Comparison of amendment to ORS 418.240: HB 4042 and SB 1534

HB 4042, Section 1	SB 1534, Section 8
(c) The department must take immediate steps to suspend, revoke **or place conditions** on the license, certificate or other authorization of a child-caring agency, if any of the following are found to exist:	(c) The department must take immediate steps to suspend or revoke the license, certificate or other authorization of a child-caring agency, if any of the following are found to exist:
A) There has been the death of a child as a result of abuse or neglect on the part of the agency or any of the agency's employees or agents	A) There has been the death of a child as a result of abuse ~~or neglect~~ on the part of the agency or any of the agency's employees or agents.
(B) There has been sexual or physical abuse or neglect of a child in the agency's care or custody that was known to the agency and the agency did not take immediate steps to report the abuse or neglect and to ensure the child's safety.	~~(B) There has been sexual or physical abuse or neglect of a child in the agency's care or custody that was known to the agency and the agency did not take immediate steps to report the abuse or neglect and to ensure the child's safety.~~
	(B) The agency failed to take reasonable action to remedy, prevent or end the abuse of any child in the agency's care or custody, despite having knowledge that sexual or physical abuse or neglect of a child in the agency's care or custody was occurring.
(C) The agency failed to cooperate fully with any local, state or federal regulatory entity's investigation of the agency or the agency's operations or employees.	(C) The agency failed to cooperate fully with any local, state or federal regulatory entity's investigation of the agency or the agency's operations or employees.
(D) The agency failed to provide financial statements as required under ORS 418.255.	~~D) The agency failed to provide financial statements as required under ORS 418.255.~~
	(d) The department shall take immediate steps to place conditions on or suspend or revoke the license, certificate or other authorization of a child-caring agency, if any of the following are found to exist:

	(A) The agency's managers or other relevant employees of the agency failed to provide financial statements as required by ORS 418.255; or
	(B) The agency failed to provide access to a child in the agency's care or custody as required by ORS 418.305.

Summary: Both proposals eliminate language that creates a risk of license revocation for failure to make an immediate mandatory report of abuse to the child abuse hotline.

- HB 4042:
  - Eliminates the mandate to revoke or suspend a license in any circumstance, instead broadening the mandate to include a revocation, suspension or condition.
- SB 1542:
  - Maintains the mandate to revoke or suspend a license when a child died due to abuse, failed to take reasonable actions to stop abuse known to the agency, or when the agency fails to cooperate with a local, state or federal investigation the operation of the agency or its employees.
  - Consistent with HB 4042, allows a revocation, suspension or a condition if an agency fails to submit required financial documents. It would also mandate a suspension, revocation or condition if the CCA fails to allow reasonable access to a child by ODHS, the child's attorney or the child's CASA as required by law.
  - Removes an employee's failure to report abuse from violations that require a mandatory licensing action. The Department may still choose to issue an appropriate licensing penalty for noncompliance, but the agency can determine whether that is necessary or if a plan of correction is sufficient based on the circumstances of the specific incident.

ORS 418.491- Car seats and seat belts are not mechanical restraints

HB 4042 Section 2	SB 1534 Section 22 (with -6 Amendment)
(8)**(a)** "Mechanical restraint" means a device used to restrict the movement of a child in care or the movement or normal function of a portion of the body of a child in care.	(8)**(a)** "Mechanical restraint" means a device used to restrict the movement of a child in care or the movement or normal function of a portion of the body of a child in care.
(b) "Mechanical restraint" does not include a vehicle safety restraint when used as intended during the transport of a child in care in a moving vehicle.	**(b) 'Mechanical restraint' does not include a passenger safety device or system that meets the federal standards for vehicle safety devices or systems adopted under 49 C.F.R. 571.213 and the standards adopted by the Department of Transportation under ORS 815.055 when the vehicle safety device or system is used as intended by the manufacturer for the transport of a child in care in a moving vehicle.**

Summary: Both proposals clarify that a properly utilized car seat or passenger safety device is not a mechanical restraint. SB 1534 borrows from language in HB 4092 to describe a car seat, with language expanded to ensure passenger lap belts and other kinds of specialized vehicle safety devices are included.

