. In addition, many states allow these facilities to operate under "deemed" status. In these cases, if a program is accredited by a national agency the state licensing agency is not required to visit or monitor the program. In these cases, a facility may receive a licensing visit only once every five years. Further, every facility at which our children were injured previously were "in good standing" with their own state licensing entity. This was true even for a facility that had an "immediate jeopardy" finding from CMS (Northern Illinois Academy).

- HB 3835 prohibits children with IDD from being sent to out of state intermediate care facilities, but does not protect children with IDD from being sent to locked, segregated non-HCBS compliant congregate care facilities. *(Reference: Page 85, lines 4-5).*

Why this matters: ODHS argues that provisions in the -A13 amendment protect children with IDD from being sent to institutional placements, contrary to Oregon's longstanding policy of not using institutions for children with IDD. However, the -A13 only prevents placement in an "intermediate care facility" and allows ODHS to define that term. From 2017-2020, Child Welfare sent kids with IDD to locked, segregated facilities that were not classified as ICFs. The -A13 would not prevent the Department from doing that again.

- HB 3835 allows any person designated by the Child Welfare Director or Medicaid Director to approve an out of state placement. *(Reference: Page 79, lines 21-27)*

> **"(f) All approvals of the exceptions in this subsection must be made by the director of the division of the department that administers the state child welfare program or the director's designee. In addition, the exceptions under paragraph (a)(A), (C) and (E) of this subsection must also be approved by the director of the division of the authority that administers the state medical assistance program or the director's designee.**

Why this matters: ODHS assures the Legislature that these placements must be approved by the Director of Child Welfare and the Director of the State Medicaid agency. However, the language in the bill does not do that. Instead, it allows the directors to delegate that authority to any person of their choosing. The bill doesn't require the active involvement in decision making by either of the directors. Nothing in the A13 amendment would prevent a local caseworker, an office staff person or a CCO from approving the out of state placement absent any discussion with the directors.

The A8 amendment also does not require a single designee. This was a problem when children were placed out of state prior to 2020. Because there was no clear individual with the responsibility for approving or monitoring the placements, there was a lack of clarity about whether complaints were investigated, incident reports received or follow-up conducted. This was identified as a weakness by A&M.

- HB 3835 requires ODHS to ensure each child placed out of state understands their rights under the Foster Child Bill of Rights. (*Reference: Page 80, lines 25-28*)

*Why this matters: The language in the bill only requires the child be told about what rights they would have **in Oregon** and how to report a violation of those rights **to Oregon**. Although the A13 amendments require ODHS to ensure that the rights in the out of state placement are "in significant alignment" with the rights they would have in Oregon, it does not require that they be the same. How will children understand what rights they can expect to have upheld in the out-of-state placement?*

In addition, the bill explicitly absolves ODHS of the requirement to ensure that those child's rights are upheld once the child crosses state lines (Reference: Page 75, lines 10-13).

"(J) The child-caring agency must meet all of the program, discipline, behavior support, supervision and child rights requirements adopted by the department by rule for behavioral rehabilitation services provided in this state.

ODHS is explicitly relieved of this mandate through HB 3835.

The A13 amendments also relieve ODHS of any duty to license or enter a contract with the facilities, the agency has no authority to enforce or uphold the rights of children in another state. The reason that Oregon adopted both contract AND statute was to resolve this issue. The contract placed the facilities under a contractual obligation to comply with Oregon standards. The licensure gave ODHS the authority to regulate, monitor, investigate and enforce compliance with those standards.

- HB 3835 makes it easier to place a child in an out of state placement than to make a placement in Oregon. *(Reference: Page 77, line 23).*

  Why this matters: Oregon law requires that a child be placed in a congregate care setting only if it meets a handful of specific exceptions OR is a qualified residential treatment program (QRTP). Placement in a QRTP requires an assessment by a trained or licensed clinician that is not an employee of ODHS, OHA or the facility. That individual must determine that the child's needs cannot be met in a family foster home, and provide the child's planning team and the court with a report that explains why the child is eligible for the QRTP. The court then needs to approve the placement. Consistent with federal law, there are strict time limits for the evaluation and for reapproval for continued placement.

  HB 3835 waives the current requirement that any out of state placement be a QRTP unless the placement is a PRTF. (Reference: Page 77, line 23). This would allow ODHS to unilaterally place a child in an out of state, non-QRTP facility without an evaluation and without prior approval of the court. Nothing in HB 3835 with the A13 amendment requires consultation with any licensed

practitioner that is independent from ODHS, OHA or the facility to which the child is being sent.

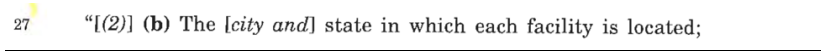
- ODHS argues that HB 3835 is needed to give Child Welfare youth with acute mental health needs access to highly specialized treatment that is only available in other states. However, HB 3835 establishes **no requirement** that any program be licensed as a health care facility, that any services be provided by licensed health practitioners or that any of the facilities be directed by a physician.

- To the contrary, HB 3835 with the -13 amendment would allow ODHS to send a child to an out of state group home **with no medical or mental health staffing** simply because there is no congregate care placement available in Oregon. This is regardless of whether any clinician has identified a treatment need for a child. Child Welfare could also send kids out of state when the reason they can't access a congregate care placement is that the assessor or Court found that the child did not require a QRTP level of care.

- HB 3835 appears to provide additional exemptions to Out of State Placement requirements by allowing any of the placements described in Section 37, including placement in adult settings or settings designed for adjudicated youth, to be exempted from any of the contract and oversight requirements established in ORS 418.321. (*Reference: Section 38*)

  Why this matters: Advocates have been clear they are seeking a very narrow exception to allow children to be placed out of state in extraordinary situations involving the need for specialized treatment. However, the actual language of the bill doesn't do that. It allows a placement in any type of congregate care facility. Because of amendments to Sections 37 and 38, it appears this broad authority extends to placements in congregate care programs for adults and adult foster or proctor home placements.

