

## **Memo: Outline of Proposed 2016 Children's Safety and Dignity Legislation**

The Senate Human Services and Early Childhood Committee will introduce a bill to address the safety and dignity of children in state care. The bill will cover issues related to licensing, abuse investigations, and leadership coordination.

This bill fits the criteria for urgency in a short session because of recent revelations that children were allowed to languish in state care while a provider allegedly misdirected nearly \$2 million in public funds intended to support vulnerable Oregon children. Efforts must continue to determine why this organization was allowed to operate for so long, and to determine whether there are similar organizations providing substandard care to children. That will take time. In the mean time, legislation in 2016 will ensure that the Oregon Department of Human Services has both the mandate and the tools needed to protect the state's most vulnerable children.

This memo addresses the omnibus policy bill to make residential care safer for children. The committee will also introduce a second bill reflecting the need to appropriately resource oversight for organizations caring for vulnerable children. Currently, there are only 3 licensing staff for 203 children's programs. This is inadequate. The second bill will expand position authority for licensing and will direct DHS and stakeholders to work on a proposal for the 2017 session to address an appropriate licensing fee and civil penalty structure for children's programs. Further, in 2017, the Legislature must address the structural and financial needs within our child welfare system. Without appropriate investments in training, technology, foster parent recruitment, front line personnel and key licensing and abuse investigation staff we will continue to see heartbreaking outcomes for children. The Legislature has a moral obligation to address these issues so that the agency can deliver the results the public demands.

### **Elements of the bill:**

**Licensing:** DHS children's licensing needs expanded tools to address identified concerns with licensed providers. Currently, there is uncertainty about the definition of "substantial compliance" and about the authority the Department has to act to deny, revoke, suspend or place conditions upon a license. Statutory language will help clarify that.

- Foster homes and residential service programs operated under the supervision of a private child caring agency must be directly licensed by the state.
- In order to be eligible to receive payments from DHS for residential care of children, the organization must be incorporated as a non-profit organization. Current licensees not meeting this requirement will be grandfathered in if they meet all other licensing requirements.

- When processing a licensing application or doing a contract review, DHS must consider the financial solvency of an organization. Bankruptcy proceedings, garnishments, back taxes, and financial instability may be grounds for denial, revocation or suspension of license or for conditions to be placed on the license, including but not limited to admissions restrictions.
- When DHS becomes aware of an investigation by another state agency or a law enforcement agency into the finances of an organization providing foster care or residential services by any other government agency, DHS must immediately require an independent audit of the organization. All costs related to the audit shall be paid by the organization.
- If the Department finds the financial health of the organization impacts child safety and/or stability it may be grounds for denial, revocation or suspension of license or for conditions to be added to the license, including but not limited to admissions restrictions.
- Payments to providers must be made by electronic funds transfer and may not be issued through a paper check.
- Filing of bankruptcy, imposition of garnishments, penalties with local, state or federal taxing agencies, and findings of financial, civil or criminal misconduct may be grounds for revocation of a license, refusal to extend a license, denial of a new license and/or conditions placed on the license which may include but not be limited to restriction on admissions.
- In order for an organization to receive a new or renewed license, it must be substantially compliant with licensing rules. The Department may not waive statutory requirements. Substantially compliant means that the organization is compliant in at least 90% of licensing requirements. Failure to reach compliance within 45 days may result in denial or revocation of license, conditions placed upon the license including but not limited to admissions restrictions, and/or civil penalties.
- Under no circumstances shall the Department consider a provider to be substantially compliant if deficiencies are found related to children and family rights, child abuse reporting, behavior management, resident furnishings and personal items, food services, safety, medication, or minimum staffing requirements.
- Licensing must ensure that unannounced site visits are incorporated into the quality assurance process at least once per year. Such visits must include inspection of all areas of the facility, including common areas, children's personal living spaces, and bathrooms.
- Licensees will be required to inform all employees upon hiring and at least once a year subsequently of their mandatory reporting responsibilities. This notice must include that the responsibility to report is individual, that the report must be made to state officials and not just to private agency managers. Contact information must be provided to the employees for making mandatory reports.
- Appropriate DHS personnel (case managers, child welfare staff, abuse investigators), children's attorneys, and CASA's may not be denied immediate

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access to children in the care of a private child caring agency or foster home. These individuals must have immediate access upon request to face to face visits with the child or youth, and the ability to enter the child's personal living space, and the common areas of the facility including the kitchen, bathroom, dining and community living spaces. Refusal to provide access may be cause for immediate revocation or suspension of license, or may result in conditions placed upon the license including but not limited to admission restrictions.

