

OFFICE OF THE SECRETARY OF STATE

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ARCHIVES DIVISION

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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 419
OFFICE OF TRAINING, INVESTIGATIONS AND SAFETY

FILED

09/22/2023 4:27 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Update to Definitions and Restraint and Involuntary Seclusion Rules for Children's Care Licensing Program.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 10/24/2023 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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Filed By:
Jenifer McIntosh
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 10/16/2023

TIME: 3:00 PM - 3:30 PM

OFFICER: Jenifer McIntosh

HEARING LOCATION

ADDRESS: Microsoft Teams/Phone Only, 201 High St. SE, Salem, OR 97301

SPECIAL INSTRUCTIONS:

Attendees will need to join the meeting by Microsoft Teams or phone. If you wish to provide comment, please be signed in or call in by no later than 15 minutes after the start time. Everyone has a right to know about and use ODHS programs and services. ODHS provides assistance such as: sign language and spoken language interpreters, written materials in other languages, braille, large print, audio and other formats. If you need assistance or have questions, please contact ADA.dhs@dhssoha.state.or.us at least 5 days before the meeting

REMOTE MEETING DETAILS

MEETING URL: [Click here to join the meeting](#)

PHONE NUMBER: 1-971-277-2343

CONFERENCE ID: 27162869

SPECIAL INSTRUCTIONS:

Meeting ID: 239 870 553 966

Passcode: 6fomWY

NEED FOR THE RULE(S)

Children's Care Licensing Program needs to amend rules to be in alignment with the requirements of Senate Bill 93 and Senate Bill 794.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

Senate Bill 93 (2023 Regular Session):

<https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/SB93>

Senate Bill 794(2023 Regular Session):

<https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/SB794>

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

Children's Care Licensing Program does not currently have comprehensive data on racial demographics of our reports and assignments. (Previous

Child Welfare data showed a disproportionate number of reports made involved Native American and African American/Black children and that a disproportionate number of those reports were assigned for investigation.) How these changes affect racial equity was not addressed in legislation. Children's Care Licensing Program is working to identify resources to engage with to assist in connecting with diverse populations that may be impacted by future rules.

FISCAL AND ECONOMIC IMPACT:

There is no anticipated fiscal impact based on the amendments to the Definitions and Restraint and Involuntary Seclusion rules. The changes are due to Senate Bill 93 and Senate Bill 794 and the fiscal impact to small businesses and the public were considered during the 2023 session.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

None

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Rulemaking is the result of state legislation with no room for interpretation of the rule text. Small businesses are invited to provide comments on this rule.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

Rulemaking is the result of state legislation with no room for interpretation of the rule text. Children's Care Licensing Program will e-mail their interested parties e-mail distribution list a copy of this notice.

RULES PROPOSED:

419-400-0005, 419-400-0180

AMEND: 419-400-0005

RULE SUMMARY: Adds to the definition of involuntary seclusion.

CHANGES TO RULE:

419-400-0005

Definitions ¶¶

Unless the context indicates otherwise, these terms are defined for use in OAR chapter 4139, division 215400:¶¶

(1) "Academic boarding school" means an organization or a program in an organization that:¶¶

