Oregon Department of Human Services

SOCAC
System of Care Advisory Council

House Bill 3835 -A13 Policy Brief

Oregon is at a critical juncture in its efforts to strengthen the systems that support children with complex behavioral health needs. Despite a shared commitment to child safety and well-being, current laws often hinder the delivery of effective care due to inconsistent definitions, outdated statutory limits, and inflexible rules governing children's placement. House Bill 3835 proposes targeted, practical reforms designed to address these systemic challenges. Drawing on insights from families, youth, providers, and agency staff, the bill aims to clarify legal standards, expand access to appropriate services, and support a more stable, responsive, and equitable continuum of care for Oregon's most vulnerable children.

The bill is comprised of four major components:

1. Clarifying statutory language concerning restraint and seclusion;
2. Improving children's timely access to secure transportation services;
3. Improving children's access to medically necessary treatment options; and
4. Technical amendments addressing human trafficking, background check requirements for children in care, and other concerns brought to the System of Care Advisory Council (SOCAC) by families and youth with lived experience, advocates, and representatives of child-serving organizations.

Regulating restraint and seclusion – placement settings

Challenge

Oregon's definitions of "wrongful restraint" and "wrongful seclusion" in child abuse law are inconsistent, causing confusion among mandatory reporters, families and youth, as actions may be considered abuse in some settings but not in others. In addition, current law places liability fully on frontline workers. These issues can undermine care quality as workers are positioned to prioritize risk mitigation over proactive engagement with youth. Addressing these challenges requires that we establish clearer definitions of situations where use of restraint or seclusion amounts to child abuse, and to shift accountability where appropriate –

holding frontline workers' leaders and management accountable for systemic failures like inadequate training or staffing resources.

Additionally, current statute restricts crisis intervention to three models, which creates a barrier for new providers who are already using other nationally recognized models. Expanding treatment options and removing barriers for new providers to serve children in Oregon is critical to improving access to timely care for youth with complex needs.

Proposed Change

HB 3835 proposes several key changes to improve child abuse definitions and care practices in Oregon:

- Renames "wrongful restraint" to "abusive restraint," simplifies the definition, and applies it uniformly across foster parents, child-caring agencies and developmental disabilities facilities. The bill defines abusive restraint as:
  - A restraint is used as a form of discipline, punishment, retaliation or convenience;
  - Use of chemical restraint; or
  - Excessive or reckless use of force that results in, or is likely to result in, serious physical harm to the child or child in care.

Certain violations, such as documentation errors, formal authorization timing issues, or training lapses that do not affect the justification or performance of a restraint would no longer automatically trigger child abuse investigations. These violations will continue to be handled through licensing or human resources processes to address root causes. The bill adds language clarifying Oregon Department of Human Services' (ODHS) authority to take licensing action as necessary.

The bill also removes the arbitrary statutory limit on the number of approved crisis intervention models, allowing for greater diversity and innovation in care practices. SOCAC will be responsible to convene youth and families with lived experience to advise ODHS on the approval of new models, ensuring those directly affected have a voice in the decision-making process.

These changes aim to improve child safety, ensure consistent reporting, reduce provider burnout, and enhance care quality across Oregon's child-serving systems.

Why it Matters

The proposed amendments are critical for bolstering and stabilizing the provider workforce, which in turn will enhance placement and treatment capacity and improving access to quality care for Oregon's at-risk youth. By clarifying definitions and reducing unnecessary child abuse investigations, the changes will help frontline workers focus on providing care rather than managing liability concerns. This shift will not only foster a more supportive and effective work environment but also ensure that children with complex needs receive consistent, trauma informed care.

Several child-caring agencies (CCAs) have expressed that these changes would help them retain children with aggressive behaviors for longer periods, allowing them to complete their treatment plans. This reduces the trauma youth experience with unplanned discharges to new settings, giving them greater opportunity to stabilize and receive necessary care. The changes will also promote consistency across care settings and make it easier for providers to offer timely and appropriate services to youth in crisis.

Secure transportation

Challenge

Secure medical transportation services, which are regulated by the Oregon Health Authority, are occasionally needed by parents or Child Welfare to transport a child safely to a treatment program. SB 710 (2021) was intended to regulate secure non-medical transportation providers to better protect children in Oregon, but it inadvertently caused a shutdown of secure medical transportation services by requiring them to be licensed as a CCA. This has prevented children from being transported for medically necessary treatment, effectively stranding them in hospitals and CCAs. While Senate Bill 1547 in 2022 made some amendments, it did not fully resolve the complex overlap between medical transport and child-caring agency regulations, resulting in fewer medical and non-medical transport providers willing to serve children.

Additionally, ORS 419A.245 – the current statute regulating the use of mechanical restraints during the transportation of children in state custody – is outdated and does not align with current standards for treating children in Oregon Department of Human Services (ODHS) custody.

Proposed Change

HB 3835 makes the following changes to improve a child's access to secure transportation services in Oregon:

- Amends the statute to remove medical transportation providers from CCA regulations, reducing confusion between the OHA-regulated medical transport providers and child-caring agencies. This change would enable medical transportation providers to more confidently serve children in need.
- Removes references to children in Child Welfare custody from the permissible use of mechanical restraints by Oregon Health Authority transport providers.

Why it Matters

The proposed changes are crucial for ensuring that children in Oregon can be safely and promptly transported to the care they need. By clarifying the roles and responsibilities of medical transportation and non-medical secure transport services, these amendments will reduce regulatory confusion, improve coordination, and prevent delays in critical care. These changes are vital to safeguarding the well-being of children in Oregon, ensuring they receive timely and necessary treatment, and preventing further disruptions in their care and safety.

