



## PERMANENT ADMINISTRATIVE ORDER

### DHSD 4-2020

CHAPTER 407  
DEPARTMENT OF HUMAN SERVICES  
ADMINISTRATIVE SERVICES DIVISION AND DIRECTOR'S OFFICE

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FILING CAPTION: Updating OTIS rules to align with ODDS host homes and "within 72 hour" response time

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#### RULES:

407-045-0845, 407-045-0887

AMEND: 407-045-0845

REPEAL: Temporary 407-045-0845 from DHSD 1-2020

RULE TITLE: OTIS Child Abuse Rules: Screening Report Form: Time Line and Requirements

NOTICE FILED DATE: 01/17/2020

RULE SUMMARY: OAR 407-045-0845 is being amended to align with 407-045-0835 updating the reference to response time from "within 5 days" to "within 72 hours."

#### RULE TEXT:

(1) OTIS Screening Time Line.

(a) The time line for an OTIS investigator to complete and document actions and information gathered under OAR 407-045-0825 and 407-045-0835 is one of the following, unless an exception is granted as provided in subsection (b) of this section:

(A) Immediately when a "within 24 hours" response time line is assigned as provided in OAR 407-045-0835(2).

(B) Within the same day when a "within 72 hours" response time line assigned as provided in OAR 407-045-0835(2).

(C) No later than the next working day after the screening determination is made when the report is closed at screening as provided in OAR 407-045-0835(1)(c).

(b) An extension to the time line required in subsection (a) of this section may only be approved as follows:

(A) The director of OTIS or designee may grant a one business day extension up to two times if the OTIS investigator is unable to complete all required screening activities the same day the report is received because critical information, such as the location of the child or young adult, is still needed to determine the OTIS response.

(B) Notwithstanding paragraph (A) of this subsection:

(i) Screening activities may not exceed two business days beyond the day the report is received by the Department; and

(ii) No extension to the time line required under subsection (a) of this section may be granted if the OTIS investigator has the critical information needed to determine the OTIS response or has information to indicate that child or young adult is unsafe.

(C) The OTIS investigator must document the reason for the extension, including the critical information that remains to be collected, and the approval of the director of OTIS or designee.

(2) Screening Report Form Contents. The OTIS screening report form must include all of the following information:

(a) Screening activities completed.

(b) If a report is assigned for investigation:

(A) Information supporting the decision that an investigation is required under OAR 407-045-0835(1)(b); and

(B) Information that supports the assigned OTIS response time line.

(c) If a report is closed at screening:

(A) Information supporting the decision that the report must be closed at screening under OAR 407-045-0835(1)(c);  
and

(B) Supervisor approval.

(3) The screening report form must be entered into the Department's electronic database.

STATUTORY/OTHER AUTHORITY: ORS 409.050, 418.005

STATUTES/OTHER IMPLEMENTED: ORS 409.050, 409.185, 418.005, 418.257 – 418.259, 419B.005 - 419B.050, ORS 443.400 to 443.455

AMEND: 407-045-0887

REPEAL: Temporary 407-045-0887 from DHSD 1-2020

RULE TITLE: OTIS Child Abuse Rules: Abuse Determination

NOTICE FILED DATE: 01/17/2020

RULE SUMMARY: OAR 407-045-0887 is being amended to align with recent rulemaking to include references to ODDS host homes.

RULE TEXT:

(1) Abuse Determination Requirements.

(a) Except as provided in OAR 407-045-0886, an abuse determination must be made for all reports of abuse that are determined to require an investigation under OAR 407-045-0835(1)(b).

(b) The standard of proof for making an abuse determination is reasonable cause to believe.

(c) The possible abuse determinations are:

(A) "Substantiated", which means there is reasonable cause to believe the abuse occurred.

(B) "Unsubstantiated", which means there is no evidence the abuse occurred.

(C) "Inconclusive", which means there is some indication the abuse occurred, but there is insufficient evidence to conclude that there is reasonable cause to believe the abuse occurred. The inconclusive determination may be used only in the following circumstances:

(i) After extensive efforts have been made, the OTIS investigator is unable to locate the alleged victim; or

(ii) After completing an investigation, there is insufficient information to support an abuse determination of substantiated or unsubstantiated and:

(I) The alleged victim is unable or unwilling to provide consistent information; or

(II) There is conflicting or inconsistent information from collateral contacts.

(2) Except as provided in section (4) of this rule, abuse of a child, for the purpose of making an abuse determination on a report subject to ORS 419B.005, includes, but is not limited to, the following:

(a) Child selling, including the selling of a child that consists of buying, selling, bartering, trading, or offering to buy or sell the legal or physical custody of a child.

