

DHS Report for HB 4106 – OAR 413 Temporary Rules in 2017

Rule #	Caption	Statement of Need – Reason for Action	Finding of Need to Act Promptly and Why a Temporary Rules was Appropriate
<p>ADOPT: 413-115-0000, 413-115-0010, 413-115-0020, 413-115-0030, 413-115-0040, 413-115-0050, 413-115-0060, 413-115-0070, 413-115-0080, 413-115-0090, 413-115-0100, 413-115-0110, 413-115-0120, 413-115-0130, 413-115-0140, 413-115-0150</p> <p>AMEND: 413-015-0115, 413-015-0205, 413-015-0215, 413-015-0415, 413-015-0432, 413-015-0455, 413-020-0000, 413-020-0010, 413-020-0020, 413-020-0050, 413-020-0075, 413-030-0009, 413-030-0210, 413-030-0220, 413-030-0445, 413-030-0460, 413-040-0000, 413-040-0010, 413-040-0155, 413-040-0159, 413-040-0310, 413-070-0000, 413-070-0010, 413-070-0072, 413-070-0512, 413-070-0516, 413-070-0519, 413-070-0625, 413-070-1050, 413-100-0240, 413-110-0000, 413-110-0240, 413-110-0290, 413-110-0300, 413-120-0000, 413-120-0020, 413-120-0021, 413-120-0025, 413-120-0057, 413-120-0060, 413-120-0115, 413-120-0165, 413-120-0175, 413-120-0625, 413-120-0730, 413-120-0750, 413-200-0306, 413-215-0000, 413-215-0081, 413-215-0426, 413-215-0431, 413-215-0441</p> <p>SUSPEND: 413-070-0100, 413-070-0130, 413-070-0140, 413-070-0150, 413-070-0160, 413-070-0170, 413-070-0180, 413-070-0190, 413-070-0200, 413-070-0210, 413-070-0220, 413-070-0230, 413-070-0240, 413-070-0250, 413-070-0260</p>	<p>Application of the Indian Child Welfare Act (ICWA)</p>	<p>The Department's current rules regarding rights of Indian children and responsibilities of the Department with respect to Indian children are not in compliance with new federal BIA regulations. The Department is subject to the BIA regulations and therefore the rules must be changed to reflect the requirements.</p>	<p>The Department finds that failure to act promptly by amending rules will result in serious prejudice to the public interest, and Indian families and children served by the Department. Failure to comply with BIA regulations could expose the Department to federal penalties and/ or litigation, and may negatively impact Indian children if the rights and protections afforded to them by the ICWA are not fully reflected in the Department's rules. The Department needs to proceed by filing temporary rules because the public, the Department, and Indian children will immediately benefit when the Department's rules reflect the obligations of the Department in regard to the treatment and rights of Indian children under the ICWA and new BIA regulations, which went into effect on Dec. 12, 2016.</p>
<p>ADOPT: 413-017-0000, 413-017-0010, 413-017-0020, 413-017-0030, and 413-017-0040</p>	<p>Adopting rules to establish procedure for Critical Incident Response Team required by ORS 419B.024</p>	<p>OAR 413-017 needs to be amended because ORS 419B.024 requires the Department to adopt rules necessary to carry out the provisions of the CIRT statute. Currently, the Department does not have administrative rules on the requirements, processes, and procedures relating to CIRTs.</p>	<p>The Department finds that failure to act promptly by adopting these rules will result in serious prejudice to the public interest, the Department, and the welfare of children in Oregon. The Department has followed the CIRT statute since its enactment in 2007, but immediately adopting rules will increase the accountability of the Department and consistency in process, to ensure that the statute is fully implemented and that the purpose of the statute, i.e. to learn and improve after a child fatality, is fulfilled. The Department needs to proceed by temporary rule because the public, the Department, and the welfare of children in Oregon will immediately benefit when the Department's processes and procedures on CIRTs are clear in the Department's administrative rules.</p>
<p>ADOPT: 413-017-0000, 413-017-0010, 413-017-0020, 413-017-0030, and 413-017-0040</p>	<p>Adopting rules to establish procedure for Critical Incident Response Team required by ORS 419B.024</p>	<p>OAR 413-017 needs to be amended because ORS 419B.024 requires the Department to adopt rules necessary to carry out the provisions of the CIRT statute. Currently, the Department does not have administrative rules on the requirements, processes, and procedures relating to CIRTs.</p>	<p>The Department finds that failure to act promptly by adopting these rules will result in serious prejudice to the public interest, the Department, and the welfare of children in Oregon. The Department has followed the CIRT statute since its enactment in 2007, but immediately adopting rules will increase the accountability of the Department and</p>