- (a) Provides educational services and care to children 24 hours a day; and¶
- (b) Does not hold itself out as serving children with emotional or behavioral problems, providing therapeutic services, or assuring that children receive therapeutic services.¶
- (2) "Adoption agency" means an organization providing any of the following services:¶
 - (a) Identifying a child for adoption and arranging an adoption.¶
 - (b) Securing the necessary consent to relinquishment of parental rights and to adoption.¶
 - (c) Performing a background study on a child or a home study on a prospective adoptive parent and reporting on such a study.¶
 - (d) Making determinations of the best interests of a child and the appropriateness of adoptive placement for the child.¶
 - (e) Monitoring a case after placement until final adoption.¶
 - (f) When necessary because of disruption before final adoption, assuming custody and providing child care or other social services for the child pending an alternative placement.¶
- (3) "Age-appropriate or developmentally appropriate activities" means:¶
 - (a) Activities or items that are generally accepted as suitable for children in care of the same chronological age or level of maturity or that are determined to be developmentally appropriate for a child in care based on the development of cognitive, emotional, physical, and behavioral capacities that are typical for an age or age group; and¶
 - (b) In the case of a specific child in care, activities or items that are suitable for the child in care based on the developmental stages attained by the child in care with respect to the cognitive, emotional, physical, and behavioral capacities of the child in care.¶
- (4) "Approval" means acceptable to the regulatory authority based on conformity with generally recognized standards that protect public health.¶
- (5) "Approved proctor foster parent" means an individual approved by a foster care agency to provide care to children in a proctor foster home.¶
- (6) "Background check" means a criminal records check and abuse check done in compliance with the Department's criminal records and abuse check rules, OAR 407-007-0200 to 407-007-0370.¶
- (7) "Birth parent" means each person who holds a legally recognized parental relationship to the child but does not include the adoptive parents in the adoption arranged by the adoption agency.¶
- (8) "Boarding" means care or treatment services provided on a 24 hour per day basis to children.¶
- (9) "Chemical restraint" means a drug or medication that is administered to a child in care to control behavior or restrict freedom of movement. Chemical restraint is different from the use of medication for the treatment of symptoms of severe emotional disturbances or disorder.¶
- (10) "Child in care" means an unmarried person under 21 years of age who resides in or receives care or services from a child caring agency.¶
- (11) "Child-caring agency" is defined in ORS 418.205 and:¶
 - (a) Means any private school, private agency, or private organization providing:¶
 - (A) Day treatment for children with emotional disturbances;¶
 - (B) Adoption placement services;¶
 - (C) Residential care including, but not limited to, foster care or residential treatment for children;¶
 - (D) Outdoor youth programs;¶
 - (E) A secure transportation services provider;¶
 - (F) Any private organization or person that provides secure transportation services as defined by ORS 418.205(2)(a)(B); or¶
 - (G) Other similar care or services for children.¶
 - (b) Includes the following:¶
 - (A) A shelter-care home that is not a foster home subject to ORS 418.625 to 418.645;¶
 - (B) An independent residence facility as described in ORS 418.475;¶
 - (C) A private residential boarding school; and¶
 - (D) A child-caring facility as described in ORS 418.950.¶
 - (E) A county operated program that provides care or services to children in the custody of the Oregon Department of Human Services or the Oregon Youth Authority, or under a contract with the Oregon Health Authority, as described in ORS 418.205.¶
- (c) Child-caring agency does not include:¶
 - (A) Residential facilities or foster care homes certified or licensed by the Department under ORS 443.400 to 443.455, 443.830 and 443.835 for children receiving developmental disability services.¶
 - (B) Any private agency or organization facilitating the provision of respite services for parents pursuant to a properly executed power of attorney under ORS 109.056. For purposes of this paragraph, "respite services" means the voluntary assumption of short-term care and control of a minor child without compensation or

reimbursement of expenses for the purposes of providing a parent in crisis with relief from the demands of ongoing care of the parent's child;¶

(C) A youth job development organization as defined in ORS 344.415;¶

(D) A shelter-care home that is a foster home subject to ORS 418.625 to 418.645; or¶

(E) A foster home subject to ORS 418.625 to 418.645.¶

(F) A facility that exclusively serves individuals 18 years of age and older; or¶

(G) A facility that primarily serves both adults and children but requires that any child must be accompanied at all times by at least one custodial parent or guardian.¶

(12) "Children's emergency safety intervention specialist" means a qualified mental health professional licensed to order, monitor and evaluate the use of seclusion and restraint in accredited and certified facilities that provide intensive mental health treatment services to individuals under 21 years of age.¶

(13) "Clinical supervisor" means an individual who meets the clinical supervisor qualifications in OAR 309-022-0125.¶

(14) "Cohabiting" means the act of two adults, unmarried to each other, living together in an intimate relationship as if married.¶

(15) "Contraband" means items the possession of which is prohibited by the child-caring agency including, but not limited to weapons or drugs.¶