(b) Mental injury (psychological maltreatment), including cruel or unconscionable acts or statements made, threatened to be made, or permitted to be made by the caregiver that has a direct effect on the child. The caregiver's behavior, intentional or unintentional, must be related to the observable and substantial impairment of the child's psychological, cognitive, emotional, or social well-being and functioning.

(c) Neglect, including failure, through action or omission, to provide and maintain adequate food, clothing, shelter, medical care, supervision, protection, or nurturing. Neglect includes each of the following:

(A) Physical neglect, which includes each of the following:

(i) Failing to provide for the child's basic physical needs including adequate shelter, food, and clothing.

(ii) Permitting a child to enter or remain in or upon premises where methamphetamines are being manufactured.

(iii) Unlawful exposure of a child to a substance that subjects a child to severe harm to the child's health or safety. When the OTIS investigator is making a determination of physical neglect based on severe harm to the child's health due to unlawful exposure to a substance, this determination must be consistent with medical findings.

(B) Medical neglect is a refusal or failure to seek, obtain, or maintain necessary medical, dental, or mental health care.

Medical neglect includes withholding medically indicated treatment from infants who have disabilities and life-threatening conditions. However, failure to provide a child with immunizations or routine care alone does not constitute medical neglect. When the OTIS investigator is making a determination of medical neglect, this determination must be consistent with medical findings.

(C) Lack of supervision and protection, including failure to provide supervision and protection appropriate to the child's age, mental ability, and physical condition.

(D) Desertion, which includes the caregiver leaving the child with another person and failing to reclaim the child, or

caregiver failure to provide information about their whereabouts, providing false information about their whereabouts, or failing to establish a legal guardian or custodian for the child.

(E) Psychological neglect, which includes serious inattention to the child's need for affection, support, nurturing, or emotional development. The caregiver behavior must be related to the observable and severe harm of the child's psychological, cognitive, emotional, or social well-being and functioning.

(d) Physical abuse, including an injury to a child that is inflicted or allowed to be inflicted by non-accidental means that results in harm. Physical abuse may include injury that could not reasonably be the result of the explanation given.

Physical abuse may also include injury that is a result of discipline or punishment. Examples of injuries that may result from physical abuse include, but are not limited to:

(A) Head injuries;

(B) Bruises, cuts, lacerations;

(C) Internal injuries;

(D) Burns or scalds;

(E) Injuries to bone, muscle, cartilage, and ligaments;

(F) Poisoning;

(G) Electrical shock; and

(H) Death.

(e) Sexual abuse, which includes:

(A) A person's use of a child for the person's own sexual gratification, the sexual gratification of another person, or the sexual gratification of the child. Sexual abuse includes incest, rape, sodomy, sexual penetration, fondling, and voyeurism.

(B) Sexual exploitation, including, but not limited to, the use of a child in a sexually explicit way for personal gain to make money, in exchange for goods, services, or drugs, or to gain status. Sexual exploitation also includes using children in prostitution or using children to create pornography.

(C) Sex trafficking.

(f) Threat of harm, including all activities, conditions, and circumstances that place the child at threat of severe harm of physical abuse, sexual abuse, neglect, mental injury, or other abuse.

(3) Except as provided in section (4) of this rule, abuse of a child or young adult, for the purpose of making an abuse determination on a report subject to ORS 418.257, includes, among others, the following:

(a) Abandonment, including desertion or willful forsaking of a child or young adult, or the withdrawal or neglect of duties and obligations owed a child or young adult by a child-caring agency, proctor foster parent, caregiver, ODDS licensed group home, ODDS host home, other individual, or an employee, volunteer, or contractor of a child-caring agency, ODDS licensed group home, or ODDS host home.

(b) Financial exploitation.

(A) Financial exploitation includes:

(i) Wrongfully taking the assets, funds, or property belonging to or intended for the use of a child or young adult.

(ii) Alarming a child or young adult by conveying a threat to wrongfully take or appropriate moneys or property of the child or young adult if the child or young adult would reasonably believe that the threat conveyed would be carried out.

(iii) Misappropriating, misusing, or transferring without authorization any moneys from any account held jointly or singly by a child or young adult.

(iv) Failing to use the income or assets of a child or young adult effectively for the support and maintenance of the child or young adult.

(B) Financial exploitation does not include age-appropriate discipline that may involve the threat to withhold, or the withholding of, privileges.

(c) Involuntary seclusion:

(A) Involuntary seclusion means confinement of a child or young adult alone in a room from which the child or young adult is physically prevented from leaving.

