Secretary of State

NOTICE OF PROPOSED RULEMAKING HEARING*

A Statement of Need and Fiscal Impact accompanies this form

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ARCHIVES DIVISION
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Department of Human Services, Administrative Services Division and Director's Office — 407

Agency and Division — Administrative Rules Chapter Number

Jennifer Bittel — (503) 947-5250

Rules Coordinator — Telephone

Department of Human Services, Administrative Services Division and Director's Office, 250 Winter St. NE, Salem, OR 97301

Address

RULE CAPTION

Changes to Investigation of Reported Abuse in Child-Caring Agencies due to SB1515 (2016)

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

Hearing Date	Time	Location	Hearings Officer
10-17-16	10:00 a.m.	Human Services Building, 500 Summer St NE, Salem, OR 97301, Room	Kris Skaro

RULEMAKING ACTION

Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

ADOPT:
OAR 407-045-0825, 407-045-0885, 407-045-0886, 407-045-0887, 407-045-0895, 407-045-0955

AMEND:
OAR 407-045-0800 through 407-045-0980

REPEAL:
OAR 407-045-0810(T) through 407-045-0970(T)

RENUMBER: Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

AMEND AND RENUMBER: Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

Statutory Authority:
ORS 409.050 & 418.005

Other Authority:

Statutes Implemented:
ORS 418.205 to 418.327, 419B.005 to 419B.050, 418.189, 418.702, 418.747, 418.751, 418.782, 409.185, 409.225 & OL 2016, chapter 106

RULE SUMMARY

The Department of Human Services (Department) is proposing to permanently adopt temporary rules that went into effect on July 1, 2016 to comply with SB 1515 (Oregon Laws 2016, chapter 2016). The law created new requirements relating to ensuring the safety of children and young adults residing in or receiving services from child-caring agencies licensed by the Department. The intent of this legislation is to enhance safety of children in child-caring agencies and proctor foster homes, align abuse definitions with paid caregiving expectations, define investigation outcomes, and improve communication within the Department.

The rules in OAR 407-045-0800 through 407-045-0980 outline the child-caring agencies or proctor foster homes in which the Office of Adult Abuse Prevention and Investigations (OAAPI) investigates allegations of abuse, and establishes requirements for OAAPI screeners and investigators when allegations of abuse are received in these settings. The rules require immediate screening and investigation of abuse allegations in a child-caring agency or proctor foster home. Changes the definition of child in care to include young adults up to the age of 21 if they are residing in or receiving care or services from a child-caring agency or proctor foster homes and requires OAAPI investigators and screeners to notify appropriate Department personnel of the abuse report and investigation, and requires OAAPI to collaborate with appropriate personnel to share information and determine the appropriate Department response to ensure safety of the children in care.
In addition, non-substantive edits were made to these rules to ensure consistent terminology throughout Department program rules and policies, make general updates consistent with current Department practices, update statutory and rule references, correct formatting and punctuation, improve ease of reading, and clarify Department rules and processes.

The Department is amending additional rules to implement SB 1515, including rules for the Office of Licensing and Regulatory Oversight, the Office of Child Welfare Programs, and the Background Check Unit. More information is available on the SB 1515 implementation webpage at: https://www.oregon.gov/DHS/CHILDREN/Pages/sb1515.aspx.

Proposed rules are available on the Department of Human Services website: http://www.oregon.gov/DHS/POLICIES/Pages/ss-admin-rules.aspx. Written comments may be submitted until Friday, October 21, 2016 at 5:00 p.m. via email to kris.a.skaro@state.or.us, faxed to 503-373-7032, or mailed to Kris Skaro, Rules Coordinator, 500 Summer Street NE, E-48, Salem, Oregon, 97301.

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.

10-21-2016 5:00 p.m.	Jennifer Bittel	jennifer.bittel@state.or.us
Last Day *(m/d/yyyy)* and Time for public comment	Rules Coordinator Name	Email Address

*The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation.

Secretary of State

STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing accompanies this form.