(16) "Day treatment" means a comprehensive, interdisciplinary, nonresidential, community-based, psychiatric treatment, family treatment, and therapeutic activities integrated with an accredited education program provided to children with emotional disturbances.¶

(17) "Day treatment agency" means a child-caring agency that provides psychiatric day treatment services.¶

(18) "Debrief" means to interview a person (such as a child in care or staff member) usually upon return (as from an expedition) in order to obtain useful information.¶

(19) "Department" means the Oregon Department of Human Services.¶

(20) "Developmental disabilities residential facility" means a residential facility or foster home for children who are 17 years of age or younger and receiving developmental disability services that is subject to ORS 443.400 to 443.455, 443.830 and 443.835.¶

(21) "Discipline" means a training process to help a child in care develop the self-control and self-direction necessary to assume responsibilities, make daily living decisions, and learn to conform to accepted levels of social behavior.¶

(22) "Disruption" means the interruption of an adoptive placement prior to the finalization of the adoption in a court of law.¶

(23) "Employee" means an individual holding a paid position with a child-caring agency.¶

(24) "Facility" means the physical setting, buildings, property, structures, administration, and equipment of a child-caring agency.¶

(25) "Family" means related members of a household, among whom at least one adult functions as a parent to one or more minor children.¶

(26) "Financial irregularities" means a condition or act characterized by intentional deception such as the intentional misstatement or omission of significant information in accounting records, financial statements, other reports, documents, or records.¶

(27) "Foster care agency" means a child-caring agency that offers to place children by taking physical custody of and then placing the children in proctor foster homes certified by the child-caring agency as provided in ORS 418.248 and these rules.¶

(28) "Homeless, runaway, and transitional living shelter" means a child-caring agency that provides residential services or operates a shelter, mass shelter, or transitional living program for homeless or runaway youth, pregnant or parenting girls, or other children in care working toward independent living.¶

(29) "Homeless or runaway youth" means a child in care who has not been emancipated by the juvenile court; lacks a fixed, regular, safe, and stable nighttime residence; and cannot immediately be reunited with his or her family.¶

(30) "ICWA" or "the Act" means the Indian Child Welfare Act of 1978, 25 U.S.C. §§ 1901-63.¶

(31) "Indian child" means any unmarried person who is under age 18 and either:¶

(a) Is a member or citizen of an Indian tribe; or¶

(b) Is eligible for membership or citizenship in an Indian tribe and is the biological child of a member or citizen of an Indian tribe.¶

(32) "Intercountry adoption" means an adoption in which a child who is a resident and citizen of one country is adopted by a citizen of another country.¶

(33) "Involuntary seclusion" means the confinement of a child in care alone in a room or an enclosed space from which the child in care is prevented from leaving by any means. (Does not include age-appropriate discipline, including, but not limited to, time-out if the time-out is in a setting from which the child in care is not prevented from leaving by any means.)¶