(B) Involuntary seclusion includes:

- (i) Involuntary seclusion of a child or young adult for the convenience of a child-caring agency, proctor foster parent, caregiver, ODDS licensed group home, ODDS host home, or an employee, volunteer, or contractor of a child-caring agency, ODDS licensed group home, or ODDS host home; or
- (ii) Involuntary seclusion of a child or young adult to discipline the child or young adult.
- (C) Involuntary seclusion does not include age appropriate discipline, including but not limited to a time-out.
- (d) Neglect:
  - (A) Neglect includes:
    - (i) Failure to provide the care, supervision, or services necessary to maintain the physical and mental health of a child or young adult; or
    - (ii) The failure of a child-caring agency, proctor foster parent, ODDS licensed group home, ODDS host home, caregiver, other person, or an employee, contractor, or volunteer of a child-caring agency, ODDS licensed group home, or ODDS host home to make a reasonable effort to protect a child or young adult from abuse.
  - (B) For purposes of this subsection, "services" includes, but is not limited to, the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene or any other service essential to the well-being of a child or young adult.
- (e) Physical abuse, which includes:
  - (A) Any physical injury to a child or young adult caused by other than accidental means, or that appears to conflict with the explanation given of the injury; or
  - (B) Willful infliction of physical pain or injury upon a child or young adult.
- (f) Sexual abuse:
  - (A) Sexual abuse includes:
    - (i) An act that constitutes a crime under ORS 163.375, 163.405, 163.411, 163.415, 163.425, 163.427, 163.465, 163.467, or 163.525;
    - (ii) Sexual harassment, sexual exploitation, or inappropriate exposure to sexually explicit material or language;
    - (iii) Any sexual contact between a child or young adult and an employee of a child-caring agency, proctor foster home, ODDS licensed group home, ODDS host home, caregiver, or other person responsible for the provision of care or services to a child or young adult;
    - (iv) Any sexual contact between a person and a child or young adult that is unlawful under ORS chapter 163 and not subject to a defense under that chapter; and
    - (v) Any sexual contact that is achieved through force, trickery, threat, or coercion.
  - (B) For purposes of this subsection, "sexual exploitation," as defined in ORS 419B.005(1)(a)(E), includes, but is not limited to:
    - (i) Contributing to the sexual delinquency of a minor, as defined in ORS chapter 163, and any other conduct which allows, employs, authorizes, permits, induces or encourages a child to engage in the performing for people to observe or the photographing, filming, tape recording or other exhibition which, in whole or in part, depicts sexual conduct or contact, as defined in ORS 167.002 or described in ORS 163.665 and 163.670, sexual abuse involving a child or rape of a child, but not including any conduct which is part of any investigation conducted pursuant to ORS 419B.020 or which is designed to serve educational or other legitimate purposes; and
    - (ii) Allowing, permitting, encouraging or hiring a child to engage in prostitution as described in ORS 167.007 or a commercial sex act as defined in ORS 163.266, to purchase sex with a minor as described in ORS 163.413 or to engage in commercial sexual solicitation as described in ORS 167.008.
  - (C) For purposes of this subsection, "sexual contact," as defined in ORS 163.305, means any touching of the sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the actor for the purpose of arousing or gratifying the sexual desire of either party.
- (g) Verbal abuse:
  - (A) Verbal abuse includes threatening severe harm, either physical or emotional, to a child or young adult through the use of:

- (i) Derogatory or inappropriate names, insults, verbal assaults, profanity, or ridicule; or
- (ii) Harassment, coercion, threats, compelling or deterring conduct by threats, humiliation, mental cruelty, or inappropriate sexual comments.
- (B) Verbal abuse does not include age-appropriate discipline that may involve the threat to withhold privileges.
- (h) Wrongful use of a physical or chemical restraint of a child or young adult, excluding an act of restraint prescribed by a physician licensed under ORS chapter 677 and any treatment activities that are consistent with an approved treatment plan or in connection with a court order.
- (A) For purposes of this subsection, "physical restraint" means the act of restricting a child or young adult 's voluntary movement as an emergency measure in order to manage and protect the child or young adult or others from injury when no alternate actions are sufficient to manage the child or young adult 's behavior. "Physical restraint" does not include temporarily holding a child or young adult to assist him or her or assure his or her safety, such as preventing a child or young adult from running onto a busy street.
- (B) "For purposes of this subsection, "chemical restraint" means the administration of medication for the management of uncontrolled behavior.
- (4) Abuse does not include reasonable discipline unless the discipline results in one of the conditions described in sections (2) or (3) of this rule.

STATUTORY/OTHER AUTHORITY: ORS 409.050, 418.005

STATUTES/OTHER IMPLEMENTED: ORS 409.050, 409.185, 418.005, 418.257 – 418.259, 419B.005 – 419B.050, ORS 443.400 to 443.455