- HB 3835 narrows the information available to the public regarding out of state placements via the ODHS website. *(Reference: Page 86, line 27 and Page 87 lines, 9-15.)*


27 "[(2)] **(b)** The [*city and*] state in which each facility is located;

"[*(10) Demographic information about all children or wards the department currently has placed in out-of-state facilities, including but not limited to age, gender or gender identity, race, ethnicity, tribal status and, if disclosed by the child or ward, sexual orientation;*]

"[*(11) The number of children or wards the department currently has placed in out-of-state facilities who have autism, intellectual disabilities or developmental disabilities; and*]

Why this matters: When children were placed out of state from 2017-2020, it was hidden from the Legislature and the public. Once a reporter uncovered these placements, the Department refused to disclose the name of facilities or where the facilities were located. ODHS also was not tracking and would not disclose the demographics of the children sent away. It was only by gathering this information that advocates and legislators were able to uncover the abuse these youth were experiencing and initiate the process to removed them from these facilities.

HB 3835 removes the requirement that ODHS disclose the cities in which the out of state facilities are located, the demographic information about the children placed and information about the number of children with autism and IDD placed out of state.

It is worth noting that when ODHS sent a child to an out of state placement last summer in defiance of state law, it refused to disclose the name of the facility or even the state in which it was located.

Secure transportation

Relevant Sections: 8, 18, 24, 25, 26

Background: In 2017, the Oregon Legislature passed SB 846 (Gelser, Frederick, Manning Jr., Thatcher) that limited the use of chains, shackles, handcuffs and other hard restraints by agents and contractors of ODHS and OHA. This was in response to issues with shackling of children in court as well as to issues regarding children being transported between ODHS placements in hard restraints, including belly chains and ankle shackles. In 2021, Oregon became the first state to regulate nonmedical secure transportation providers. These are companies that can be hired to take kids from their beds in the middle of the night and take them to distant wilderness programs or therapeutic boarding schools. The trauma imposed lasts for decades. Other states have now used Oregon's legislation as a model.

HB 3835 loosens these standards in several critical ways:

- HB 3835 repeals the 2017 language prohibiting the use of hard restraints on children in foster care. (Reference*: Page 28, lines 8-13*)

> "[*(a)*] **(3)** Instruments of physical restraint, such as handcuffs, chains, irons, straitjackets, cloth restraints, leather restraints, plastic restraints and other similar items, may not be used **during transportation of a youth, adjudicated youth or young person** unless:
>
> "[*(2) This section applies to all circumstances of transportation of a ward or child by the Department of Human Services, the Oregon Health Authority or an agent of the department or authority, including but not limited to transportation between placements with child-caring agencies, foster homes, shelter care facilities, treatment and residential facilities or any other type of placement destination for a ward or child in the custody of the Department of Human Services.*]

  Why this matters:
  - *This removes the requirement to develop a safety plan for the use of restraint during transportation between ODHS placements. (Page 28, lines 14-16)*

- *HB 3835 will allow any **entity except for ODHS** to contract with providers that use mechanical restraints such as "handcuffs, chains, irons, straitjackets, cloth restraints, leather restraints, plastic restraints and other similar items" for children in foster care who are not being transported to a detention facility, a youth correction facility, secure hospital or secure intensive community inpatient facility. (Page 27, lines 25-30).*
- *This section of law has been violated by ODHS repeatedly since its passage in 2017. In one particularly egregious case, a youth was taken from Portland to Iowa in handcuffs and ankle chains--- including while moving through the airport. This was not transportation to a secure facility or detention center and the youth had no history of harming others.*
- *In 2023, ODHS entered contracts with secure transportation providers that proactively authorized the use of handcuffs on children in foster care which was strictly prohibited by this law and by SB 710.*

- *HB 3835 weakens the nonmedical secure transportation regulations established in 2021 and refined in 2023.*
  - *The elimination of reporting requirements for prohibited restraints increases the probability of kids being subject to mechanical restraints and other prohibited restraints while in the care of secure transport companies. In these situations, the children are alone with the transporters. There are no other witnesses.*
  - *Any issues related to community confusion regarding the difference between secure medical transportation and secure nonmedical transportation can be easily address by adding the words "medical" and "nonmedical" to the statute. There is no need to amend the language from SB 846 (2017) to address the issue of nonmedical secure transportation of foster children.*

Developmental Disability Services

Relevant Sections: 1, 10, 11,12, 13, 14, 15, 17, 21, 22, 23, 26, 27, 36, 37, 41

Background: Under current law, ODDS licenses, certifies or endorses residential and foster care settings for children and adults with ID/DD. The services provided to children are not regulated by Child Welfare and many of the children receiving these services are not in the legal custody of ODHS. Under current law, children and adults are served in separate settings. All services offered through ODDS are voluntary.

- HB 3835 would allow child welfare to place children in adult developmental disability settings and would exempt these settings from being regulated by child welfare even if children were placed in these settings. *(References: Page 46, lines 1-4 and Page 84, lines 19-25)*.

> **"(a) Residential facilities or foster care homes certified or licensed by the department under ORS 443.400 to 443.455, 443.705 to 443.825, 443.830 and 443.835 for children or adults receiving developmental disability services;**
>
> ---
>
> **"(4) Notwithstanding subsection (2) or (3) of this section, the department may place a child or ward in a congregate care residential setting that is not a child-caring agency or a qualified residential treatment program if the congregate care residential setting is an adult setting licensed by the department or authority and it provides services or treatment that are medically necessary and medically appropriate for the child or ward.**

Why this matters: The referenced statutes seem to allow children to be placed in residential care facilities (i.e., assisted living facilities) as well. In addition, even though children would be placed in adult settings, the criminal abuse backgrounds of the adults with whom they share a home would not be checked. That's because HB 3835 exempts any person over the age of 18 that was placed in a setting by ODHS from criminal background check requirements. This creates a significant safety risk.

In addition, this poses a cultural problem. People with IDD have a long history of being infantilized with many people seeing no difference between an adult with IDD and a child. Blending adults and children in the same residential settings is insulting to people with IDD and disrespects the differences in needs and preferences across the lifespan.

- HB 3835 would allow Child Welfare to start using ODDS providers for non-disabled children by allowing LLCs to be licensed as CCAs. *(Reference: Page 47, lines 16-18)*

Why this matters: The ODDS system was built from the ground up, with people with IDD and their families recruiting and building most of the services system. Thousands of children and adults receive support from companies that provide 24-hour residential services or in home supports. Most people recognize these as the agencies that provide DSPs (direct support professionals) to children and adults with IDD to support their lives in the community. Like most sectors, the DD system struggles with capacity and many children and adults with IDD are not able to find enough workers to use their available hours.