ORS 418.529: Trainings and Certifications

HB 4042 Section 3	SB 1534 Section 22a (with -6 Amendment)
(1)(a) The Department of Human Services shall adopt by rule training standards and certification requirements regarding the placement of a child in care in a restraint or involuntary seclusion, consistent with this section.	(1)(a) The Department of Human Services shall adopt by rule training standards and certification requirements ~~regarding the placement of a child in care in a restraint or involuntary seclusion, consistent with this section.~~ **for a person to be qualified and authorized to impose a restraint upon a child in care as permitted under ORS 418.257 to 418.259.**
(b) The department shall designate ~~[two or three]~~ nationally recognized providers of crisis intervention training that meet the department's training standards and whose certifications issued upon completion of the training programs the department will recognize as satisfying the department's certification requirements.	(b) The department shall designate ~~two or three~~ **at least two but no more than four** nationally recognized providers of ~~crisis intervention~~ training **programs on the safe and limited use of physical restraints in emergency situations** whose certifications ~~issued upon completion~~ of training **and completion are the sole certifications** the department will recognize as satisfying the ~~department's certification requirements~~ **certification requirements under this section.**
	(c) The department may not designate any program under this subsection that would promote or provide instruction or materials in this state designed to prepare an individual to utilize any restraint prohibited by statute.
(3)(b) Complete a minimum of 26 hours of initial education with a focus on de-escalation, nonviolent intervention and methods consistent with the department's rules for the use of ~~physical intervention~~ **restraint.**	(3)(b) Complete a minimum of 26 hours of initial education with a focus on de-escalation, nonviolent intervention and methods consistent with the department's rules for the use of ~~physical intervention~~ **restraint.**
	(7) Nothing in this section is intended to restrict a child-caring agency, proctor foster home or developmental disabilities residential facility from utilizing additional training on the prevention of crisis situations and alternative responses to crisis situations that do not involve the use of physical force.

Summary: Both bills replace a confusing reference to "physical intervention" with "restraint." HB 4092 allows for an unlimited number of crisis intervention trainings. SB 1534 expands the number of approved programs to four, and clarifies this

limitation only applies to programs that provide certification in the technical skills of use of force/physical restraint. It prohibits the Department from selecting programs that teach restraint methods that are prohibited in Oregon, and clearly states there is no limitation on the type or number of crisis prevention and response programs a CCA can utilize if those programs do not involve training on the use of physical force.

Section 4

Out of State Placements

HB 4042 Section 4	SB 1532 Section 13 (in -1 amendment)
Allows out of state placement compliant with ICWA (Section deleted in proposed amendment)	Allows out of state placement compliant with ICWA (Section deleted in proposed amendment)

This language is proposed to be removed from HB 4042 in a pending amendment. SB 1532 language is amended for language determined in collaboration between ODHS, Tribes and OJD.

ORS 418.322, Placement of Children (Generally)

HB 4042 Section 5	SB 1532 Section 15
(1)(a) "Congregate care residential setting" means any setting that cares for more than one child or ward and is not a setting described in ORS 418.205 (2)(c)(A), **(C)**, (D), (E), [or] (F) **or (G)** or (10).	(1)(a) "Congregate care residential setting" means any setting that cares for more than one child or ward and is not a setting described in ~~[ORS 418.205 (2)(c)(A), (D), (E) or (F) or (10)]~~ **ORS 418.205 (8) or 418.215 (2)(a), (c), (d), (e), (f) or (g).** *Note: These two sections are only different because of the reorganization of 418 in SB 1532. There is no substantive change, it is just the references that are different.*
(3) Notwithstanding subsection (2) of this section, the department may place a child or ward in a child-caring agency that is not a qualified residential treatment program if:	(3) Notwithstanding subsection (2) of this section, the department may place a child or ward in a child-caring agency that is not a qualified residential treatment program if:
(3)(d) The Oregon Health Authority has approved the *[placement as medically necessary]* **services or treatment** and the child-caring agency:	(3)(d) The Oregon Health Authority has approved the *[placement as medically necessary]* **services or treatment** as **medically necessary and medically appropriate** and the child-caring agency:
(A) Is a residential care facility.	(A) Is a ~~[residential care facility;]~~ **psychiatric residential treatment facility that meets the requirements prescribed by the authority by rule, consistent with all federal requirements for certification as a facility providing inpatient psychiatric services for persons under 21 years of age;**
(3)(k) The responsible Medicaid entity has approved the services or treatment.	

(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 provides services or treatment that are medically necessary and medically appropriate for the child or ward.	**(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:**
	(a) The child or ward is 16 years of age or older;
	(b) A licensed health care provider who is acting within the health care provider's scope of practice and who is not an employee of the authority has personally assessed the child or ward and has determined that the child or ward requires residential treatment for a substance use disorder;
	(c) The congregate care residential setting is licensed, certified or otherwise approved by the Oregon Health Authority to provide substance use disorder treatment
	(d) The congregate care residential setting primarily serves individuals who are 18 years of age or older; and
	(e) The admission is medically necessary and medically appropriate.
(5)(a) The department may not place a child or ward in a residential care facility or shelter-care home described in subsection (3)(g) or (h) of this section:	(5)(a) The department may not place a child or ward in a residential care facility or shelter-care home described in subsection (3)(g) or (h) of this section:
[(a)] (A) For more than 60 consecutive days or 90 cumulative days in a 12-month period, **unless the limits for the**	(a) For more than 60 consecutive days or 90 cumulative days in a 12-month period; or