- (34) "Licensee" means a child-caring agency that holds a license issued by the Department.¶
- (35) "Mass shelter" means a structure that contains one or more open sleeping areas in which, on a daily basis, only emergency services are provided to homeless or runaway youth, such as a meal and a safe place to sleep overnight.¶
- (36) "Mechanical Restraint" means a device used to restrict the movement of a child in care or the movement or normal function of a portion of the body of a child in care.¶
- (37) "Medication" means any drug, chemical, compound, suspension, or preparation in suitable form for use as a curative or remedial substance either internally or externally by any person.¶
- (38) "ODDS" means the Office of Developmental Disabilities Services within the Department.¶
- (39) "OYA" means the Oregon Youth Authority.¶
- (40) "Outdoor living setting" means an outdoor field setting in which services are provided to children in care either more than 10 days per month for each month of the year or for longer than 48 hours at a location more than two hours from community-based medical services.¶
- (41) "Outdoor youth program" means a program that provides, in an outdoor living setting, services to children in care who are enrolled in the program because they have behavioral problems, mental health problems, or problems with abuse of alcohol or drugs. "Outdoor youth program" does not include any program, facility, or activity operated by a governmental entity, operated or affiliated with the Oregon Youth Conservation Corps, or licensed by the Department as a child-caring agency under other authority of the Department. It does not include outdoor activities for children in care designed to be primarily recreational.¶
- (42) "Outdoor youth program activity" means an outdoor activity, provided to children in care for the purpose of behavior management or treatment, which requires specially trained staff or special safety precautions to reduce the possibility of an accident or injury. Outdoor youth activities include, but are not limited to, hiking, adventure challenge courses, climbing and rappelling, winter camping, soloing, expeditioning, orienteering, river and stream swimming, and whitewater activities.¶
- (43) "Over the counter medication" means any medication that does not require a written prescription for purchase or dispensing.¶
- (44) "Placement" means when the child is placed in the physical or legal custody of prospective adoptive parents.¶
- (45) "Proctor foster home" is defined in ORS 418.205 and means a foster home certified by a child-caring agency under ORS 418.248 that is not subject to ORS 418.625 to 418.645.¶
- (46) "Program" means a set of one or more services provided by a child-caring agency that make the child-caring agency subject to the rules in OAR chapter 413, division 215.¶
- (47) "Prone restraint" means a restraint in which a child in care is held face down on the floor.¶
- (48) "Qualified Mental Health Professional (QMHP)" means an individual who meets the QMHP qualifications in OAR 309-022-0125.¶
- (49) "Re-adoption" means a process in which a child whose adoption was completed in another country is re-adopted in this country.¶
- (50) "Reasonable and prudent parent standard" means the standard, characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child in care while encouraging the emotional and developmental growth of the child in care, that a substitute care provider shall use when determining whether to allow a child in care to participate in extracurricular, enrichment, cultural, and social activities.¶
- (51) "Reportable injury" means any type of injury to a child in care, including but not limited to rug burns, fractures, sprains, bruising, pain, soft tissue injury, punctures, scratches, concussions, abrasions, dizziness, loss of consciousness, loss of vision, visual disturbance or death.¶
- (52) "Report of suspected violation" means information that a child-caring agency may have failed to comply with an applicable requirement in:¶
- (a) ORS 418.205 to 418.327;¶
 - (b) These rules, OAR ~~413-215-400-0000~~5 to ~~413-215-19-400-0310~~;¶
 - (c) A contract with the Department to provide services to a child in care; or¶
 - (d) Behavior Rehabilitation Services (see OAR 413-095-0000 to 413-095-0080).¶
- (53) "Residential care agency" means a child-caring agency that provides care and treatment services to children 24 hours a day in a staffed facility.¶
- (54) "Restraint" means the physical restriction of a child in care's actions or movements by holding the child in care or using pressure or other means.¶
- (55) "Secure escort" means services for a child who poses a risk of elopement or where restraint or seclusion may be utilized if the child poses a risk of injury to self or others.¶
- (56) "Secure nonemergency medical transportation provider" means a private organization or person that provides nonemergency medical secure transportation services licensed by and subject to rules adopted by the Oregon Health Authority.¶