### **Abuse and Neglect Investigations in Licensed Care**

Abuse investigations for children and youth in residential care are currently conducted under the same definitions of abuse that are used for child welfare in the family home. That standard rests on the idea that homes must be minimally adequate. The standard for safety and dignity of children in state care must be higher, and Oregon's commitment to the safety of children in state care must be uncompromising. As such, abuse definitions for children in care should match the abuse definitions used for other vulnerable Oregonians in state paid care, including children with intellectual and developmental disabilities and seniors. The changes in this section related to abuse investigations will simply ensure that children in state care have the same protections as adults in state care. The proposed language matches statutory requirements, protections and transparency offered to these other populations.

- DHS/OAPPI shall have the expanded authority to investigate and substantiate allegations of abuse in the following circumstances:
  - When the allegations involve an alleged victim that is between the ages of 18-21 and committed to the authority of the state and living in a state funded foster or residential program
  - When the allegations involve activities that take place while the child or youth is at the residence or participating in programming under the supervision of staff--- regardless of whether the abuse is perpetrated by the staff or individuals invited into the home by the staff
  - The criteria for substantiating allegations of abuse for a child in care shall be expanded to match the standards used to substantiate allegations in all other licensed care facilities for vulnerable populations. This will be done by creating a new section of statute defining abuse for "children in care"
- Abuse and neglect investigation reports will be a public record when they take place in a state funded foster or residential program. The reports must be redacted to protect the confidentiality of the child or youth.
- When there is a substantiated allegation of abuse or neglect, notification that abuse or neglect has occurred shall be provided to: licensing; the child welfare director; the case managers, CASAs and attorneys of every child or youth living in the facility; and the parent of each child or youth living in the

facility unless such notification to the parent is contrary to the child's safety plan.

- When a child is alleged to be a victim of abuse, notification that that child is the subject of an abuse investigation shall be provided to the child's CASA, the child's attorney, the child's case worker and the parent of the child unless such notification to the parent is contrary to the child's safety plan.
- When investigating allegations of abuse and neglect in a residential or foster agency, OAPPI shall conduct a comprehensive investigation of the well being of children within the facility. If the investigation reveals concerns about licensing standards, child safety, or other issues the investigator must immediately inform licensing and DHS leadership.
- When an abuse investigator, licenser, or other DHS official has reason to believe that a crime is occurring in a licensed foster care or residential facility that must be reported immediately to law enforcement and licensing, even if it is not directly related to the allegation that is the subject of the investigation. Failure to report such concerns is grounds for a finding of official misconduct.
- Interference in an OAPPI investigation—including but not limited to the intimidation of witnesses, falsification of records, or denial or limitation of interviews--- may be grounds for revocation or suspension of a license, or for conditions to be placed upon a license including but not limited to admissions restrictions
- OAPPI must have unrestricted access to witnesses. This includes allowing children and employees to be interviewed without the presence of supervisors or other agency personnel. Refusal to allow such private interviews may result in revocation or suspension of a license, or for conditions to be placed upon a license including but not limited to admissions restrictions.

### **Leadership Accountability**

Within the Department of Human Services there are many individual agencies that may encounter red flags about the safety and stability of a program providing services to children and other vulnerable populations. Likewise, several state agencies may have access to information that would suggest vulnerable Oregonians in state care are at risk. Clearer direction is needed to ensure that critical information can flow between these entities.

- If the Oregon Department of Justice opens an investigation into a provider that contracts with the state to provide direct services to children or vulnerable adults, DOJ must inform and regularly update the Director of the Department of Human Services and the relevant division managers. The Director of the Department of Human Services must make appropriate personnel available for such a briefing without delay.

- If the Oregon Department of Revenue or the Oregon Bureau of Labor and Industries opens an investigation into a private provider that contracts to provide direct services to children or vulnerable adults, the agency must inform and regularly update the Director of the Department of Human Services and the relevant division managers. The Director of the Department of Human Services must make appropriate personnel available for such briefing without delay.
- When an employee or director of the Oregon Department of Human Services becomes aware of concerns about the safety of children or adults in the residential care of the state, that person must immediately take action to ensure the concerns are appropriately investigated and all necessary actions are taken to protect the people in the care of the Department. Failure to act is official misconduct.

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