Fair access to treatment for children in foster care

Challenge

Children in foster care have more limited options for treatment than their peers who are enrolled in the Oregon Health Plan, involved in the juvenile justice system, or covered by private insurance.

Current law prohibits children in foster care from receiving in-patient treatment from any facility than is not licensed as an Oregon CCA. This means they cannot receive treatment, even when medically necessary, from a provider outside of Oregon. This is especially challenging for Tribal children seeking culturally appropriate care that may be out of state, and for children living near the state's borders whose closest treatment option is in a neighboring state. In addition, there are time limits that apply to children in foster care for certain in-state placements that do not apply to other youth. These differences can contribute to inequitable health outcomes and put children in state custody at greater risk of being placed in temporary lodging.

Proposed Change

HB 3835 makes a series of changes to improve access to medically necessary treatment options for foster children while maintaining oversight and accountability. If passed, the bill would:

- Allow for treatment in non-CCA licensed settings, including those out of state, if the responsible Medicaid entity has approved the services and treatment as medically necessary and appropriate.
- Allow exceptions to out-of-state placement regulations, in compliance with the Indian Child Welfare Act (ICWA)
- Allow for exceptions for children in rural areas seeking treatment in neighboring states, and for children already placed with relatives and adoptive families outside of Oregon.
- Extend time limitations on placements such as shelter care homes or other agencies that are not qualified residential treatment programs (QRTPs) and allow children to advocate for extended placements if they wish to stay.
- Allow exceptions to the requirement that out-of-state adoption and foster care agencies be licensed as an Oregon CCA.
- Allow exception on a case-by-case basis for a child to be placed in an adult setting for medically necessary and appropriate services and treatment.

Why it Matters

Accessing medically necessary treatment and services

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

> *The OHA Ombuds Office was contacted by a hospital who was caring for an adolescent Oregon Health Plan patient admitted with an advanced eating disorder. The hospital provided care for the physical aspects of the member's symptoms but was not equipped to provide the kind of behavioral health treatment the member needed to address their condition. The hospital reported that while they were able to assure the member's physiological safety was maintained, their mental health was declining in the absence of the necessary psychological care. The member was unable to be admitted to any behavioral health facilities in Oregon to receive those therapies because they*

required an ongoing high level of medical care. It was determined that no facility in Oregon could provide the level of simultaneous medical and psychological care the member required and that, in its absence, the member was at highly elevated risk of mortality. The Ombuds Office convened members of the treatment team, family, and the CCO (Coordinated Care Organization), and ultimately arranged for the member to be sent to an out of state care facility that could provide all the treatment the member required in one location.

After a period of treatment at that facility, the member was able to be returned home to their community and maintained with outpatient care appropriate to their needs.

Extending Non-QRTP Time Limits: Oliver's Story

The following statement from Youth Tides, a Homeless, Runaway and Transitional Living Shelter, illustrates the importance of extending time limits for children's stays in non-QRTP settings.

During the initial 60 day stay, he was doing extremely well and there had been no placement found for him. We gave a 30-day extension after discharging him for a day. During that extension it was determined that he may benefit from a child specific contract to not disrupt the progress he was making at Youth Tides.

Oliver ended up staying at Youth Tides for one year, 10 months. During this time, he was able to graduate high school, obtain employment, apply and get accepted into college, learn important life skills around budgeting, public transportation, shopping, cooking, etc. Oliver also gained confidence in himself, and he was able to create meaningful relationships with adult staff that really cared for him. Oliver still calls Youth Tides from time to time to check in and update us on his life. He is doing well in school, he's in a committed healthy relationship, and he now has a cat at his home. He's excelling at his responsibilities with his growing independence.

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

Technical and clarifying amendments

The bill addresses several other challenges brought to SOCAC by families and youth with lived experience, state agencies, youth advocates, and organizations that serve children. Proposed changes include:

- **Human trafficking –** While Oregon already has a definition of child abuse for commercial sex trafficking of children, this amendment adds labor trafficking of a child to the definitions of child abuse, aligning Oregon statute with federal law. Labor trafficking is defined as the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

- **Video recordings –** To encourage the use of using video recordings in CCAs, the bill would provide opportunity to review video of alleged restraint and seclusion violations and require the consent of the involved young person if 18 years of age or older before the video is shared with eligible parties.

- **Codify application of child-in-care child abuse definitions –** The bill amends ORS 418 to specify that child-in-care abuse definitions apply exclusively to individuals employed by child-caring agencies, developmental disabilities residential facilities, proctor foster homes, certified foster homes, adjudicated youth foster homes, or those responsible for providing care or services to children in care.

- **Expand definition of child-in-care –** The bill would expand the child-in-care definition to include youth who are adjudicated in Oregon Youth Authority (OYA) foster homes, thereby aligning regulations and definitions for OYA certified foster homes with all types of Oregon foster homes. This statutory amendment clarifies legislative intent, aligns with current practices in screening and investigation by ODHS, and expands protections to adjudicated youth to mirror the ways that other children in certified foster care are currently protected.

- **Broaden mandatory actions –** The bill amends ORS 418.240 to allow ODHS to place conditions on the license, not just suspension or revocation, aligning with similar regulatory actions of developmental disabilities residential facilities for children.

- **Adding a narrow corporate status exception –** Currently, all CCAs are required to be corporations, regardless of the type of services provided to children. This bill introduces a narrow exception to this requirement, allowing similar service organizations – such as direct support professional (DSP) organizations, which are authorized by Oregon statute to operate as limited liability companies (LLCs) – to be licensed as CCAs. Under this exception, companies must comply with additional child safety standards set by ODHS through rulemaking.