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Department of Human Services, Administrative Services Division and Director's Office — 407

Agency and Division — Administrative Rules Chapter Number

Changes to Investigation of Reported Abuse in Child-Caring Agencies due to SB1515 (2016)

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

The amendment and adoption of rules in OAR 407-045-0800 through 407-045-0980 and the repeal of temporary rules in OAR 407-045-0800 through 407-045-0980.

Statutory Authority:

ORS 409.050 & 418.005

Other Authority:

Statutes Implemented:

ORS 418.205 to 418.327, 419B.005 to 419B.050, 418.189, 418.702, 418.747, 418.751, 418.782, 409.185, 409.225 & OL 2016, chapter 106

Need for the Rule(s):

These rules need to be adopted and amended because SB 1515 (2016) made significant changes to Oregon laws relating to the Department's investigation of alleged abuse in child-caring agencies and proctor foster homes adding oversight and responsibility for ensuring the safety and well-being of children and young adults who reside in or receive services from child-caring agencies or proctor foster homes. These rules must be amended to reflect the new requirements and responsibilities. These changes implement SB 1515.

Documents Relied Upon, and where they are available:

Oregon Laws 2016, chapter 106, located at: https://www.oregonlegislature.gov/bills_laws/Pages/Oregon-Laws.aspx

Fiscal and Economic Impact:

The Department estimates a fiscal impact to the Department to be approximately $1.3 million. Legislative budget actions for the Department are discussed in the SB 1515 budget report available at https://olis.leg.state.or.us/liz/2016R1/Downloads/MeasureAnalysisDocument/33644.

For the Department's Office of Adult Abuse Prevention and Investigations, the Legislature initially appropriated $96,659 other funds expenditure limitation for a permanent position for the first year of implementation, with a full-time equivalent (1.0 FTE) to be allocated for the following budget years.

The workload and number of cases is indeterminate at this time. Additional resources may need to be requested from either the Emergency Board, or the Legislature, if actual cases, or other workload issues, exceed the agency's initial estimate.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

The Department estimates no fiscal impact to other state agencies or local governments. Although the Department contracts with local governments to provide services or care to children, SB 1515 is limited to private child-caring agencies.

The Department estimates no fiscal impact on the general public.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small business and types of businesses and industries with small businesses subject to the rule:

There are approximately 200 child-caring agencies licensed by the Department that may be affected by these rule changes.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

The Department estimates amending these rules may have a fiscal impact on child-caring agencies who are the subject of reports of child abuse or neglect. Abuse allegations are expected to increase under the SB 1515 definitions of abuse as the types of abuse defined are more comprehensive by aligning to the care and services licensed child-caring agencies provide. In addition, the abuse determination from these investigations will be based on the SB1515 definition of reasonable cause to believe, therefore there may be an increase in the number of

substantiated abuse findings. These findings may result in investigation and staffing costs to child-caring agencies as a result of the investigation or abuse finding. Additionally, child-caring agencies will need to address corrective actions issued by licensing and may become ineligible to provide services. The Department is unable to estimate the fiscal impact on child-caring agencies as data is not available and the Department cannot estimate how many investigations will result in substantiated findings.

c. Equipment, supplies, labor and increased administration required for compliance:
See 2.b.

How were small businesses involved in the development of this rule?
Child-caring agencies, some of whom may qualify as small businesses, were invited to participate in the rule advisory committee process.

Administrative Rule Advisory Committee consulted?: Yes
If not, why?:
Two public stakeholder meetings were held on June 8, 2016 and July 20, 2016 with feedback gathered on proposed changes required by SB1515 and the temporary rules adopted by the Department as of July 1, 2016, respectively. A rule advisory committee was held on August 28, 2016 with representation from child-caring agencies, child abuse assessment professionals, advocates for children, and the association representing providers and programs for children and families.

10-21-2016 5:00 p.m.	Jennifer Bittel	jennifer.bittel@state.or.us
Last Day (m/d/yyyy) and Time for public comment	Printed Name	Email Address

CHAPTER 407
DEPARTMENT OF HUMAN SERVICES

DIVISION 45
OFFICE OF ADULT ABUSE PREVENTION AND INVESTIGATIONS

Investigation of Reported Abuse in Certain Child-Caring Agencies

407-045-0800
Purpose and Applicability

(1) The purpose of OAR 407-045-0800 to 407-045-0955 is to describe the responsibility of the Office of Adult Abuse Prevention and Investigations (OAAPI) to investigate reports of abuse in certain Child-Caring Agencies (CCA). These rules govern reports of abuse or neglect in which the CCA, CCA employees or their staff, or proctor foster parent is reported to be responsible for alleged abuse of a child in care. All such reports shall be investigated by OAAPI.

