

# **Adoption of Final Rule Changes to Implement SB 1515**

Seven sets of rules were amended on July 1, 2016, to implement [SB 1515](#). After several public meetings and opportunities to submit written comments, the Department has finalized each of the seven rule sets effective December 1, 2016. This document includes a summary of the changes and links to final rule text. [Find more information about the implementation of SB 1515 on the website.](#)

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## **CPS (Child Protective Services)**

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OAAPI screens and investigates most reports of child abuse relating to child-caring agencies or proctor foster homes, however, CPS is responsible in some cases, including: reports of child-on-child sexual abuse; abuse of a child who resides in, but does not receive services from, a child-caring agency (such as a proctor foster parent's biological child); and abuse reported in an academic boarding school, adoption agency, or homeless or runaway youth shelter. The primary changes to the CPS rules are in a new set of rules, OAR 413-015-0620 to 461-015-0640, which reflect new SB 1515 requirements for CPS screening and investigation when reports of child abuse involve a child-caring agency or proctor foster home. Other changes made throughout the CPS rules are to align terminology with SB 1515 and include reference to the definition of abuse that also applies to children in care. (Very few substantive changes have been made to these rules throughout the public comment period. They are largely similar to the temporary rules adopted on July 1, 2016.) Specific changes are summarized below.

- Clarifies the circumstances under which the report of child abuse or neglect is the responsibility of CPS versus OAAPI.
- Requires additional screening activities for reports of child abuse or neglect involving a child-caring agency or proctor foster home:
  - When the report is the responsibility of OAAPI, the report is immediately pended to OAAPI.
  - When the report is the responsibility of CPS, screeners must notify staff designated to ensure that internal and external notifications required in SB 1515 occur.
  - Requires screeners to notify staff who are required to make SB 1515 notifications when reports of child abuse or neglect are received regarding a child-caring agency or proctor foster home.
- Requires additional assessment activities for investigations of child abuse or neglect involving a child-caring agency or proctor foster home including:
  - Convening a staffing prior to starting the CPS assessment with other appropriate Department personnel including the caseworker for each child in care, OLRO, Well-Being, and OAAPI;
  - Notifying the child in care about their rights to have certain people present during an interview;
  - Notifying the owner, manager, operator, or other appropriate authority for the child-caring agency or proctor foster home about the investigation;
  - Interviewing current and past employees of the child-caring agency if those people may have information regarding the alleged abuse;
  - Interviewing children and young adults who reside in or receive services from the child-caring agency if they witnessed the abuse or have other pertinent information;
  - Notifying the parent of the child in care to gain permission to interview the child in care if the child is not in the legal custody of DHS or OYA;
  - Reporting any crime that may have been committed to law enforcement;

- Determining the disposition of the investigation consistent with the possible findings in SB 1515;
- Notifying staff who are required to make SB 1515 notifications; and
- Completing a Sensitive Issue Report when a report of abuse is substantiated.

Final rules are available [here](#) and rule text showing changes is available [here](#).

## **BRS (Behavior Rehabilitation Services)**

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These rules govern child-caring agencies who also contract to provide BRS services. The changes are described below. (Note that these rules have not substantively changed since the temporary rules were adopted on July 1, 2016.)

- Update terminology consistent with SB 1515, e.g. children are referred to as "children in care" and approved provider parents are referred to as "proctor foster parents."
- Require the BRS providers to permit immediate access to children in care and the premises as required in ORS 418.305 as amended by SB 1515.
- Require BRS providers to comply with all state and federal laws and regulations applicable to foster care agencies, including licensing rules.
- Require the Department to investigate reports received regarding a BRS provider to determine whether there has been a material breach of the BRS contract.

Final rules are available [here](#) and rule text showing changes is available [here](#).

## **Monthly Contact and Monitoring Child Safety**

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These rules are amended to reflect new Department responsibilities related to reporting concerns about children residing in or receiving services from a child-caring agency and a new rule is adopted to reflect the internal and external notifications SB 1515 requires when: the Department receives a report that a possible licensing or contract violation has occurred; the Department opens an investigation into a report of child abuse; or when the Department takes an action against the license of a child-caring agency.

- A new rule is adopted, OAR 413-080-0052, to state requirements for Department staff when they become aware of a concern involving a child-caring agency or proctor foster home. Specifically, staff must: notify Department staff designated to make SB 1515 notifications; document the report in OR-Kids when possible; make efforts to address the concern; and report to law enforcement, per SB 1515, if any crime may have been committed.
- The monthly face-to-face contact requirements are updated to include reference to reporting any concerns the caseworker may become aware of, consistent with the new rule described above, OAR 413-080-0052.

- A new rule is adopted, OAR 413-080-0070, to establish the required notifications under SB 1515 that must be made and to whom. Specifically, the rule lists the internal and external entities who must be notified when: a report of a suspected licensing or contract violation is received; when the Department opens an investigation into a report of child abuse or neglect involving a child-caring agency or proctor foster home; when a report of child abuse or neglect is substantiated or founded; and when actions are taken against a child-caring agency's license, including placing conditions on a license or suspending or revoking a license.

