

Out of State Placements:

15 contract provisions waived by HB 3835A (-8)

OREGON CANNOT ENFORCE OREGON LAW OUTSIDE ITS BORDERS.

This became clear when children were sent out of state in large numbers from 2017-2019. It became clear that it was essential to have strong, uniform requirements established in contract with each agency. Following the lead of other states, licensure was also identified as critical tool giving the Department the authority to enter facilities, access information about the operations of the facilities, maintain regular access to youth and communicate with other states regarding their experience with these programs. Without licensure, the only tool available to ODHS to protect children is disrupting placement and canceling contracts.

In 2019, with the guidance of the consultant A&M, a set of standard requirements for contracts with out of state providers was adopted by ODHS. These were codified in statute in 2020. The purpose of these requirements, along with licensure, was to ensure that Oregon had the necessary tools to oversee the provision of services to children served far from home and ensure their rights are protected. The purpose was to ensure that children in the care of ODHS have the same rights and protections when they are in congregate care placements outside Oregon that they have when placed in facilities inside Oregon.

HB 3835A (with the -8 amendment) waives all contract requirements carefully established in response to the harms caused to Oregon kids just a few years ago. This is found on page 77 of the -8 amendment.

20 “(7)(a) Notwithstanding ORS 418.322, the department may place a
21 child in an out-of-state placement without requiring the placement to
22 be licensed or under contract, as described in subsection (1) of this
23 section, or to be a qualified residential treatment program as described
24 in ORS 418.323 if:

THE FOLLOWING ARE THE 15 STATUTORY CONTRACT REQUIREMENTS WAIVED IN THEIR ENTIRETY BY HB 3835 (-8):

- ⇒ **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.