duration of the placement are extended as provided in paragraph (b) of this subsection; or	
~~[(b)]~~ **(B)** If the residential care facility or shelter-care home also serves youths or adjudicated youths served by the county juvenile department or adjudicated youths committed to the custody of the Oregon Youth Authority by the court	(b) If the residential care facility or shelter-care home also serves youths or adjudicated youths served by the county juvenile department or adjudicated youths committed to the custody of the Oregon Youth Authority by the court
(**b) The department, by rule, may extend the limits for the duration of placement of a child or ward under paragraph (a) of this subsection:**	
(A) As requested by the child or ward; or	
(B) By up to 30 consecutive or 30 cumulative days in a 12-month period if the department determines that the extension is in the best interest of the child or ward.	
(6) The department may not place a child or ward in a homeless, runaway or transitional living shelter described in subsection (3)(i) of this section for more than 60 consecutive or 90 cumulative days in any 12-month period.	(6) The department may not place a child or ward in a homeless, runaway or transitional living shelter described in subsection (3)(i) of this section for more than 60 consecutive or 90 cumulative days in any 12-month period.
	Notwithstanding subsections (4)(a) and (5) of this section, the department may extend the placement of a child or ward that is at least 16 years of age if the child or ward's attorney affirms in writing that, after the child or ward's consultation with the attorney, the child or ward does not object to the extension.
	(A) The child's attorney affirms in writing that, after the child's consultation with the attorney, the child or ward does not object to the extension; and

	(b) An extension under this subsection may last up to 90 cumulative days if:
	After the child or ward's consultation with the attorney of the child or ward or the attorney for the child or ward affirms in writing that the child or ward does not object to the placement;
(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.	

Summary: Both proposals make changes in the types or lengths of placements that can be made outside the requirements of the federal Family First Act. The approaches are significantly different.

Family First Requirements: The Family First Services and Prevention Act was championed by Oregon Senator Ron Wyden and signed into law in 2018. Under this law, enhanced federal funding is available to provide supports to children and families to prevent entry to foster care. FFSPA required significant reduction in use of congregate care placements for children in foster care. It requires all children be placed in family foster homes unless an independent licensed provider has conducted a validated assessment and determined the child's needs require treatment in a congregate care facility, and the child's team (including the parents) are engaged in the planning process. A child must have this assessment completed within 30 days and

approved by the court at a hearing within 45 days. If the assessor doesn't find congregate care to be necessary, or the court disapproves of the request, the child will no longer be eligible for Title IVE funding if the child remains in the setting for more than 45 days. Title IVE funding is the lever the federal government has to encourage states into the best practice of reducing use of congregate care and ensuring all children get to grow up in a family home, rather than congregate care, if they are not able to safely grow up in their own family home.

HB 4042 would exempt almost any placement from the court oversight and independent assessment required under the federal Family First Services and Prevention Act. It would expand the type of congregate care settings where the Department can place **foster children of any age** to include **adult settings** that are **not licensed to serve children** or to serve children in the child welfare system. This would include adult residential care settings for people with mental illness, physical disabilities or developmental disabilities including assisted living facilities, 24-hour adult residential homes for people with developmental disabilities, adult foster care for people with mental illness, IDD or physical disabilities, adult foster homes or 24-hour residential programs for the elderly, and skilled nursing facilities. Under current law, because none of these adult settings are a foster home certified by child welfare or a licensed CCA, ***none of these children would be covered under the "child in care" statute unless we amend the definition of "child in care."***

The language also allows an extension of up to 30 days in any 12-month period time limits on placement in any residential care or short-term assessment and stabilization setting if **the Department** finds that to be in the best interest of the child. There is no independent assessment of needs and no court oversight as prescribed for other long-term congregate care placements that last more than 45 days. There is also no limit to how long the placement will be extended if the child "requests" the extension. The statute doesn't describe how the child's request will be initiated, documented or revoked. Further, if the child was accessing any treatment or service through the program, regardless of whether residential placement is required to access it, it would be exempt from court approval or the timelines under the proposed language in the new (k). The language does not require that the **placement** be medically necessary or medically appropriate, only that the services or treatment have that designation. It also doesn't require Medicaid to pay for the **placement**—only that it approve treatment and services, even if the treatment and services are available in the community.

- **SB 1534** expands access in more limited ways. As introduced, it would have allowed a child that is at least 16 to receive treatment in a substance use disorder treatment facility that primarily serves individuals over the age of 18 when medically necessary and appropriate. This language is removed by amendment because OHA provided written comments that raised concern. They wrote:

  > *"Clinically, it is not best practice and potentially harmful to place children in the same setting with adults for substance use treatment unless there are very tight guardrails."*

  SB 1534 provides an exception for youth aged 16 and older to extend their length of stay in a homeless, runaway or transitional shelter. These settings are not designed as treatment settings and there is not a pathway to a longer stay through the QI process. Although a shelter setting is not ideal, it is more ideal than a hotel, runaway status or a self-selected environment. Many older youth are unwilling to accept placement in a family foster home or a residential program that has significant structure and restriction on freedom. Providing flexibility in these environments offers some control to older youth over their own lives without confusing the shelter for "treatment." This would not require court approval, but does have the safeguard of only being available if the child's attorney attests in writing that the child does not object. A 90-day initial extension is allowed based on the attorney continuing to attest that the child does not object. Provisions connecting these further extensions to school enrollment and participation were removed at the request of the Governor.