- (57) "Secure transportation" means the transport of a child in a vehicle specifically equipped to prevent a passenger from exiting, eloping or interfering with the operator of the vehicle. This excludes standard factory installed safety equipment such as seat belts or child-safety locks.¶
- (58) "Secure adolescent inpatient treatment program" means a child-caring agency that is an intensive treatment services program, as described by the Oregon Health Authority (see OAR 309-022-0100), that provides inpatient psychiatric stabilization and treatment services to individuals under 21 years of age who require a secure intensive treatment setting.¶
- (59) "Secure children's inpatient treatment program" means a child-caring agency that is an intensive treatment services program, as described by the Oregon Authority by (see OAR 309-022-0100), that provides inpatient psychiatric stabilization and treatment services to children under 14 years of age who require a secure intensive treatment setting.¶
- (60) "Secure Transportation Services" means the secure transportation or secure escort of children. ¶
- (61) "Serious bodily injury" means any significant impairment of the physical condition of an individual, as determined by qualified medical personnel, whether self-inflicted or inflicted by someone else.¶
- (62) "Service plan" means an individualized plan of services to be provided to each child in care based on his or her identified needs and designed to help him or her reach mutually agreed upon goals. The service plan must address, at a minimum, the child in care's physical and medical needs, behavior management issues, mental health treatment methods, education plans, and any other special needs.¶
- (63) "Shelter" means a facility operated by a child-caring agency that provides services for a limited duration to homeless or runaway youth.¶
- (64) "Sole supervision" means being alone with a child in care or being temporarily the only staff in charge of a child in care or subgroup of children in care.¶
- (65) "Special needs" mean a trait or disability of a child that requires special care or attention of the child or that historically has made placement of a child with similar characteristics or disability difficult.¶
- (66) "Staff" means employees of the child-caring agency who are responsible for providing care, services, or treatment to a child in care.¶
- (67) "Stationary outdoor youth program" means an outdoor youth program which remains in a stationary location that houses children in care.¶
- (68) "Supine restraint" means a restraint in which a child in care is held face up on the floor.¶
- (69) "Therapeutic boarding school" means an organization or a program in an organization that:¶
- (a) Is primarily a school and not a residential care agency;¶
 - (b) Provides educational services and care to children for 24 hours a day; and¶
 - (c) Holds itself out as serving children with emotional or behavioral problems, providing therapeutic services, or assuring that children receive therapeutic services.¶
- (70) "Transitional living program" means a set of services offered by a child-caring agency that provides supervision and comprehensive services for up to 18 months to assist homeless or runaway youth to make a successful transition to independent and self-sufficient living.¶
- (71) "Wilderness first responder" means a medical training course and certification for outdoor professionals.
- Statutory/Other Authority: ORS 409.050, ORS 418.005, ~~2019 OR Law Chapter 519~~, ORS 418.255, ORS 418.240
 Statutes/Other Implemented: ORS 418.205 - 418.327, ORS 418.528

RULE SUMMARY: Adds clarification to what restraints are prohibited in a Child Caring Agency. Exempts Child Caring Agencies that are licensed as Adoption Agencies from certain reporting requirements relating to restraints and involuntary seclusion.

CHANGES TO RULE:

