

Policy Transmittal Developmental Disabilities Services



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Number: DD-PT-21-093

Issue date: 10/29/2021

Topic: Developmental Disabilities

Due date:

Transmitting (check the box that best applies):

- New policy
 Policy change
 Policy clarification
 Executive letter
 Administrative Rule
 Manual update
 Other:

Applies to (check all that apply):

- | | |
|--|--|
| <input type="checkbox"/> All DHS employees | <input type="checkbox"/> County Mental Health Directors |
| <input type="checkbox"/> Area Agencies on Aging: {Select type} | <input type="checkbox"/> Health Services |
| <input type="checkbox"/> Aging and People with Disabilities | <input checked="" type="checkbox"/> Office of Developmental Disabilities Services (ODDS) |
| <input type="checkbox"/> Self Sufficiency Programs | <input type="checkbox"/> ODDS Children's Intensive In Home Services |
| <input checked="" type="checkbox"/> County DD Program Managers | <input type="checkbox"/> Stabilization and Crisis Unit (SACU) |
| <input type="checkbox"/> ODDS Children's Residential Services | <input checked="" type="checkbox"/> Other (<i>please specify</i>): Licensing Unit, Child Foster Home Certifiers, Child Foster Home Providers |
| <input type="checkbox"/> Child Welfare Programs | |

Policy/rule title:	Senate Bill 710 Restraint and Involuntary Seclusion Requirements for I/DD Child Foster Home Settings		
Policy/rule number(s):	OAR 411-346-0110; OAR 411-346-0185; OAR 411-346-0190; and OAR 411-346-0195 (new section)	Release number:	
Effective date:	November 1, 2021	Expiration date:	
References:	Senate Bill 710 (2021 legislative session)		
Web address:	Senate Bill 710: https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/SB710/Enrolled OAR 411-346 Temporary Rulemaking: https://www.oregon.gov/dhs/SENIORS-		

Discussion/interpretation:

The 2021 legislative session resulted in Senate Bill 710 (SB 710) being adopted into Statute. SB 710 creates provisions and codifies requirements for restraints and involuntary seclusion in out-of-home settings for children. Some, but not all, sections of SB 710 apply to foster homes for children with intellectual or developmental disabilities. Therefore, the Office of Developmental Disabilities Services (ODDS) is updating rules in OAR chapter 411, division 346, to implement the applicable sections of SB 710.

The following is a summary of the updates to the rules in OAR chapter 411, division 346:

OAR 411-346-0110 Definitions and Acronyms

The following terms were added and defined:

- Involuntary Seclusion
- Prone Restraint
- Restraint
- Serious Bodily Injury
- Supine Restraint

OAR 411-346-0185 Abuse and Incident Handling and Reporting

- Codifies language related to reporting the use of a restraint.

OAR 411-346-0190 Standards and Practices for Care and Services

- Renamed 411-346-0190(3), “Freedom From Restraint”, to “Individually-Based Limitations.”
- Added clarifying language related to the use of individually-based limitations.
- Updated language to include prohibited behavior support practices under SB 710.
- Clarifies that a safeguarding intervention is a restraint.
- Cites the new rule section, OAR 411-346-0195, for requirements that must be met when a restraint is used.

OAR 411-346-0195 Restraint and Involuntary Seclusion

- This is a new section that incorporates the language from SB 710 regarding prohibited use of restraint and involuntary seclusion, as well as permissible use of restraint.

Implementation/transition instructions:

Upon adoption of the temporary rules:

Definitions

- "Involuntary Seclusion" means the confinement of a child alone in a room from which the child is prevented from leaving by any means. Involuntary seclusion does not include time-out if the time-out is in a common area of the home from which the child is not prevented from leaving and used as a positive behavior support practice that meets the requirements in OAR 411-346-0190(9)(c)(A)-(C).
- "Prone Restraint" means a restraint in which a child is held face down on the floor or other surface.
- "Restraint" means the physical restriction of a child's actions or movements by holding the child or using pressure or other means.
- "Serious Bodily Injury" means any significant impairment of the physical condition of a child or others, as determined by qualified medical personnel, whether self-inflicted or inflicted by someone else.
- "Supine Restraint" means a restraint in which a child is held face up on the floor or other surface.

Reporting Requirements

- A foster provider must immediately, but not later than one business day, notify a child's case management entity of the use of a restraint.
- A foster provider must complete a written incident report for use of a restraint.

Individually-based Limitations

- A foster provider may not place any limitations on a child's home and community-based freedoms described in OAR 411-004-0020 without an individually-based limitation, except when all of the following conditions have been met:
 - The child is under the age of 18.
 - The limitation is consistent with community parenting standards for children of the same age who do not experience disabilities.
 - The foster provider, child's parent or legal guardian, and the ISP team identify and agree upon the limitation appropriate for the child.

Prohibited Behavior Support Practices

In addition to the prohibited behavior support practices already described in OAR 411-346-0190(9), the following are prohibited:

- Use or threatened use of a prone restraint.
- Use or threatened use of a supine restraint.
- Use of practices that are abusive, aversive, coercive, disciplinary, demeaning, retaliatory, or for convenience.

Restraint and Involuntary Seclusion Prohibitions

In addition to those already described in Oregon Administrative Rules, prohibited restraints under SB 710 include:

- Nonincidental use of a solid object, including the ground, a wall, or the floor, to impede an individual's movement, unless the restraint is necessary to gain control of a weapon.
- Pressure or risk of pressure on neck/throat or mouth unless the restraint is necessary for the purpose of extracting a body part from a bite.
- Anything that impedes or risks impeding breathing.
- Intentional placement of hands, feet, elbows, knees, or object on neck, throat, or genitals.
- Pressure or risk of pressure on stomach, chest, joints, throat, or back by a foot, knee, or elbow.

A child may not be placed involuntary seclusion.

Permissible Use of Restraint

- A child may only be placed in a restraint if the child's behavior poses a reasonable risk of imminent serious bodily injury to the child or others and less restrictive interventions would not effectively reduce that risk.
- A restraint may only be used on a child if:
 - The restraint is necessary to break up a physical fight or to effectively protect a person from an assault, serious bodily injury, or sexual contact;

- The restraint uses the least amount of physical force and contact possible; and
- The restraint is not a prohibited restraint as described in rule.

Training/communication plan:

Child foster home providers are responsible for reviewing the complete rule text and complying with the provisions of OAR chapter 411, division 346.

Child foster home Certifiers should review this transmittal with the child foster home providers certified in their respective counties.

This transmittal will be discussed during the next Monthly Transmittal Review. Please send questions in advance to ODDS.Questions@dhsosha.state.or.us.

- The Monthly Transmittal Review is held the second Wednesday of every month at 2 pm using the Zoom platform. Please register in advance for these meetings: <https://www.zoomgov.com/meeting/register/vJlsc-qvqD8iGURx5OQk8TAdIS6Arg9ZAf4>
- After registering, you will receive a confirmation email containing an appointment and information about joining the meeting. American Sign Language (ASL) and live captioning will be provided. To request other accommodations or languages, please send an email to ODDS.Questions@dhsosha.state.or.us at least three business days prior to the meeting.

Local/branch action required:

Central office action required:

Field/stakeholder review: Yes No

If yes, reviewed by:

Filing instructions:

If you have any questions about this policy, contact:

Contact(s): Julie Van Nette, Children's Foster Care Coordinator	
Phone: 971-388-9726	Fax:
Email: julie.l.vannette@dhsosha.state.or.us	