Final rules are available [here](#) and rule text showing changes are available [here](#).

## **OLRO (Office of Licensing and Regulatory Oversight)**

Most of the changes in SB 1515 relate to licensure and oversight requirements for child-caring agencies and thus significant changes were made to the Department's licensing rules. Highlights of the changes are below. (Since the RAC and public comment process, several minor changes have been made in response to written comments, but most substantive changes to these rules were reflected in the temporary rules adopted on July 1, 2016.)

- Sets out the full compliance requirements listed in section 4 of SB 1515, such as complying with abuse reporting and investigation requirements, providing adequate furnishings and personal items for children, ensuring the safety of children, and not engaging in financial mismanagement. To be licensed by the Department, a child-caring agency must currently be in full compliance with these requirements (as fleshed out in Department rules) or the Department must be confident the child-caring agency *will be* in full compliance. This is in contrast to the previous standard of "substantial compliance."
- Requires the Department to create a licensing workload model to drive the Department's budget requests and staffing choices to ensure adequate oversight of child-caring agencies.
- Updates definitions to align with SB 1515, including "child in care," "child-caring agency," and "proctor foster home" and consolidates definitions in an overarching definitions rule applicable to the entire division of licensing rules.
- Requires compliance with all applicable laws and rules, and the internal policies and procedures of the child-caring agency as a condition of licensure.
- Establishes new financial oversight requirements required in SB 1515, including annual audits or financial review (depending on annual revenue) and tax compliance certificates.
- Adds specific rights for children and families served by child-caring agencies, including a prohibition on the restriction of child-parent communication as a condition of program participation, and a requirement that child-caring agencies must afford the rights in the Foster Care Bill of Rights to children in the care or custody of the Department.

- Requires child-caring agencies to have child abuse reporting policies, procedures, and training as required in section 37 of SB 1515.
- Clarifies requirements related to the internal written policies and procedures child-caring agencies must have, including the additional requirement to have a suicide prevention policy, and requiring policies to be submitted at the initial application for a license and licensing renewals.
- Requires child-caring agencies to provide contact information for executive directors and board members and governmental agencies or units with whom they contract to provide services or care to children. This is necessary to allow the Department to make external notifications when certain reports are received, an abuse investigation is opened, or actions are taken against a child-caring agency's license. (These notifications requirements are reflected in OAR 413-080-0070 described above.)
- Requires child-caring agencies to provide access to children in care and the agencies' premises as required in section 20 of SB 1515 and, for those child-caring agencies who care for children on a 24-hour basis, to obtain parental consent to allow access to the child as required in SB 1515 and the licensing rules.
- Requires child-caring agencies to provide the Department with information about children in its care and allow inspection of records and documents, including financial documents, when requested.
- States that the Department will investigate when it becomes aware that abuses, deficiencies, or failures to comply may be occurring in a child-caring agency.
- Updates the civil penalty criteria consistent with section 31 of SB 1515.
- Requires annual unannounced inspections of premises where children reside or receive services.
- Grants new authority for the Department to take licensing enforcement actions when licensing violations exist.
- Requires licensing enforcement actions in certain circumstances, such as the death of a child.
- Allows a child-caring agency to appeal the decision to place conditions on a license through a contested case hearing.
- Updates the foster care agency rules to align with the standards for proctor foster homes with standards for Department-certified foster homes.
- Requires prospective adoptive parents to sign a release of information regarding previous adoption application denials.
- Increases requirements for therapeutic boarding schools to obtain assessments and services from qualified providers.
- Makes additional housekeeping changes to align requirements for different types of child-caring agencies; improves the organization of the rules; and updates terminology to align with SB 1515.

Final rules are available [here](#) and rule text showing changes is available [here](#).

## **Client Rights**

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Minor changes are being made to these rules to align with the notice and hearing rights child-caring agencies have under SB 1515, licensing rules, and ORS chapter 183. Primarily, terminology is updated and the right to appeal when conditions are placed on a license will be included in these overarching client rights rules.

Final rules are available [here](#) and rule text showing changes is available [here](#).

## **Background Check Unit**

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The primary change to these rules is to implement section 6 of SB 1515 which adds new background check requirements for proctor foster home applicants.

- Defines "proctor foster parent" as a person applying for certification or recertification of a proctor foster home by a child-caring agency pursuant to OAR 413-215-0301 to 413-215-0396.
- Defines "subject individual" to include, for any child foster home, proctor foster home, or child adoptive home certified by a child-caring agency under OAR chapter 413, division 215:
  - A foster parent or proctor foster parent;
  - An adoptive parent applicant or approved adoptive parent;
  - A household member in an adoptive or foster home 18 years of age or over;
  - A household member in an adoptive or foster home under 18 years of age if there is reason to believe the household member may pose a risk to children in the home; and
  - A respite care provider.
- Clarifies definition of "subject individual" regarding employee, contractor, or employee for a child-caring agency OAR chapter 413, division 215.
- Requires proctor foster parents to:
  - Provide a release of information allowing the Department to disclose information regarding open or pending abuse investigations and substantiated allegations of abuse or neglect;
  - Disclose any currently open or pending child or adult protective services abuse or neglect investigations;
  - Disclose any substantiations for child or adult abuse or neglect; and
  - Disclose any restraining orders or protective orders.
- States that failure to provide a release of information results in a background check request being closed with no hearing rights.
- Requires the Department to share information with the foster care agency about open or pending abuse investigations; substantiated abuse investigations; and whether the applicant is currently certified or licensed by the Department as a foster parent.