Child Welfare has long sought to use these service providers to support children without intellectual or developmental disabilities. Many are organized as LLCs (limited liability companies) and Oregon law prohibits LLCs from operating child caring agencies in this state. HB 3835 would remove this requirement, allowing Child Welfare to poach DSPs from the workforce built by the IDD community for children that don't have intellectual or developmental disabilities. (Page 47, lines 16-18) In the case of children with IDD, this could force more children out of family homes and into foster care because they are not able to access the supports they need.

It is worth noting that this proposed shift comes at a time when capacity to fulfill the service plans of children with IDD is already constrained. This is compounded by the recent announcement that ODHS is implementing a freeze on any new ODDS provider applications.

ODHS Accountability and Authority

Relevant Sections: 1, 15, 17, 27, 28, 31, 33, 36, 36a, 36b, 37, 47

Under current law, ODHS is obligated to take immediate action when it becomes aware of problems within a child caring agency. HB 3835 narrows the scope of this obligation and shifts the responsibility from the DHS Director to front line staff in some circumstances.

Obligation to investigate child abuse

- HB 3835 relieves ODHS of the obligation to investigate abuse of children in care in a variety of circumstances. *(References: Page 58, lines 22-23; Page 6 line 27 through Page 7 line 2)*

> "418.258. (1) When the Department of Human Services [*becomes aware of a report of suspected child abuse of a child in care, whether in the form of an allegation, complaint or formal report made under this section, and whether made directly to the Director of Human Services, the department or an employee of the department, to the centralized child abuse reporting system described in ORS 418.190, through the mandatory abuse reporting process set forth in ORS 419B.005 to 419B.050 or otherwise*] **receives, through the centralized child abuse reporting system described in ORS 418.190, a report of abuse of a child in care by an employee, operator, contractor, agent or volunteer of a child-caring agency, developmental disabilities residential facility, adjudicated youth foster home, certified foster home or proctor foster home or any other person responsible for the provision of care or services to the child in care**, the department shall immediately:

Why this matters: Under current law, ODHS is required to take a series of actions when it becomes aware by any means that there is suspicion that a child in care may be experiencing abuse, regardless of who is perpetrating the abuse. This includes notifying relevant parties and immediately initiating an investigation to determine whether a child in care was abused.

If HB 3835 were to become law, ODHS would only be required to investigate the allegations if it learned about the alleged abuse through the child abuse hotline. This means that if the Director of ODHS learned about potential abuse through a news article, a legislative hearing, a question from a neighbor, etc. he would be relieved of the obligation to investigate. In other words, ODHS would have no obligation to act simply because of HOW the agency became aware of the information—no matter how severe the alleged abuse is.

HB 3835 further limits the obligation by only requiring abuse of a child in care be investigated if the allegation is against an employee, operator, contractor, agent or volunteer of a provider or a person directly responsible for providing care and services to the child. This means that if ODHS becomes aware of an allegation that a child placed in an adult setting is being sexually or physically abused by one of the adult clients, ODHS will have no obligation to

investigate if an agency official learns about the allegation from any source other than the hotline. Even if they did investigate, they would have no authority to substantiate abuse against that adult client because they are not included in the definition of "individual." (References: Page 6 line 27 through page 7 line 2)

Obligation to consider risk to a child when entity is under state or federal investigation

HB 3835 eliminates the requirement for the ODHS Director to investigate the circumstances surrounding a state, federal or law enforcement investigation of a CCA and minimizes the obligation of the Director to ensure child safety. *(References: Page 52, lines 24 and 28; Page 53, lines 2-10)*

Why this matters: Under current law, if the ODHS Director or his designee becomes aware through any means that a CCA or an owner, operator or employee of a CCA is the subject of an investigation by a state, federal or law enforcement agency, the director is required to immediately ensure an investigation takes place to determine whether there is a risk to children in care. If the investigation leads to the conclusion that there is a threat to a child or a child is at risk, the Director is required to take immediate action to ensure the safety of children. Failure to meet these obligations is official misconduct in the second degree. Ultimate responsibility lies with the Director.

HB 3835 relaxes these obligations. The Director would only be required to "assess" the circumstances rather than "investigate." (Page 52, line 24 and Page 53, line 2) It is unclear what is involved in an assessment and if that requires anything more than reading a communication or thinking through the allegations without any independent inquiry.

HB 3835 also raises the threshold at which the Director must act to ensure child safety. Current law requires action when there is "risk" or a "threat" to a child. (Page 52, line 26-27). HB 3835 only requires action if there is a condition that "serious endangers the health, safety or welfare" of a child in the care of the agency. (Page 53, line 4-5)

- HB 3835 shifts ultimate responsibility for child safety from Director of ODHS to front-line licensing staff. *(References: Page 70, lines 4 and lines 6-7)*

  Why this matters: Current law requires that any ODHS employee that becomes aware of a licensing or certification issue with a provider immediately inform the ODHS director or the director's designee about the concern. The Director (or designee) is then obligated to take immediate action to investigate and take appropriate actions to ensure child safety.

  HB 3835 removes this obligation from the Director and shifts it to the employes of the Licensing Division. This relieves the Director from accountability if no investigation is completed or appropriate actions are not taken to ensure the child's safety. Under current law, if these things do not occur, the Director can be charged with official misconduct in the second degree. HB 3835 shifts this risk to the staff of the licensing division.

SOCAC Scope and Authority

Relevant Sections: 36a, 36b, 39, 47

- HB 3835 prescribes the following new authorities and duties for the SOCAC:
  - Convene an advisory committee to consider approved training programs for the use of restraint and seclusion (Page 23, beginning on line 18)
  - Receive direct notification from the Department of Human Services prior to the placement of a child out of state, or as soon as practicable after he placement. (Page 81, line 16-19)
  - Review and analyze quarterly narrative reports from ODHS justifying the out of state placements of youth or placement of youth in otherwise prohibited congregate care placements or adult placement settings. (Page 81 line 28 through Page 82 line 6)
  - Write and submit a report to the Legislature twice each year summarizing the Department's quarterly reports, and providing the SOCAC's analysis of trends over the prior four quarters and analysis of whether the placements are appropriate. (Page 82, line 7-15)
  - Hold quarterly meetings in executive session for the purpose of reviewing the quarterly reports from the Department. (Page 82, lines 19-20)