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			consistency in process, to ensure that the statute is fully implemented and that the purpose of the statute, i.e. to learn and improve after a child fatality, is fulfilled. The Department needs to proceed by temporary rule because the public, the Department, and the welfare of children in Oregon will immediately benefit when the Department's processes and procedures on CIRTs are clear in the Department's administrative rules.
AMEND: 413-090-0085	Temporarily amending rules to update the BRS rate table that is incorporated by reference	OAR 413-090-0085 needs to be amended because OHA is revising the BRS rate table that the Department has adopted by reference. Presently, the BRS rates table adopted by the Department is outdated, and in order for the Department to implement OHA's new rates, the Department must amend its rule.	The Department finds that failure to act promptly by amending these rules will result in serious prejudice to the public interest, the Department and the welfare of children and youth in Oregon. The Governor has signed the budget and the amended OHA BRS rate table's increased rates are now valid from July 1, 2017 forward. As DHS has incorporated OHA's BRS rate table into its rules, our rules need to be promptly amended to comport with the rate changes. This will help to endure access to the needed BRS services for vulnerable youth.
SUSPEND: 413-017-0000(T), 413-017-0010(T), 413-017-0020(T), 413-017-0030(T), 413-017-0040(T)	Suspending temporary rules relating to Critical Incident Response Teams (CIRT) required by ORS 419B.024	These rules need to be suspended because they are not consistent with SB 819 (2017). The Department's responsibilities relating to child fatalities are now governed by provisions in the new law and therefore suspending the temporary rules avoids confusion about the current requirements relating to CIRTs.	The Department finds that failure to act promptly by suspending these rules will result in serious prejudice to the public interest and the Department because the rules are not consistent with the current law as reflected in SB 819 (2017). The Department needs to proceed by temporary rule because the public and the Department will immediately benefit when rules that are inconsistent with legal requirements are suspended.
AMEND: 413-015-0210, 413-015-0215, 413-015-0415 and 413-015-0470	Amending screening and CPS rules to clarify expectations for assigning reports and providing notifications	OAR 413-015-0210, 413-015-0215, 413-015-0415 and 413-015-0470 need to be amended because the Department needs to: ensure that certain types of reports are assigned for CPS assessment; clarify for screeners what rules to use when a report involves a child caring agency or proctor foster home; change when reporting to the Office of Adult Abuse Prevention and Investigation is required; and ensure the Department communicates with the Oregon Youth Authority in certain circumstances.	The Department finds that failure to act promptly may result in children being unsafe. It is in the interest of the public, specifically children residing in or receiving services from child caring agencies, children in the custody of Oregon Youth Authority, and children residing in ODDS licensed residential facilities or ODDS certified foster homes, to move quickly in making the clarifications.
AMEND: 413-015-0400, 413-015-0445 SUPSEND: 413-015-9000, 413-015-9010, 413-015-9020, 413-015-9030, 413-015-9040	Suspending rules relating to Differential Response to implement SB 942 (2017)	The Department's DR rules, OAR 413-015-9000 to 413-015-9040, need to be suspended because SB 942 (2017) requires the Department to make a disposition on all reports of child abuse and neglect that are assigned for assessment regarding whether the allegation is founded, unfounded, or cannot be determined (referred to as unable to determine by the Department). The core component of DR is that CPS does not make a disposition on abuse allegations that are assigned at screening for "alternative response," provided the child is determined to be safe at the conclusion of the assessment. This will no longer be allowed under Oregon law after passage of SB 942 (2017).	The Department finds that failure to act promptly by suspending and amending these rules will result in serious prejudice to the public interest and the Department. Given the unanimous passage of SB 942 and impending signature by the Governor, Oregon law will require a child abuse assessment to conclude with a disposition. The Department needs to proceed by temporary rule because the public and the Department will immediately benefit when the Department is in compliance with state law.