(2) These rules apply to the following CCA entities as defined in OAR 413-215-0000:

(a) Residential care agencies for children;

(b) Day treatment programs;

(c) Therapeutic boarding schools;

(d) Foster care agencies and the proctor foster homes certified by the CCA; and

(e) Outdoor youth programs.

(3) Nothing in these rules relieves any mandatory reporter, including a CCA or proctor foster parent, from reporting abuse alleged to have been caused by other individuals, including but not limited to family members.

(4) Reported child abuse involving CCA entities not listed in section (2) of this rule, as well as by other persons not listed in section (1) of this rule shall be screened and assessed for investigation by the Department's Child Welfare Program in accordance to OAR 413-015-0200 through 413-015-0225 and 413-015-0620 through 413-015-0640.

(5) Every child deserves safe, respectful and dignified treatment provided in a caring environment. All CCAs and proctor foster parents shall conduct themselves in such a manner that every child is free from abuse.

Stat. Auth.: ORS 409.050, 418.005 & 418.189
Stats. Implemented: ORS 418.189, 418.205 – 418.327, 409.185, 418.015, 419B.005-419B.050 & OL 2016, chapter 106

407-045-0820
Definitions

The following definitions apply to OAR 407-045-0800 through 407-045-0980:

(1) “Abuse” of a child in care has the meaning given in ORS 419B.005 or means one or more of the following:

(a) Any physical injury to a child in care caused by other than accidental means, or which appears to be at variance with the explanation given of the injury.

(b) Neglect of a child in care.

(c) Abandonment, including desertion or willful forsaking of a child in care or the withdrawal or neglect of duties and obligations owed a child in care by a child-caring agency, caretaker or other person.

(d) Willful infliction of physical pain or injury upon a child in care.

(e) 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.

(f) Verbal abuse.

(g) Financial exploitation.

(h) Sexual abuse.

(i) Involuntary seclusion of a child in care for the convenience of a child-caring agency or caretaker or to discipline the child in care.

(j) A wrongful use of a physical or chemical restraint of a child in care, 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.

(2) “Child in care” means an individual who is under 21 years of age who is residing in or receiving care or services from a child-caring agency or proctor foster home that is subject to ORS 418.205 to ORS 418.327, ORS 418.470, ORS 418.475, or ORS 418.950 to ORS 418.970.

(3) “Child-caring agency” (CCA) is defined in ORS 418.205 and means:

(a) Any private school, private agency or private organization that provides:

(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) Residential care in combination with academic education and therapeutic care, including but not limited to treatment for emotional, behavioral or mental health disturbances;

(E) Outdoor youth programs; or

(F) 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 defined in ORS 418.950.

(c) Child-caring agency does not include:

(A) Residential facilities or foster care homes certified or licensed by the Department of Human Services 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 section, respite services means the voluntary assumption of short-term care and control of a minor child without compensation or reimbursement of expenses for the purpose 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.

(4) "Financial exploitation" means:

(a) Wrongfully taking the assets, funds or property belonging to or intended for the use of a child in care.

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

(c) Misappropriating, misusing or transferring without authorization any moneys from any account held jointly or singly by a child in care.

(d) Failing to use the income or assets of a child in care effectively for the support and maintenance of the child in care.

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

(5) "Department" means the Department of Human Services.

(6) "Designated medical professional" means a medical professional as defined in ORS 418.747 who has been trained to conduct child abuse medical assessments pursuant to 418.782.

(7) "Inconclusive" means there is some indication that the abuse of a child in care occurred, but there is insufficient evidence to conclude that there is reasonable cause to believe that the abuse occurred.