- Receive quarterly reports from ODHS regarding why out of state placements were determined to be in the best interests of each child or ward placed out of state. (Page 87, lines 18-24)
- Study the implementation of HB 3835 in its entirety and analyze the effects of implementation. (Section 47, Page 92-93)
- Provide two comprehensive reports to the Legislature in September 2026 and September 2027 regarding its analysis of implementation of HB 3835. (Page 93, lines 8-13)
- Provide recommendations to the legislature for legislation in September 2026 and September 2027. (Page 93, lines 9-10)

Why this matters: HB 3835 substantially expands the scope and authority of the System of Care Advisory Council. Despite being an advisory body, whose members are not confirmed by the Senate, the authorities and access designated to this advisory board far exceed the authorities and access provided to similar advisory committees across the state. For instance, the Oregon Council on Developmental Disabilities is federally mandated, its members are Senate confirmed, its membership is primarily comprised of people with IDD and HB 3835 substantially impacts the population it serves. However, the OCDD is not given any of the authorities given to the SOCAC under HB 3835. There is no other similarly situated advisory council that is provided authority to access exempt records, review them in executive session and substitute their judgement for legislative oversight.

The executive branch does not need legislation to allow it to share information with executive branch advisory committees. The executive branch also does not need legislation to ask an advisory committee to review information, study issues or make recommendations. Including such provisions in legislation only serves to generate additional general fund appropriations to the SOCAC to carry out these activities.

Legislative Oversight and Public Transparency

Relevant Sections: 15, 17, 30, 32, 36a, 36b, 39, 47

Current law requires ODHS to publish quarterly reports about substantiated allegations of abuse of children in care and the use of restraint and seclusion with children in care. This

includes all substantiated findings of abuse and key information about the incident. (ORS 418.259)

- HB 3835 obscures key data. It removes including information about whether the abuse resulted in a reportable injury or sexual abuse. (*References: Page 66, lines 9-10)*
- HB 3835 also removes the requirement to report on any substantiated allegation of abuse in care that was committed by a person other than the entity licensed by ODHS. This will eliminate critical information about how frequently children are subjected to abuse by third parties that have access to them because of their status as a child in care. (*Reference: Page 65, beginning on line 22*)
- HB 3835 also relieves the Department of the requirement to report how many incidents of restraint or involuntary seclusion were reported in each quarter as potentially inappropriate. (*Reference: Page 67, lines 4-5*)
- HB 3835 does add some new provisions. That includes the number of incidents in which a prohibited restraint is used and the number of reports of licensing violations related to restraint and seclusion.

HB 3835 removes financial reporting requirements for any child caring agency that does not receive public funds. (Page 55, line 30)

> *Why this matters: Current law requires ODHS to receive annual audited financial reports from child caring agencies with annual revenues more than $1 million. This is because when a child caring agency becomes insolvent, it poses a severe risk to the children in its care. This occurred with Give us This Day. This requirement is already waived for adoption agencies, but this would expand that exemption to all programs that do not receive public funds and do not take custody of children. This would potentially include secure transport providers. If no regulatory entity is monitoring the audits of an adoption agency or secure transport company, fraud and trafficking of children might be detected too late and protections for children in private placements are weakened.*

ODHS states that out of state placements made subject to the provision of HB 3835 will be transparent and have rigorous oversight. **However, the bill only requires notifications be made to other executive branch entities.** This includes the foster care ombudsman that reports to the Director of ODHS (page 81, lines 9-11); the Governor; and the System of Care Advisory Council (SOCAC). The SOCAC is appointed by the Governor with no Senate

confirmation and includes multiple executive branch employees as its members. (Section 36b, beginning on page 81)

It is worth noting that SB 1113 (an alternative option to address the issues raised by HB 3835) would have required notification to the Children's Advocate, and companion legislation would have made the Children's Advocate independent from the Governor and ODHS. The A13 amendment narrowly requires notification to the Foster Care Ombudsman and carefully defines this as a position that is within ODHS. (Page 81, lines 9-11 and line 17). This ensures that if the Children's Advocate become sindependent, that Advocate will not receive these reports. Under existing ODHS practice, the Foster Care Ombudsman is not permitted to speak with the press without consent from ODHS and is not able to publish its reports and recommendations made to the Governor or ODHS. (*Reference: Testimony by and email from the Foster Care Ombudsman)*

Any information provided to the Legislature regarding out of state placements will first be filtered through the System of Care Advisory Council under HB 3835. Although SOCAC will receive immediate written notice of the placement and quarterly reports about the circumstances of each placement (page 81, lines 16-19), the Legislature would only receive summary reports from SOCAC. Not only would information be excluded from the report, the Legislature would receive it three months later than SOCAC. This makes it impossible for the Legislature to exercise its oversight duties in a timely fashion because they will not receive information regarding out of state placements for 6-9 months after they occur. (Page 81, line 28-29). In addition, HB 3835 exempts the information provided to the SOCAC from public disclosure and allows all discussion about out of state placements to be conducted in executive session. (Page 82, lines 16-20)

Finally, HB 3835 assigns the SOCAC, rather than the Legislature, the role of analyzing the executive branch's implementation of all sections of this measure. The SOCAC would then submit their report to the Legislature and be authorized to make further recommendations to the Legislature. (Page 82 lines 1-6 and Page 93 lines 9-10)

BRS Services and capacity

In materials provided to the Legislature, the SOCAC and ODHS make several assertions about why Child Welfare struggles to find placement for children that merit further consideration.

- Proponents of the bill state that there is a capacity crisis arising from an unwillingness of BRS providers to take on kids with aggressive behaviors due to fears of abuse investigations.
    - BRS programs are not mental health programs. In fact, OHA recently released a memo asking CCOs to stop requesting "urgent" authorizations for BRS Placements. **The memo states that children with aggressive behaviors, suicidality and other high needs do not meet the eligibility criteria for BRS services.** See Appendix 6: BRS)
    - BRS Rules explicitly prohibit placement of children with high needs in BRS programs.
    - Few BRS programs utilize restraint or involuntary seclusion. This was true even prior to passage of SB 710.
- Early in the process, proponents argued that Oregon was "bleeding" PRTF beds.
    - Oregon has more PRTF beds today than it has at any time in the past ten years, with additional beds scheduled to come online this year. In testimony to the Senate Early Childhood and Behavioral Health Committee earlier this session, Chelsea Holcomb of OHA stated that Oregon providers are eager to expand their services and out of state providers are also indicating plans to establish services in the state.