419-400-0180

Licensing Umbrella Rules: Restraints and Involuntary Seclusion

- (1) A child-caring agency may only place child in care in a restraint or involuntary seclusion if the child in care's behavior poses a reasonable risk of imminent serious bodily injury to the child in care or others and less restrictive interventions would not effectively reduce the risk.¶
- (2) A child-caring agency may not place a child in care in a restraint or involuntary seclusion as a form of discipline, punishment, or retaliation or for the convenience of staff, contractors or volunteers of the child-caring agency.¶
- (3) If the child-caring agency utilizes restraints or involuntary seclusion as part of its practices, its use of restraints and involuntary seclusion must be in compliance with all applicable federal and state laws, regulations and rules.¶
- (4) A child in care placed in a restraint or involuntary seclusion must be continuously monitored by staff of the child-caring agency for the duration of the restraint or involuntary seclusion.¶
- (5) Any restraint or involuntary seclusion used on a child in care must be performed in a manner that is safe, proportionate and appropriate, taking into consideration the child in care's chronological and developmental age, size, gender identity, physical, medical and psychiatric condition and personal history, including any history of physical or sexual abuse.¶
- (6) The removal or limitation of the use of a mobility aid or other assistive device in a restraint is prohibited unless there is a risk of imminent serious bodily injury and less restrictive interventions would not effectively reduce the risk.¶
- (7) Removing or limiting the use of a mobility aid or other assistive device for the purpose of controlling a child in care's behavior is prohibited and¶
- (8) If any restraint or involuntary seclusion lasts for more than 10 minutes, the child-caring must provide adequate access to the bathroom and water at least every thirty minutes to the child in care.¶
- (9) For any restraint or involuntary seclusion lasting more than 10 minutes a supervisor, trained in the non-violent crisis intervention system used by the child-caring agency must provide written authorization for the continuation of the restraint or involuntary seclusion every five minutes.¶
 - (a) If the supervisor is not on-site at the time the restraint is used, the supervisor may provide the written authorization electronically.¶
 - (b) The written authorization must document why the restraint or involuntary seclusion continues to be the least restrictive intervention to reduce the risk of imminent serious bodily injury in the given circumstances.¶
- (10) Restraint.¶
 - (a) The following types of restraint of a child in care are prohibited:¶
 - (A) Chemical restraint.¶
 - (B) Mechanical restraint.¶
 - (C)-Prone restraint.¶
 - (D) Supine restraint, except:¶
 - (i) Supine restraint may be used only when the child in care is currently admitted to a secure children's inpatient treatment program or secure adolescent inpatient treatment program and:¶
 - (ii) The restraint is authorized by an order written at the time of and specifically for the current situation by a licensed medical practitioner as defined by OAR 309-022-0105(54) or a licensed children's emergency safety intervention specialist as defined by OAR 309-022-0105(14);¶
 - (iii) The restraint is used only as long as needed to prevent serious physical injury, as defined in ORS 161.015, and while no other intervention or form of restraint is possible;¶
 - (iv) A licensed medical practitioner, children's emergency safety intervention specialist or qualified mental health professional, who is certified in the use of the type of restraint used, continuously monitors the use of the restraint and the physical and psychological well-being of the child in care at all times while the restraint is being used;¶
 - (v) Each individual placing the child in care in the restraint is trained, as required by the Department of Human Services by rule, in the use of the type of restraint used and the individual's training is current;¶
 - (vi) One or more individuals with current cardiopulmonary resuscitation training are present for the duration of the restraint;¶
 - (vii) The child caring agency has written policies that require a licensed children's emergency safety intervention specialist or other licensed practitioner to evaluate and document the physical, psychological and emotional well-

being of the child in care immediately following the use of the restraint.¶

(E) Any restraint that includes the intentional and nonincidental use of a solid object, including the ground, a wall or the floor, to impede a child in care's movement, except:¶

(i) This type of restraint may be used if the restraint is necessary to gain control of a weapon or;¶

(ii) The child in care is currently admitted to a secure children's inpatient treatment program or secure adolescent inpatient treatment program and complies with OAR ~~413-215-0077~~ ~~(89-400-0180)~~ (10)(a)(D) (i through vii).¶

(I) The restraint is authorized by an order written at the time of and specifically for the current situation by a licensed medical practitioner or a licensed children's emergency safety intervention specialist;¶

(II) The restraint is used only as long as needed to prevent serious physical injury, as defined in ORS 161.015, and while no other intervention or form of restraint is possible;¶

(III) A licensed medical practitioner, children's emergency safety intervention specialist or qualified mental health professional, who is certified in the use of the type of restraint used, continuously monitors the use of the restraint and the physical and psychological well-being of the child in care at all times while the restraint is being used;¶

(IV) Each individual placing the child in care in the restraint is trained, as required by the Department of Human Services by rule, in the use of the type of restraint used and the individual's training is current;¶

(V) One or more individuals with current cardiopulmonary resuscitation training are present for the duration of the restraint;¶

(VI) The child caring agency has written policies that require a licensed children's emergency safety intervention specialist or other licensed practitioner to evaluate and document the physical, psychological and emotional well-being of the child in care immediately following the use of the restraint;¶

(F) Any restraint that places or creates a risk of placing pressure on a child in care's neck or throat.¶

(G) Any restraint that places or creates a risk of placing, pressure on a child in care's mouth, ~~except:~~¶

~~(i)~~ This type of restraint may be used if the restraint is necessary for the purpose of extracting a body part from a bite.¶

(H) Any restraint that impedes, or creates a risk of impeding, a child in care's breathing.¶

(I) Any restraint that involves the intentional placement of ~~hands, feet, elbows, knees or any object~~ object or a hand, knee, foot or elbow on a child in care's neck, throat, genitals or other intimate parts.¶