(8) "Intimidation" means compelling or deterring conduct by threat. Intimidation does not include age-appropriate discipline that may involve the threat to withhold privileges.

(9) "Law enforcement agency" means:

(a) Any city or municipal police department;

(b) Any county sheriff's office;

(c) The Oregon State Police;

(d) Any district attorney;

(e) A police department established by a university under ORS 352.121 or ORS 353.125.

(10) "Legal finding" means a court or administrative finding, judgment, order, stipulation, plea, or verdict.

(11) "Neglect" of a child in care means:

(a) Failure to provide the care, supervision or services necessary to maintain the physical and mental health of a child in care; or

(b) The failure of a child-caring agency, proctor foster home, caretaker or other person to make a reasonable effort to protect a child in care from abuse.

(12) “OAAPI” means the Department’s Office of Adult Abuse Prevention and Investigations.

(13) “OAAPI investigator” means a Department employee who is authorized and receives OAAPI approved training to screen or investigate allegation of abuse under these rules.

(14) “OAAPI Substantiation Review Committee (OSRC)” means a group of three Department employees selected by the Department’s Deputy Director or designee, none of whom was involved in any part of the investigation that resulted in the OAAPI substantiation under review.

(15) “Person with substantiated abuse” means the person OAAPI has reasonable cause to believe is responsible for abuse of a child in care under these rules, and about whom a substantiated finding has been made.

(16) “Proctor foster home” means a foster home certified by a child-caring agency under Oregon Laws 2016, chapter 106, section 6 that is not subject to ORS 418.625 to 418.645.

(17) “Restraint,” if applicable, as defined in OAR 413-215-0076:

(a) “Chemical restraint” meaning the administration of medication for the management of uncontrolled behavior, is prohibited. Chemical restraint is different from the use of medication for treatment of symptoms of severe emotional disturbances or disorders.

(b) “Physical restraint” means the act of restricting a child in care's voluntary movement as an emergency measure in order to manage and protect the child in care or others from injury when no alternate actions are sufficient to manage the child in care's behavior. “Physical restraint” does not include temporarily holding a child in care to assist him or her or assure his or her safety, such as preventing a child in care from running onto a busy street.

(18) “Screening” means the process used by the Department to determine the response when information alleging abuse or neglect is received.

(19) “Seclusion” means that a child in care is involuntarily confined to an area or room, and is physically prevented from leaving.

(20) “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 in care.

(21) “Sexual abuse” means:

(a) Sexual harassment, sexual exploitation or inappropriate exposure to sexually explicit material or language;

(b) Any sexual contact between a child in care and an employee of a child-caring agency or proctor foster home, caretaker or other person responsible for the provision of care or services to a child in care;

(c) Any sexual contact between a person and a child in care that is unlawful under ORS chapter 163 and not subject to a defense under that chapter; or

(d) Any sexual contact that is achieved through force, trickery, threat or coercion.

(22) “Sexual contact” has the meaning given that term in ORS 163.305(1)(a)(E).

(23) “Sexual exploitation” as described in ORS 419B.005(1)(a)(E).

(24) “Substantiated” means there is reasonable cause to believe that abuse of a child in care occurred.

(25) “Suspicious physical injury” is defined in ORS 419B.023(1)(b) and includes but is not limited to:

(a) Burns or scalds;

(b) Extensive bruising or abrasions on any part of the body;

(c) Bruising, swelling, or abrasions on the head, neck, or face;

(d) Fractures of any bone of a child in care under the age of three;

(e) Multiple bone fractures of a child in care;

(f) Dislocations, soft tissue swelling, or moderate to severe cuts;

(g) Loss of the ability to walk or move normally according to the child’s developmental ability;

(h) Unconsciousness or difficulty maintaining consciousness;

(i) Multiple injuries of different types;

(j) Injuries causing serious or protracted disfigurement or loss or impairment of the function of any bodily organ; or

(k) Any other injury that threatens the physical well-being of the child in care.

(26) “Unsubstantiated” means there is no evidence that the abuse of a child in care occurred.

(27) “Verbal abuse” means to threaten significant physical or emotional harm to a child in care through the use of:

(a) Derogatory or inappropriate names, insults, verbal assaults, profanity or ridicule; or

(b) Harassment, coercion, threats, intimidation, humiliation, mental cruelty or inappropriate sexual comments.