      Oregon's growth is unusual because nationwide, there is a significant decrease in the number of beds.

- The proponents also state that some specialized services for kids with complex needs, particularly those with aggressive behaviors, must be accessed out of state because they are not available in Oregon.
    - The border states of Washington, Nevada and Idaho all send children out of state every year. The explanation for this is that these states lack the types of specialized services needed for kids with complex needs, particularly those with aggressive behaviors. If there are enough high-quality residential services available in each of these states to meet the need of Oregon youth, why do these states (and so many others) need to send their own kids out of state?

- The preamble to HB 3835 states that Oregon is "49th in the nation for access to youth behavioral health care." In the executive summary, this is attributed to the Mental Health America Survey. The link in the executive summary no longer

works, but the 2024 rankings are online through this link, and tell a different story.

- Under its "Youth Ranking", Oregon is listed as number 49 out of 51. This ranking combines a variety of factors including youth experiencing a major depressive episode or substance use disorder over the past year and youth with a major depressive episode that did not receive mental health services. Breaking apart Oregon's rating is instructive and suggests that the overall low ranking is not due to lack of access to care, but with the prevalence of reported behavioral health challenges.
    - Oregon youth have the highest reported rate of a major depressive episode with 24.96% of youth reporting such an event (compared to 20.17% nationally)
    - Oregon youth also have the highest rate of youth reporting thoughts of suicide in the past year, at 15% (compared to 13.16% nationally).
    - Oregon weighs in at number 48 for youth SUD disorder, with 12.52% reporting this within the last year, compared to 8.95% nationally.
    - Despite these very high numbers, Oregon ranks #7 in the country for access to care. 44.7% of youth reported not receiving treatment for their mental health needs, compared to 56.10% nationally.
    - Oregon was in the middle of the pack (#24) for having private health insurance coverage that covers mental health with just 7.4% reporting their plans lack such coverage.
    - Of kids who received treatment, 54.6% said it helped, putting Oregon at number 40. 65% of youth nationwide found treatment to be helpful.
    - Oregon ranked second to last on the measure of youth flourishing, with only 54.4% of Oregon kids age 6-17 meeting these criteria. The three criteria youth must meet are being interested in learning new things, working to finish tasks they started and remaining calm and in control when faced with a challenge.

These data suggest that Oregon must look at how we can improve the quality of care youth are receiving and better support them to flourish across multiple settings.

Appendix 1: Abuse Definitions

Two Definitions of Abuse: How do they compare?

General Child Abuse (ORS 419b.005)	Abuse of a Child in Care (ORS 418.259)
Any assault, as defined in ORS chapter 163, of a child	
Any physical injury to a child that has been caused by other than accidental means, including any injury that appears to be at variance with the explanation given of the injury	**Any physical injury** to a child in care caused by other than accidental means, or that appears to be at variance with the explanation given of the injury.
Any **mental injury** to a child, which shall include only cruel or unconscionable acts or statements made, or threatened to be made, to a child if the acts, statements or threats result in severe harm to the child's psychological, cognitive, emotional or social well-being and functioning.	**Verbal abuse** means to threaten significant physical or emotional harm to a child in care through the use of derogatory or inappropriate names, insults, verbal assaults, profanity or ridicule; or harassment, coercion, threats, intimidation, humiliation, mental cruelty or inappropriate sexual comments.
Rape of a child, which includes but is not limited to rape, sodomy, unlawful sexual penetration and incest, as those acts are described in ORS chapter 163	**Sexual abuse** which means sexual harassment, sexual exploitation or inappropriate exposure to sexually explicit material or language; any sexual contact between a child in care and an employee of a child-caring agency, proctor foster home, certified foster home, developmental disabilities residential facility, caretaker or other person responsible for the provision of care or services to a child in care; any sexual contact between a person and a child in care that is unlawful under ORS chapter 163 and not subject to a defense under that chapter; or any sexual contact that is achieved through force, trickery, threat or coercion.
Sexual abuse, as described in ORS chapter 163	An act that constitutes a crime under ORS 163.375, 163.405, 163.411, 163.415, 163.425, 163.427, 163.465, 163.467, or 163.525

Sexual exploitation, including but not limited to: Contributing to the sexual delinquency of a minor, as defined in ORS chapter 163, an any other conduct that allows, employes, authorizes, permits, induces or encourages a child to engage in the performing for people to observe or the photographing, filming, tape recording or other exhibition that, in whole or in part, depicts sexual conduct or contact, as defined in ORS 177.002 or described in ORS 419B.020 or that is designed to serve educational or other legitimate purposes;	
Allowing, permitting, encouraging or hiring a child to engage in prostitution as described in ORS 167.007 or a commercial sex act as defined in ORS 163.266, to purchase sex with a minor as described in ORS 163.413 or to engage in commercial sexual solicitation as described in ORS 167.008	
Negligent treatment or maltreatment of a child, including but not limited to the failure to provide adequate food, clothing, shelter or medical care that is likely to endanger the health or welfare of the child.	**Neglect** of a child in care which includes the failure to provide the care, supervision or services necessary to maintain the physical and mental health of a child in care; or the failure of a child-caring agency, proctor foster home, certified foster home, developmental disabilities residential facility, caretaker or other person to make a reasonable effort to protect a child in care from abuse.
Threatened harm to a child, which means subjecting a child to a substantial risk of harm to the child's health or welfare.	
Buying or selling a person under 18 years of age as described in ORS 163.537	
Permitting a person under 18 years of age to **enter or remain in or upon**	

premises where methamphetamines are being manufactured	
Unlawful exposure to a controlled substance, as defined in ORS 475.005 or to the **unlawful manufacturing of a cannabinoid extract**, as defined in ORS 475C.009, that subjects a child to a substantial risk of harm to the child's health or safety.	
The **restraint or seclusion of a child in violation** of ORS 339.285, 339.288, 229.291, 339.303 or 339.308	The use of **restraint or involuntary seclusion in violation** of ORS 418.521 or ORS 418.523
The **infliction of corporal punishment** on a child in violation of ORS 330.250 (9)	**Willful infliction of physical pain** or injury upon a child in care
	Abandonment, including desertion or willful forsaking of a child in care or the withdrawal or neglect of duties and obligations owed a child in care by a child-caring agency, caretaker, certified foster home, developmental disabilities residential facility or other person.
	Financial exploitation, which means wrongfully taking the assets, funding or property belonging to or intended for the use of a child in care; alarming a child in care by conveying a threat to wrongful take or appropriate moneys or property of the child in care if the child would reasonable believe that the threat conveyed would be carried out; misappropriating, misusing or transferring without authorization any moneys from any account held jointly or singly by a child in care; or failing to use the income or assets of a child in care effectively for the support and maintenance of the child in care.

