



Oregon

Kate Brown, Governor

Department of Human Services

Fariborz Pakseresht, Director

500 Summer St. NE

Salem, OR 97301

Voice: 503-945-5600

Fax: 503-581-6198

TTY: 503-945-5896e



Office of Developmental Disabilities Services (ODDS) House Bill 5006 Budget Note Legislative Report

January 26, 2018

Introduction

In accordance with House Bill 5006 passed during the 2017 Legislative Session, the Department of Human Services respectfully submits the following report to address the budget note on Intellectual and Developmental Disability (IDD) group homes. The recommendations in this report represent the collaborative efforts of HB 5006 Budget Note workgroup.

HB 5006 Budget Note

“The Department of Human Services will convene a workgroup to review rules and statues regarding substantiated abuse findings, fine, and enforcement for Intellectual and Developmental Disability (IDD) group homes. The workgroup shall include representation from IDD providers, clients served in the IDD system, employees working in IDD group homes, and other stakeholders. The workgroup shall report their findings and recommended statutory changes to the appropriate legislative interim policy committees no later than February 1, 2018. The workgroup shall discuss and report on:

- Recommendations for rule or statutory changes to abuse definitions and substantiated abuse findings.
- A review of current enforcement statutes and recommended changes that result in consistent applications of fines across the IDD group home system.
- Recommendations for mandatory minimum fines for substantiated abuse.”

“Safety, health and independence for all Oregonians”
An Equal Opportunity Employer

Workgroup

A workgroup was convened to collaborate on recommendations. Self-advocates served in the IDD group home system, family members of individuals receiving services in the IDD group home system, IDD group home/Adult twenty-four hour residential providers, Direct Support Professionals (DSPs), Association of Oregon County Community Mental Health Programs (AOCMHP), Oregon Support Services, Community Developmental Disabilities Program (CDDP) representatives, Community Providers Association of Oregon (CPAO), Oregon Resource Association (ORA), Service Employees International Union (SEIU) and representatives of The Office of Adult Abuse Prevention and Investigations (OAAPI), Office of Developmental Disabilities Services (ODDS) Licensing and other Department of Human Services representatives were all invited to participate. The workgroup agreed upon shared values in order to guide the conversations and recommendations. The shared values agreed upon included:

- The individuals we serve are the priority and center of our discussions.
- A respectful, inclusive discussion is a guiding principle for this workgroup.
- Be realistic, about what our recommendations looks like for “boots on the ground” (implementation purposes)

The workgroup met five times in total, on the following dates:

- Tuesday, September 26
- Wednesday, October 25
- Wednesday, November 8
- Friday, December 8
- Wednesday, January 17

Recommendations

Recommendation #1: Identify strategies for continuous quality improvement that will increase consistencies between abuse investigators statewide, on intent of Oregon Revised Statutes (ORS) and Oregon Administrative Rules (OAR) language, abuse coordination duties, oversight and investigation findings.

Members of the group identified potential inconsistencies in the Department’s abuse coordination duties and oversight of services provided by local CDDP for abuse investigation findings. In order to discuss recommendations around application of fines and mandatory

finds the workgroup would recommend this potential for inconsistency first be addressed.

OAAPI will review the current initial and ongoing training available to Abuse Investigators in order to assess if there is a need to revise or expand current training options and requirements. Ongoing training may need to include a calibration process for Investigators to remain consistent in their interpretation and application of rule and statute language.

Recommendation #2: Amend Oregon Revised Statute 430.736 in order to align language in statute and rule, clarify intent, eliminate unnecessary or redundant language, and standardize policy.

After reviewing current abuse definitions, substantiated abuse findings and current enforcement statutes the workgroup agreed aligning definitions between statute and rule, expanding clarification to current definitions and eliminating unnecessary or redundant language should be a next step.

The workgroup recommends the following definitions in ORS 430.735 be taken under consideration for amending:

- Refine abuse definition to increase clarity.
- Refine neglect definition.
- Review application of a worker's right to self-defense across settings.
- Change abandonment language from "may result in" to "may result in imminent danger of".
- Expand "failure to protect" language to clarify this relates to a caregiver's direct awareness or witness to abuse by a third party.
- Change sexual harassment/exploitation definition to include language related to failure to discourage sexual conduct between adult and caregiver.

Recommendation #3: Review and revise OAR 407-045-0260 for the purposes of aligning language in statute and rule, clarifying intent, eliminating unnecessary or redundant language, and standardizing policy.

In order to adhere to The Administrative Procedures Act, OAAPI will need to form a Rules Advisory Committee (RAC) with additional participants not present for this workgroup discussion, to discuss and

review permanent changes to the OAR. This workgroup recommended the following topics for the consideration of the RAC:

- Improve notice to providers when there are delays or extensions on investigations.
- Develop a process to debrief decisions on findings in order to support quality improvement efforts; as the new format and necessary redactions have negatively impacted this effort.
- Provide accessible information to stakeholders related to degree of seriousness and level of abuse.
- Continue efforts to finalize an appeal process for substantiated abuse findings.
- Change sexual harassment/exploitation definition in OAR to include language of “unwelcome” contact instead of “physical” sexual contact.
- Align language with what is in statute.
- Determine if rule language is necessary to support consistency in investigations.
- Modify language on training expectations to be in line with best practices.

It is recommended the RAC include CDDP Abuse Investigators, provider representation, DSPs and individuals with I/DD.

Recommendation #4: Develop resources for individuals and families to aide in informed decision making in selecting an appropriate care setting.

Individuals have the right to request that providers disclose licensing conditions and abuse substantiations. This information can be difficult to interpret as standalone data. The workgroup recommends there be information developed and made available in order to aide in the interpretation of this data, including an explanation of commonly used terms. The workgroup discussed pursuing a future resource request to support development of on-line resources that can be accessed directly by individuals and families.

Recommendation #5: The workgroup identified specific topics that warrant further conversation and recommends the department and stakeholders focus on delving into these further, with a focus on possible changes to ORS, OAR, training and education.

Topics for further exploration:

- Expand policy on conflict of interest for abuse investigators. Specifically when matters are turned over to a neighboring county versus OAAPI for investigation.
- Balancing the need for comprehensive thorough investigations while ensuring timely decisions are made.
- The roles fines, deterrents and education play into compliance efforts. Research what most effectively improves services and the system overall.
- Improving stakeholder engagement with OAAPI in order to understand their data, trends and abuse definitions.
- Expand participation in future workgroups to ensure wider representation of interested parties, including but not limited to the Residential Facility Ombudsman's Program.

Conclusion

While this report is submitted to document and conclude the work of the HB 5006 workgroup, it does not end the department's continued commitment to focus on the health and safety of Individuals receiving services in the IDD system. Recommendations presented in this report will be developed and acted on in appropriate workgroups like the Continuous Improvement Committee (CIC) being created by the ODDS Quality Improvement unit, the Vision Advisory Committee, monthly CDDP and Brokerage leadership meetings, appropriate Rule Advisory Committees and other stakeholder meetings. Please let us know if you have any questions about the information provided in this report.

Respectfully submitted,

Lilia Teninty