Stat. Auth.: ORS 409.050 & 418.005
Stats. Implemented: ORS 409.185, 418.005, 418.189, 418.205 - 418.327, 418.747, 418.751, 419B.005-419B.050 & OL 2016, chapter 106

407-045-0825
Screening Reports of Abuse

(1) Within 24 hours of receiving a report of abuse, OAAPI shall determine if:

(a) The report meets the definition of abuse of a child in care as defined by OAR 407-045-0820 or ORS 419B.005;

(b) The CCA is listed in OAR 407-045-0800(2) or is a CCA certified proctor foster parent;

(c) The CCA, CCA employees, volunteers, contractors or their employees or their staff, or proctor foster home parent, is suspected or reported as responsible for the alleged abuse;

(d) The alleged victim of abuse is a child in care as defined by OAR 407-045-0820.

(2) The screener shall gather firsthand information to determine the appropriate Department response.

(3) If OAAPI determines the report of alleged abuse meets the conditions listed in section (1) of this rule, the report shall be assigned for investigation. The screener shall also determine the response time for the assigned OAAPI investigator:

(a) A within 24 hours response time line is required unless (b) of this subsection applies.

(b) A within five days response time line must only be used when the screener can clearly document how the information indicates the child in care's safety will not be compromised by not responding within 24 hours and whether an intentional delay to allow for a planned response is less likely to compromise the safety of the child in care.

(c) An OAAPI supervisor may change the response time line. When changing from a within 24 hours to within five days, the supervisor must explain in writing why the time line was changed and how safety was considered when the change was approved.

(4) In instances where a child in care is reported to be in need of immediate protection or a condition exists which places other children at risk, OAAPI shall collaborate with law enforcement and Department personnel or other appropriate entities to ensure child safety is provided.

(5) If an OAAPI screener becomes aware of conditions that do not constitute abuse as defined by this rule and ORS 419B.005, but may pose a risk to the health, safety, or welfare of a child, including possible licensing violations or inadequate living conditions or access to food and personal supplies, the OAAPI screener shall make a report to Department personnel designated to accept such reports and make notifications as defined in OAR 407-045-0895.

(6) If OAAPI determines the report of alleged abuse does not meet the conditions listed in section (1) of this rule, the report shall be closed at screening. Supervisor approval is required prior to closing a report at screening.

(7) OAAPI shall document the information supporting the decision to either assign a report for investigation or close a report at screening.

(a) Immediately when a “within 24 hours” response time line is assigned;

(b) Within the same day when a “within five days” response time line is assigned; or

(c) No later than the next working day after the screening determination is made when the report is closed at screening.

(8) OAAPI shall immediately make all applicable cross reports and notifications as described in OAR 407-045-0895 and shall send the screening report to the Department personnel designated to make notifications required by Oregon Laws 2016, chapter 106 and OAR 413-080-0070.

(9) The OAAPI Director or designee may grant an extension of an additional 24 hours to the 24 hour screening deadline if critical information, such as the child's location, is still needed to determine the Department response. The screener shall document in the Department's electronic information system the reason for the extension, including the critical information that remains to be collected, and the Director or designee’s approval. Such an extension does not relieve the Department of the responsibility to make notifications as described in 407-045-0895.

Stat. Auth.: ORS 409.050 & 418.005
Stats. Implemented: ORS 418.005, 418.205 - 418.327, 419B.015, 419B.017, 419B.020 & OL 2016, chapter 106

407-045-0885
Investigating Reports of Abuse

(1) In conducting abuse investigations, the OAAPI investigator or designee must attempt and, when possible, complete:

(a) In-person contact with the child in care who is the alleged victim of the suspected abuse within 24 hours of the investigation being assigned, unless the screener documents a five day response time line per OAR 407-045-0825(3)(b).

(b) During the investigation, if the investigator knows or has reason to know that the child in care is an Indian child, the investigator must give notice within 24 hours to the Indian child's tribe that an abuse investigation is being conducted unless the Department's Child Welfare Program or Abuse Hotline screener documented completion of this notification in the referral to OAAPI.