(J) Any restraint that causes pressure to be placed or creates a risk of causing pressure to be placed, on a child in care's stomach, chest, joints, throat or back by a knee, foot or elbow.¶

(K) Any other ~~restraint action~~, of which the primary purpose is to inflict pain.¶

(b) Permissible use of restraint. A restraint may be used on a child in care in the following situations:¶

(A) Holding a child in care's hand or arm to escort the child in care safely and without the use of force from one area to another;¶

(B) Assisting the child in care to complete a task if the child in care does not resist the physical contact; or¶

(C) Using a physical intervention if:¶

(i) The intervention is necessary to break up a physical fight or to effectively protect a person from an assault, serious bodily injury or sexual contact;¶

(ii) The intervention uses the least amount of physical force and contact possible: and¶

(iii) The intervention is not a prohibited restraint identified in OAR ~~413-215-0077~~ ~~(89-400-0180)~~ (10)(a).¶

(c) Only child-caring agency staff and proctor foster parents who have been trained in a nationally recognized nonviolent crisis-intervention system may use restraint and only when necessary as a last resort to prevent a child in care from inflicting harm to self or others. The restraint must be conducted within the parameters of the nationally recognized system in which the staff or proctor foster parent is trained.¶

(d) Any use of restraint by a staff member or proctor foster parent of the child-caring agency, if the member is not trained in a nationally recognized nonviolent crisis intervention system, must also be reported to a Department licensing coordinator within one business day of occurrence.¶

(e) Limitations. The child-caring agency must have a policy that prohibits the application of a nonviolent restraint to a child in care who has a documented physical condition that would contraindicate the use of that particular restraint, unless a qualified medical professional has previously and specifically authorized its use in writing for the child in care. Documentation of the authorization must be maintained in the child of care's record.¶

(11) Involuntary Seclusion.¶

(a) Rooms used for seclusion must have adequate space, temperature, light, and ventilation.¶

(b) Episodes of involuntary seclusion are limited to two hours for children in care age nine and older and one hour for children in care under the age of nine.¶

(c) If incidents of involuntary seclusion used with an individual child in care cumulatively exceed five hours in five days, or a single episode of more than two hours for children in care age nine and older or more than one hour for children in care under age nine, the executive director or designee must review the case with those with clinical leadership responsibilities to evaluate the child in care's plan of care and make necessary adjustments.¶

(12) Records¶

(a) A program shall maintain a record of each incident in which a reportable injury arises from the use of a restraint or involuntary seclusion. The record must include any audio or video recording immediately preceding, during and following the incident.¶

(b) If a program places a child in care in a restraint, except as described in ~~OAR 413-215-0077(8)(b)(A) or 413-215-0077(89-400-0180(10)(b)(A) or 419-400-0180(10)(b)(B)~~ or involuntary seclusion, the program shall provide the child in care's case manager, attorney, court appointed special advocate and parent or guardian with:¶

(A) Verbal or electronic notice that the restraint or involuntary seclusion was used as soon as practicable following the incident but not later than the end of the next business day; and¶

(B) Written notice in compliance with ~~OAR 413-215-00779-400-0180(102)(c)~~ that the restraint or involuntary seclusion was used as soon as practicable following the incident but not later than the end of the next business day.¶

(c) The written notice must include:¶

(A) A description of the restraint or involuntary seclusion, the date of the restraint or involuntary seclusion, the times when the restraint or involuntary seclusion began and ended and the location of the restraint or involuntary seclusion;¶

(B) A description of the child in care's activity that necessitated the use of restraint or involuntary seclusion;¶

(C) The efforts the program used to de-escalate the situation and the alternatives to restraint or involuntary seclusion the program attempted before placing the child in care in the restraint or involuntary seclusion;¶

(D) The names of each of individual who placed the child in care in the restraint or involuntary seclusion or who monitored or approved the placement of the child in care in the restraint or involuntary seclusion;¶

(i) For each individual identified whether the individual was trained, as required by the Oregon Department of Human Services by rule, in the use of the type of restraint or involuntary seclusion used, the date of the individual's most recent training and a description of the types of restraint the individual is trained to use, if any.¶