Appendix 2: Prohibited Restraints

ORS 418.521 (2) Except as provided in ORS 418.523, the use of the following types of restraint of a child in care are prohibited:

a. Chemical restraint.
b. Mechanical restraint.
c. Prone restraint.
d. Supine restraint.*
e. 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 in care's movement.*
f. Any restraint that places, or creates a risk of placing, pressure on a child in care's neck or throat.
g. Any restraint that places, or creates a risk of placing, pressure on a child in care's mouth.*
h. Any restraint that impedes, or creates a risk of impeding, a child in care's breathing.
i. Any restraint that involves the intentional placement of any object or a hand, knee, foot or elbow on a child in care's neck, throat, genitals or other intimate parts.
j. Any restraint that causes pressure to be placed, or creates a risk of causing pressure to be placed, on a child in care's stomach, chest, joints, throat or back by a knee, foot or elbow.
k. Any other action, the primary purpose of which is to inflict pain.

Exceptions (ORS 418.253):

- *Supine restraint and restraints that use a wall, floor or solid object may be used in the SCIP (Parry Center) and the SAIP (Farm Home).*
- *A restraint that uses a wall, floor or solid object may be used in any setting when necessary to gain control of a weapon.*
- *Pressure may be placed on the mouth as part of a restraint if necessary to extract a body part from a bite.*

Appendix 3:

Out of State contract requirements waived by HB 3835

- At the time the contract is executed, the child-caring agency must provide the department with a current list of every entity for which the child-caring agency is providing placement services.

Why this is important: This allows ODHS to confirm the quality of services with other entities contracting for services. This is important because often these facilities serve very few, if any, children that live in the state in which the facility is located. This also ensures that ODHS is aware of the full range of services provided and the nature of the population of youth with whom the Oregon child will be placed.

- No later than 15 days after accepting placement of a child from a new entity, the child-caring agency must notify the department in writing of the child-caring agency's association with the new entity. The notice must include the name and contact information of the new entity and the name and contact information of an individual associated with the new entity.

Why this is important: This is important for the same reasons listed above. This is also consistent with recommendations from the GAO and federal legislation to improve coordination and communication between states regarding the oversight of child caring agencies.

- The child-caring agency must make mandatory reports of child abuse, as defined in ORS 418.257 and 419B.005, involving Oregon children both to the centralized child abuse reporting system described in ORS 418.190 and as required under the laws of the state in which the child-caring agency is located.

Why this is important: Without this requirement, Oregon children would be subject to the definitions and reporting requirements in the other states. This also ensures children have the same protections out of state that they have in state. Finally, this ensures that Oregon is notified every time an Oregon child is the subject of a report of suspected child abuse.

- The child-caring agency must allow the department full access to the child-caring agency's facilities, residents, records and personnel as necessary for the department to conduct child abuse investigations and licensing activities or investigations.

Why this is important: Oregon law requires this of Oregon child caring agencies. However, Oregon law can't be enforced in other states. That is why this must be in the contract.

- The child-caring agency must notify the department in writing no later than three business days after any state determines that an allegation of child abuse or a license violation involving the child-caring agency is founded, regardless of whether the child abuse or violation involves an Oregon child.

Why this is important: It is important for Oregon licensing to be aware of incidents occurring that could impact child safety or the entities standing with the licensing entity of its state.

- The child-caring agency must notify the department in writing no later than three business days after the child-caring agency receives notice from any other state imposing a restriction on placement of children with the child-caring agency, suspending or revoking the child-caring agency's license with that state or indicating the state's intent to suspend or revoke the child-caring agency's license with that state.

Why this is important: This is important to have a complete understanding of the operations of the facility and its standing with all entities by which it is licensed. Oregon was not the first state to require licensing of out of state facilities for kids in care. Access to the records from other states, including California, would have helped Oregon officials recognize the dangers in Sequel and Acadia facilities much earlier.

- The child-caring agency must notify the department immediately, verbally and in writing:
    - Any time a child from any state who is in the care of the child-caring agency dies, is sexually assaulted or suffers serious physical injury; or
    - When the child-caring agency becomes aware of any criminal investigation, arrest or criminal charges involving an agency staff member if the alleged offense involved a child or could have reasonably posed a risk to the health, safety or welfare of a child.

Why this is important: ODHS would have this information from any facility in Oregon and needs this information regarding facilities housing children in far away places as well.

- Except with respect to protected information described in ORS 418.256 (5), the child-caring agency may not ask or require an employee or volunteer to sign a nondisclosure or other agreement prohibiting the employee or volunteer from the good faith disclosure of information concerning the abuse or mistreatment of a child who is in the care of the child-caring agency,

violations of licensing or certification requirements, criminal activity at the child-caring agency, violations of state or federal laws or any practice that threatens the health and safety of a child in the care of the child-caring agency.

Why this is important: This ensures that the same non-disclosure requirements that apply in state apply out of state. Because Oregon cannot enforce Oregon law in other states, this must be in the contract.

- The child-caring agency must ensure staffing ratio and staff training and education requirements that meet, at a minimum, the standards set by the department by rule for intensive behavioral support services.

Why this is important: This provision was added because when ODHS sent children out of state from 2017-2020, it told the Legislature and public that these were highly specialized facilities that offered a level of care unavailable in Oregon. This provision in the contract ensures that these facilities at least meet the standards of an Oregon BRS program. (Note: A BRS Program is not a treatment program)

- The child-caring agency must meet all the program, discipline, behavior support, supervision and child rights requirements adopted by the department by rule for behavioral rehabilitation services provided in this state.

Why this is important: The Legislature determined that all children in foster care should have the same rights and protections, regardless of whether they were served in state or out of state. Because Oregon laws can't be enforced in other states, this needs to be in the contract.

- The child-caring agency may not practice conversion therapy, as defined in ORS 675.850.