(c) If an investigator believes a child in care is in need of immediate protection or a condition exists which places the child or other children at risk, the investigator shall collaborate with law enforcement, Department personnel or other appropriate entities to ensure child safety.

(d) Interview the child in care, any witnesses, the person accused or person responsible for the agency accused of abuse, and other individuals who may have knowledge of the facts of the abuse allegation or related circumstances. The OAAPI investigator shall conduct in-person interviews where practicable.

(e) The interviewee shall be informed that they may decline to be interviewed and should be interviewed in a place and manner that allows them to leave or terminate the interview at any time.

(A) OAAPI may interview witnesses and the child in care who is the subject of suspected abuse without the presence of child-caring agency employees, proctor foster parent or Department personnel.

(B) Prior to interviewing any child in care, OAAPI shall notify the child’s parent or legal guardian, unless notification is prohibited by law or court order, or would compromise the child’s safety or a criminal investigation.

(C) When OAAPI interviews a child in care, the child shall be informed they have a right to decline the interview and may have present:

(i) The child in care’s parent or guardian, if the child has not been committed to the custody of the Department or the Oregon Youth Authority (OYA), or

(ii) The child in care’s attorney.

(D) If OAAPI determines contact with the child in care should occur at the child’s school, OAAPI shall comply with the requirements of ORS 419B.045.

(f) Obtain and review all relevant and material evidence, which includes but is not limited to:

(A) Conducting a site visit at the CCA or proctor foster home; and

(B) Receiving, reviewing, or copying records pertaining to the child in care or the incident, including but not limited to incident reports, evaluations, treatment or support plans, treatment notes or progress records, or other documents concerning the welfare of the child.

(g) Take photographs as appropriate or necessary.

(2) If the investigator observes a child in care who has suffered a suspicious physical injury and the investigator is certain or has a reasonable suspicion that the injury is or may be the result of abuse, the investigator shall pursuant to ORS 419B.023, in accordance with the protocols and procedures of the county multidisciplinary child abuse team described in ORS 418.747:

(a) Immediately photograph or cause to have photographed the suspicious physical injury pursuant to ORS 419B.023, unless the child is age 18 or older and exercises their right to decline being photographed; and

(b) Ensure that a designated medical professional conducts a medical assessment within 48 hours of the observation, or sooner if dictated by the child in care's medical needs, unless the child is age 18 or older and exercises their right to decline. If a designated medical professional is not available to conduct a medical assessment within 48 hours, the investigator shall ensure that an available physician, physician's assistant or nurse practitioner conducts the medical assessment. The investigator shall document the efforts made to locate the designated medical professional.

(A) The investigator must facilitate an assessment by a medical professional if the alleged abuse involves injury to the anal or genital region.

(B) When there are indications of severe physical trauma to the child in care, the investigator must make arrangements to immediately transport the child in care to a medical facility, which may include calling 911. The investigator must also make arrangements for medical examination of a child in care for mild or moderate physical trauma. To make arrangements for the medical examination of a child in care, the investigator must work with the Department's Child Welfare Program to assure OAR 413-015-0415(10)(e) to (i) occurs.

(C) When the investigator determines that the child in care is in need of a medical assessment as part of an abuse investigation, the investigator must consult with an OAAPI supervisor as soon as possible, but not at the expense of delaying medical treatment.

(D) As provided in ORS 147.425, a child in care who is the alleged victim of a person crime and at least 15 years old at the time of the alleged abuse may have a personal representative present during a medical examination.

(i) The personal representative needs to be over 18 years old and is selected by the child in care who is the alleged victim.

(ii) The personal representative may not be a person who is a suspect in, a party to or witness to, the crime.

(iii) If an investigator believes that a personal representative would compromise the abuse investigation, an investigator may prohibit a personal representative from being present during the medical examination.

(3) A law enforcement officer, child welfare worker or the OAAPI investigator may take photographs for the purpose of documenting the child in care's condition at the time of the abuse investigation as required in subsection (2)(a) of this section. Photographs of the anal or genital region may be taken only by medical personnel.