(ii) If an individual identified was not trained in the type of restraint or involuntary seclusion used, or if the individual's training was not current, a description of the individual's training deficiency and the reason an individual without the proper training was involved in the restraint or involuntary seclusion.¶

(d) If an incident requires notice under ~~413-215-00779-400-0180(12)(b)~~, not later than two business days following the date of the restraint or involuntary seclusion, the program shall hold a debriefing meeting with each individual who was involved in the incident and with any other appropriate program staff, shall take written notes of the debriefing meeting and shall provide copies of the written notes to the child in care's case manager, attorney, court appointed special advocate and parents or guardians.¶

(e) If a program places a child in care in a restraint or involuntary seclusion and the child in care suffers a reportable injury arising from the restraint or involuntary seclusion, the program shall immediately provide the department and the child in care's attorney, court appointed special advocate and parents or guardians with written notification of the incident and access to and, upon request, copies of all records related to the restraint or involuntary seclusion, including any photographs and audio or video recordings.¶

(f) If serious bodily injury or the death of staff occurs in connection to the use of the restraint or involuntary seclusion, the program shall provide the department with written notification of the incident not later than 24 hours following the incident.¶

(13) Reporting Requirements¶

(a) A child caring agency must submit a report to the Department on a quarterly basis that includes at a minimum:¶

(A) The total number of incidents involving restraint.¶

(B) The total number of incidents involving involuntary seclusion.¶

(C) The total number of involuntary seclusions in a locked room.¶

(D) The total number of rooms available for use by the program for involuntary seclusion and a description of the dimensions and design of the rooms.¶

(E) The total number of children in care placed in restraint.¶

(F) The total number of children in care placed in involuntary seclusion.¶

(G) The total number of children who experienced both restraint and involuntary seclusion.¶

~~(H)~~ The total number of incidents under paragraph (A) or (B) of this subsection that resulted in reportable injuries.¶

~~(H)~~ The number of children in care who were placed in restraint or involuntary seclusion more than three times during the preceding three-month period and a description of the steps the program has taken to decrease the use of restraint and involuntary seclusion.¶

~~(I)~~ The number of incidents in which an individual who placed a child in care in a restraint or involuntary seclusion was not trained, as required by the department by rule, in the use of the type of restraint or involuntary seclusion used.¶

~~(J)~~ The demographic characteristics of the children in care who the program placed in a restraint or involuntary

seclusion, including race, ethnicity, gender, disability status, migrant status, English proficiency and status as economically disadvantaged, unless the demographic information would reveal personally identifiable information about an individual child in care.¶

(L) The total number of children in care served by the program during the reporting period, including race, ethnicity, gender, disability status, English proficiency and status as economically disadvantaged, unless the demographic information would reveal personally identifiable information about an individual child in care.¶

(b) If a child caring agency provides services in more than one location, the reports required under subsection ~~413-215-00779-400-0180~~(143)(a) must separate the data for each location that serves five or more children in care.¶

(c) If a child caring agency provides services to four or fewer children in care at a location, the location specific data must include a notation indicating the aggregate number of children in care served by the child caring agency across all of its locations and the reporting requirements continue to apply to any of the child care agency's other locations serving five or more children in care.¶

(d) Each child caring agency that submits a report under this section shall make its quarterly report available to the public upon request at the Child Caring Agency's main office and on the child caring agency's website if applicable.¶

(e) Each child caring agency shall provide notice regarding how to access the quarterly reports to the parents or guardians of children in care in the program.-The child caring agency shall provide the notice upon the child in care's admission and at least two times each year thereafter.¶

(14) The reporting requirements described in OAR 419-400-0180 (13) do not apply to a program that is licensed as an Adoption Agency (as defined by OAR 419-400-0005(2)) and does not provide care or services to children other than those described in the definition.

Statutory/Other Authority: ORS 409.050, ORS 418.240, ORS 418.005

Statutes/Other Implemented: ORS 418.205 - 418.327, ORS 418.519, ORS 418.521, ORS 418.528