Why this is important: This is Oregon law that applies to all child-caring agencies in Oregon. Because Oregon laws can't be enforced in other states, this needs to be in the contract.

- The child-caring agency must identify a child by the child's preferred name and pronouns and may not implement a dress code that prohibits or requires clothing on the basis of biological sex.

Why this is important: This is Oregon law that applies to all child-caring agencies in Oregon. Because Oregon laws can't be enforced in other states, this needs to be in the contract.

- Genetic testing, including testing for psychopharmacological purposes, must be approved by a court and may not be included as a standing order for a child in care.

Why this is important: This was an unanticipated issue when children were previously sent out of state. Some states allow such testing without a court order and without explicit informed consent from the guardian. That is why this must be in the contract.

- Neither the child-caring agency nor its contractors or volunteers may use chemical or mechanical restraints on a child, including during secure transport.

Why this is important: Although the use of chemical and mechanical restraint is prohibited in Oregon law, Oregon cannot enforce its laws in other states. That is why this must be included in the contract.

- The child-caring agency must ensure that the use of any psychotropic medications for a child placed with the child-caring agency by the department is in compliance with ORS 418.517 and any rules regarding psychotropic medications adopted by the department.

Why this is important: This is Oregon law that applies to all child-caring agencies in Oregon. Because Oregon laws can't be enforced in other states, this needs to be in the contract.

Appendix 4: Restraint Training Programs

Oregon DHS authorizes the use of 3 training programs:

- Crisis Prevention Institute (CPI)
- Mandt
- Oregon Intervention System (OIS)
-

The Oregon Department of Education is the entity responsible for approving restraint training programs for Oregon's schools and there is no limitation placed on the number of programs they can authorize. Their posted list includes information about alignment with Oregon law. CPI requires no modifications for compliance with Oregon law, and MANDT simply requires that their training for use of mechanical restraint and injections in medical settings is not taught.

Pro-Act and SafetyCare both require significant modifications to the primary, hands on curriculum. If utilized in Oregon, these programs could lead to training that is not aligned with Oregon standards and that could lead to the imposition of prohibited restraints. This would put children at risk of injury and adults at risk of founded allegations of abuse.

Every Student Belongs: Preventing Restraint & Seclusion in Oregon

Restraint and seclusion are non-educational, reactive strategies utilized to mitigate the risk of substantial physical harm or bodily injury when other less restrictive interventions have failed to deescalate the situation. While restraint and seclusion are allowable under Oregon law in limited circumstances, the use of these strategies carries many associated risks. Appropriate training is essential to maintain student safety.

The following training programs are approved by the Oregon Department of Education (ODE) under OAR 581-021-0563. More information is located on ODE's Preventing Restraint and Seclusion website.

ODE Approved Training Programs for Preventing Restraint and Seclusion	
The Crisis Prevention Institute (CPI)	CPI's 's Nonviolent Crisis Intervention (NCI) is approved as published nationally. There are no Oregon-specific modifications needed for the NCI training program.
The MANDT System	MANDT is approved with the following modifications to their national curriculum to ensure compliance with Oregon law: Positioning for mechanical restraints and holding for injections are not approved for use.
Pro-ACT	Pro-ACT is approved with the following modifications to their national curriculum to ensure compliance with Oregon law: Supine holds, Front-facing wall-assisted, mechanical and chemical restraints are not approved for use.
Safety Care	Safety Care is approved with the following modifications to their national curriculum to ensure compliance with Oregon law: The Side Stability hold, Supine holds and Safety With Mats are not approved for use. Safety Care Blocking Pad Procedures are approved for use in Oregon.
Ukeru Systems	Ukeru is approved as published nationally. There are no Oregon-specific modifications needed for this training program.

Safety First - For use in Early Intervention/Early Childhood Special Education Programs Only. ODE is working with providers to phase out this program.

Appendix 5: Josie's Story

This timeline describes the experience of one Oregon child placed out of state in 2019. She arrived at Kingston on January 29, 2019.

Kingston Academy, January 2019

February 5, 2019
(Josie's 7th Day)

POLITICS

Oregon Ships Foster Care Children To Other States — And The Number Is Growing

By Lauren Dake (OPB)
Salem, Ore. Feb. 5, 2019 6 a.m.

In a follow-up question, OPB asked for more specifics about the criteria the state uses when selecting where to send children and which facilities qualify.

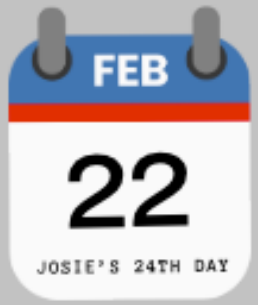
A spokesman responded in an email: "The Department goes through an extensive check for any facility, including reviewing information at a state's licensing body, making sure the facility is in good standing, verifying Secretary of State business records, and conducting other research."

The facilities where Oregon foster care children are sent are privately run.

Systemic Issues To Overcome

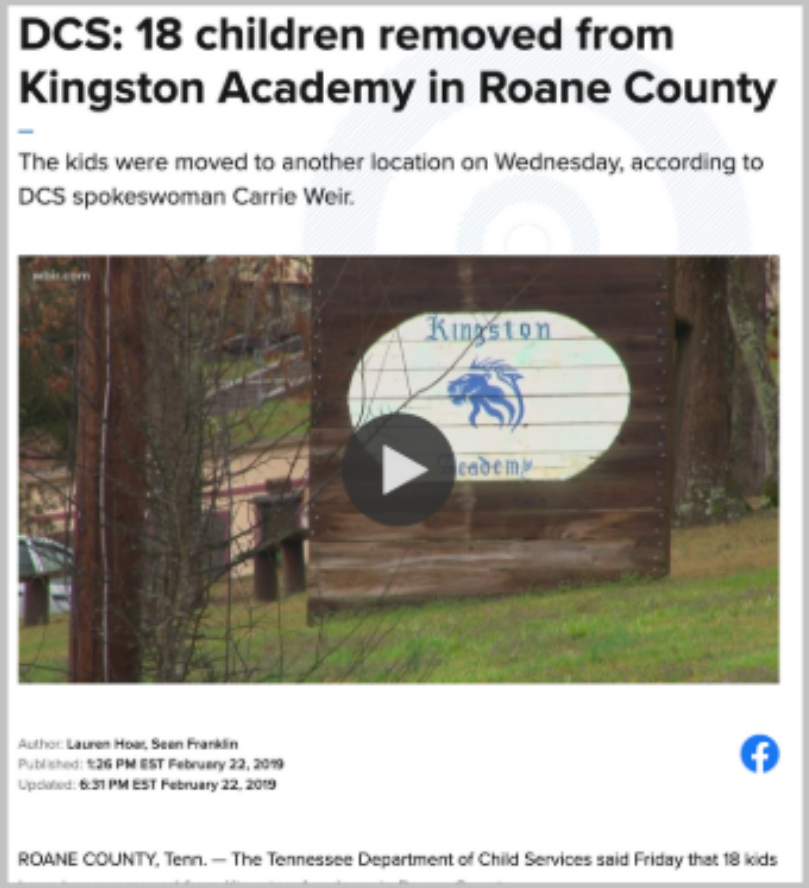
Gelser, the state senator, said the problem can't solely be fixed by the Child Welfare department.