- Clarifies what constitutes potentially disqualifying abuse for child-caring agency subject individuals, specifically:
  - Any child protective services founded or substantiated abuse;
  - Any adult protective services investigations with substantiated physical abuse, sexual abuse, or financial abuse initiated on or after January 1, 2010, based on severity;
  - For proctor foster parents:
    - Restraining orders and protective orders;
    - Substantiated adult neglect; and
    - Making a materially false statement about abuse, restraining orders, or protective orders.

Final rule text is available [here](#).

## **OAAPI (Office of Adult Abuse Prevention and Investigations)**

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These rules are amended significantly to improve the organization and flow of the rules, remove unnecessary provisions, and implement the new child abuse investigation requirements in SB 1515.

- Purpose and Applicability:
  - Clarifies that OAAPI is responsible for investigating reports of child abuse against five of the eight types of child-caring agencies: residential care agencies, day treatment programs, therapeutic boarding schools, foster care agencies, and outdoor youth programs. (Child Welfare CPS investigates the other three license types.)
- Definitions:
  - Adds the definition of abuse in SB 1515 applicable to child-caring agencies. This includes an expanded definition of neglect, financial exploitation, verbal abuse, and wrongful restraint. These types of abuse are in addition to those described in ORS 419B.005.
  - Adds definitions for chemical restraint, physical restraint, child in care, and other terms to implement SB 1515.
- Screening:
  - Requires screeners to gather information to determine type of alleged abuse and circumstances surrounding the report.
  - Requires screeners to determine whether to assign the report for investigation or close the report at screening. Reports that meet the definition of abuse in ORS 419B.005 and SB 1515 must be assigned for investigation; reports that do not meet the definition of abuse are closed at screening with supervisor approval.
  - For reports that meet the definition of abuse in SB 1515 and ORS 419B.005, requires screeners to assign an investigation response time of 24 hours or 5 days, depending on information gathered.

- Requires OAAPI to collaborate with law enforcement and/or other Department personnel if a child is in immediate need of protection.
- Requires screeners to make applicable cross reports and notifications as described in OAR 407-045-0895 and OAR 413-080-0070 (described above).
- Requires that screening is completed within 24 hours unless an extension is granted by the OAAPI Director or designee.
- Investigation:
  - Describes activities involved in the investigation process, including interviews, collaborating with law enforcement and other Department personnel, obtaining and reviewing information and evidence, and complying with Karly's Law when applicable.
  - Requires OAAPI investigators to complete a final report that includes the basis for the determination of substantiated, unsubstantiated, or inconclusive.
  - Requires OAAPI investigators to report information that does not constitute abuse, but may pose a risk to child health or well-being, to the Director or designee per SB 1515.
  - Adds an exception to completing the activities of an investigation in certain cases, such as when an investigation was opened in error or is not an allegation of abuse.
- Abuse Determination:
  - Defines the possible abuse investigation determinations (substantiated, inconclusive, unsubstantiated) consistent with SB 1515.
  - Requires investigators to consider the behavior, conditions, and circumstances in light of the statutory definitions of abuse when reaching a determination.
  - Requires various internal and external notifications upon completion of an abuse investigation.
- Abuse Report:
  - Requires OAAPI to prepare an abuse investigation report that includes information regarding the allegation, investigation, conclusions, and findings.
  - Requires the report to be completed within 30 business days from the date the report was assigned for investigation, unless an extension is approved.
  - Requires OAAPI to notify the child-caring agency if an extension is granted and the new due date for completion.
  - Allows one week for supervisor approval of the final investigation report.
- Law Enforcement Cross Reporting and Other Notifications:
  - Requires OAAPI to notify law enforcement of any crimes that may have been committed, whether or not they are related to the abuse allegation or if a child has died as a result of abuse or under suspicious circumstances.
  - Requires OAAPI to follow up with the original abuse reporter, so long as disclosure is not prohibited under other state or federal laws.



- Requires OAAPI to provide written notification to the licensing or certifying body if OAAPI becomes aware that a person accused of child abuse is licensed or certified by a public agency or board.
- Notice and Review of Substantiated Finding:
  - Requires notice be provided to a person substantiated for abuse that includes information about requesting a review of the substantiation.
  - Describes the process of reviewing a substantiated finding.
  - Lists exceptions to the right to request a review of a substantiated finding.
- Confidentiality
  - Describes requirements relating to confidentiality of investigation related information.

Final rule text is available [here](#).