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		<p>The other principle feature of DR is the option to refer families for a strengths and needs assessment through a contracted provider. At this time, that will still be done in counties that have adopted DR under the non-DR rules on CPS assessment and as directed in the strengths and needs assessment procedure. To ensure this is allowed by rule, OAR 413-015-0400 and 413-015-0445 need to be amended to remove the limitation on providing "non-contracted" community services so that DR counties can rely on these rules to continue to provide contracted community services.</p>	
<p>ADOPT: 413-070-0050, 413-070-0060, 413-070-0070, 413-070-0080, 413-070-0090, 413-070-0100, and 413-070-0110</p>	<p>Adopting rules to comply with SB 819 (2017) relating to Critical Incident Response Teams</p>	<p>These rules need to be adopted because recent legislation (SB 819 (2017)) changed the Department's responsibilities under ORS 419B.024. Previous rules implementing ORS 419B.024 were suspended because they were not consistent with the law as amended. These rules bring the Department into compliance with current law.</p>	<p>The Department finds that failure to act promptly by adopting these rules will result in serious prejudice to the public interest and the Department because the law requires the Department to adopt rules establishing the requirements and procedures of responding to critical incidents as provided in ORS 419B.024 as amended by SB 819 (2017). The Department needs to proceed by temporary rule because the public and the Department will immediately benefit when the Department has rules in place that are consistent with the law.</p>
<p>AMEND: OAR 413-015-0465</p>	<p>Adopting rules to clarify required assessments and screenings for children entering foster care.</p>	<p>OAR 413-015-0465 brings all required health assessments for children entering substitute care to one place in the administrative rules. It also brings clarification to what assessments are needed, at what age, who performs the comprehensive health assessment and who is responsible to ensure that the assessments and screenings are completed and recommendations are followed.</p>	<p>The Department finds that failure to act promptly by adopting these rules will result in serious prejudice to the public interest, the Department, and the welfare of children in Oregon. The Department's current rule regarding the various required screenings for children entering foster care is not clear, and the list provided in the rule is not a complete list of the screenings and assessments that are required. These assessments include those for physical and mental health. The Department needs to proceed by temporary rule because the public, the Department, and the welfare of children in Oregon will immediately benefit when the Department's screening/ assessment requirements for children entering foster care are clear in the Department's administrative rules.</p>
<p>Amend: 413-115-0080</p>	<p>Application of the Indian Child Welfare Act</p>	<p>The title for rule 0080 needed to be clarified, as it was not the best fit for the language in rule 0080 and was causing confusion in the field. This is the only change.</p>	<p>The Department finds that failure to act promptly by amending the rule will result in serious prejudice to the public interest, Indian families and children served by the Department. The lack of clarity in the title of 413-115-0080 could lead to failure to comply with the ICWA and BIA regulations, which could expose the Department to federal penalties, litigation, and /or may negatively impact Indian children if the rights afforded to them are not fully reflected in the Department's rule. The Department needs to proceed by filing a temporary rule because the public, the Department, and Indian children will immediately benefit when the Department's rule reflects the obligations of the Department in regard to the treatment and rights of Indian children under the BIA regulations.</p>

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AMEND: 413-020-0000, 413-020-0200, 413-020-0230, 413-090-0000, 413-090-0010	Amending rules in divisions 020 and 090 regarding CANS screenings and algorithms.	<p>The Child and Adolescent Needs and Strength (CANS) screening is being updated to a trauma CANS (T-CANS) version.</p> <p>Rule changes are needed within sections 413-020 and 413-090 to include the new T-CANS Manuals and new Algorithm and to link them as exhibits. In addition, a modification will be made to CANS rule 413-020-0230(1)(b), requiring that all foster care children--not just children with a level of care--have annual CANS screens if they remain in foster care.</p> <p>CANS rescreening has been defined. The Department has clarified when payment begins for rescreenings. Finally, minor adjustments have been made to the CANS rules, which will not affect work load or practice, such as allowing the level of care manager to delegate some authority for setting effective dates and approving rescreens, which better reflects practice.</p>	<p>The CANS algorithm is being updated in OR-Kids the night of Nov. 16, 2017. In addition, The Department has determined that all foster children will receive annual CANS screens. If the rules are not revised at this time, all the children the Department serves will not receive the benefits of the updated level of care algorithm or the expanded required CANS screenings. As such, the Department finds that failure to act promptly by amending the rules will result in serious prejudice to the public interest and children served by the Department. The Department needs to proceed by filing a temporary rule because the public, the Department, and the families it serves will immediately benefit when the Department's rule reflects the most recent CANS algorithm and policies.</p>
AMEND: 413-100-0905, 413-100-0915, 413-100-0930	Amending rules relating to child welfare programs regarding education	<p>These rules need to be adopted because recent state and federal legislation have been passed to improve educational stability for foster youth and the Department's rules on educational services to children and young adults need to be amended to reflect applicable laws. These rule changes bring the Department into compliance with state and federal law.</p>	<p>The Department finds that failure to act promptly by amending these rules will result in serious prejudice to the public interest, the Department, and children and young adults involved with the Department. Recent changes to state and federal law establish new rights and responsibilities of the Department to improve the stability of educational services to children and young adults in foster care that are effective for the 2017-2018 school year and therefore the Department needs to proceed by temporary rule because the public, the Department, and children and young adults in foster care will immediately benefit when the Department has rules in place that are consistent with the law.</p>