The entire system — from schools to juvenile justice courts to mental health providers treating children — faces immense challenges.



On This Day.....

- State of Tennessee removes all 18 of its children from Kingston
- ICPC informs Oregon that Josie must leave no later than February 28 because the facility will be closed for "life safety" reasons



DCS: 18 children removed from Kingston Academy in Roane County

The kids were moved to another location on Wednesday, according to DCS spokeswoman Carrie Weir.

Author: Lauren Hoar, Sean Franklin
Published: 1:26 PM EST February 22, 2019
Updated: 6:31 PM EST February 22, 2019

ROANE COUNTY, Tenn. — The Tennessee Department of Child Services said Friday that 18 kids

FEBRUARY 22, 2019

Oregon informed by ICPC that license is suspended, all TN removed and Josie must be removed by February 28.

FEBRUARY 26, 2019

"Tennessee ICPC to Oregon: "Due to the life safety concerns, the remaining youth need to be moved immediately from the facility. Please give an update on status of [redacted] return to Oregon"

FEBRUARY 28, 2019

Tennessee official to Oregon: "If the youth is not returned by close of business today, our Deputy Commissioner will make the appropriate contact with leadership. All other youth from the facility have been removed except [her].

FEBRUARY 28, 2019

Oregon Reply to Tennessee: "I am thoroughly confused. I spoke to Tennessee licensing this week and they said the license was not being pulled and that they had spoken to ICPC in Tennessee to clarify. Sequel is saying that there are still 8 other youth in the program and that Tennessee is telling them they are fine for now.

We have a plan to transfer her to Northern Illinois Academy as soon as possible, the worker will be submitting ICPC today to make that transfer, so we should have her out early next week.

JOSIE DOES NOT LEAVE KINGSTON UNTIL MARCH 12
NEARLY TWO WEEKS AFTER ALL OTHER CHILDREN HAVE BEEN REMOVED
She is sent to another Sequel Facility, Northern Illinois Academy.

Appendix 6: BRS

Medicaid Division

Behavior Rehabiltiation Services (BRS) program

OREGON HEALTH AUTHORITY

Date: November 1, 2024

To: Individuals who request Behavior Rehabilitation Services (BRS) authorizations

From: Donald Jardine, Medicaid Behavioral Health Policy manager

Subject: Urgent BRS prior authorization requests to end Nov. 11, 2024

Starting Nov. 11, 2024, Oregon Health Authority (OHA) will no longer accept urgent or expedited BRS prior authorization requests.

Urgent requests are for emergency services necessary to sustain the youth's life or health. According to Oregon Administrative Rule (OAR) 410-170-0040(3), BRS is not medically appropriate if a youth's life or health is at risk due to active suicidal, homicidal or seriously aggressive behaviors, active psychosis or psychiatric instability.

OAR 410-120-0000(108), (110) and (254) define emergency medical conditions and emergency services.

What should you do?

Youth experiencing a medical or psychiatric emergency should be referred to appropriate emergency services rather than BRS placement.

Starting Nov. 11, 2024, requesters must:

- Stop submitting urgent requests,
- Use the retroactive authorization process for youth who need immediate placement, and
- Use the updated authorization form found on OHA's BRS web page.

Questions?

If you have any questions, please call 503-979-8354 or email BHMC@oha.oregon.gov.

500 Summer St NE, Salem, OR 97301 | Voice: 800-336-6016 | Fax: 503-945-6873
All relay calls accepted | Oregon.gov/OHA

OAR 410-170-0040
Prior Authorization for the BRS Program; Hearing Rights

(1) The BRS program requires prior authorization from the agency in accordance with the Authority's rules, the general BRS program rules, and applicable agency-specific BRS program rules. A referral by an LPHA or agency to the Authority for prior authorization of the BRS program is not a prior authorization.

(2) Prior Authorization Criteria for the BRS program:

(a) The Authority shall provide prior authorization for the BRS program to an individual who:

(A) Is enrolled in the Oregon Health Plan (OHP), is eligible for Oregon's Medicaid or CHIP program, and is eligible for Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Services, according to the procedures established by the Authority;

(B) Has a determination by a designated LPHA that the BRS program is medically appropriate to meet the individual's medical needs;

(C) Is not receiving residential mental health or residential developmental disability services from another governmental unit or entity;

(D) Is a child; and

(E) Does not have a current prior authorization for the BRS program for the requested time period from OYA or the Department.

(b) OYA or the Department may provide prior authorization for the BRS program for an individual that meets the requirements in its agency-specific BRS program rules.

(3) To meet the requirement in section (2)(a)(B) of this rule, the designated LPHA shall determine that the BRS program is medically appropriate because the individual:

(a) Has a primary mental, emotional, or behavioral disorder or developmental disability that prevents the individual from functioning at a developmentally appropriate level in the individual's home, school, or community;

(b) Demonstrates severe emotional, social, and behavioral problems, including but not limited to: Drug and alcohol abuse; anti-social behaviors requiring close supervision, intervention, and structure; sexual behavioral problems; or behavioral disturbances;

(c) Requires out-of-home behavioral rehabilitation treatment to restore or develop the individual's appropriate functioning at a developmentally appropriate level in the individual's home, school, or community;

(d) Is able to benefit from the BRS program at a developmentally-appropriate level;

(e) Does not have active suicidal, homicidal, or serious aggressive behaviors; and

(f) Does not have active psychosis or psychiatric instability.