(a) The OAAPI investigator will photograph or cause to be photographed any suspicious injuries if the investigator is certain or has a reasonable suspicion the suspicious injuries are the result of abuse regardless of whether the child in care has previously been photographed or assessed during an abuse investigation:

(A) During the investigation of a new allegation of abuse; and

(B) Each time, during the investigation, an injury is observed that was not previously observed by the assigned investigator.

(b) When a child in care is photographed pursuant to this section, the person taking the photographs or causing to have the photographs taken must, within 48 hours or by the end of the next regular business day, whichever occurs later:

(A) Provide hard copies or prints of the photographs and, if available, copies of the photographs in an electronic format to the designated medical professional; and

(B) Place hard copies or prints of the photographs and, if available, copies of the photographs in an electronic format in the Department record labeled with the case name, case number, name of the child in care, and date taken.

(C) If a county multidisciplinary team staffing of the case is held, photographs of the injury will be made available to each team member involved in the case staffing at the first meeting regarding the child in care's case.

(D) Whenever an OAAPI investigator takes photographs of physical injuries of a child in care who is in the custody of the Department, the investigator shall promptly forward copies of the photographs to the Department's Child Welfare caseworker assigned to the child.

(4) When a law enforcement agency is conducting an investigation of the alleged abuse, the OAAPI investigator shall cooperate with the law enforcement agency. When a law enforcement agency is conducting a criminal investigation of the alleged abuse, OAAPI shall also conduct its own investigation, as long as it does not interfere with the law enforcement agency investigation.

(5) During the course of the investigation, the OAAPI investigator shall coordinate with others in the Department, including but not limited to the Office of Licensing and Regulatory Oversight, the Child Welfare Well Being Unit, a child protective service worker assigned to investigate abuse of the child in care, and the child in care's Child Welfare caseworker if the child is in the custody of the Department.

(6) When the OAAPI investigation is complete, OAAPI shall issue a final abuse investigation report as described in OAR 407-045-0890 stating whether the allegation is substantiated, unsubstantiated or inconclusive and explain the basis for that determination.

(7) Any deviations from the investigative process shall be staffed and approved by a supervisor. Deviations and approval shall be documented clearly in the investigative report.

(8) If during the course of an investigation and OAAPI investigator becomes aware of conditions that do not constitute abuse as defined by this rule and ORS 419B.005, but may pose a risk to the health, safety, or welfare of a child, including possible licensing violations or inadequate living conditions or access to food and personal supplies, the OAAPI investigator shall make a report to Department personnel designated to accept such reports and make notifications and take actions as required in Oregon Laws 2016, chapter 106 and OAR 413-080-0070.

Stat. Auth.: ORS 409.050 & 418.005
Stats. Implemented: ORS 147.425, 409.185, 418.005, 418.205 - 418.327, 418.747, 419B.045, 419B.005-419B.050 & OL 2016, chapter 106

407-045-0886
Exception to Completing Investigation of Reported Abuse

(1) The only exception to completing the investigation processes required by these rules per OAR 407-045-0885 on an assigned case is when an OAAPI investigator, in consultation with a supervisor,

determines prior to the initial contact that the referral does not require an investigation under these rules because:

(a) The investigation was opened in error; or

(b) There is no longer an allegation of abuse or neglect. The investigator received information after being assigned the case that information in combination with the corresponding screening report no longer constitutes a report of child abuse as defined in ORS 419B.005 or OAR 407-045-0820. This exception may be used only when the investigator and the supervisor determine the information:

(A) Relates directly to and specifically negates all allegations in the screening report; and

(B) Is considered on the basis of the objectivity of the individual providing the information and the quality of the information.

(2) The exception in section (1) of this rule is not permitted and an investigation must be completed when the investigator has already made contact with the alleged victim, unless the alleged victim is the original reporter.

(3) The investigator must document the determination and explain the basis for the determination that an OAAPI abuse investigation is not necessary, and list the supervisor who was consulted and approved the change.

Stat. Auth.: ORS 409.050 & 418.005
Stats. Implemented: 419B.005-419B.050 & OL 2016, chapter 106

407-045-0887
Abuse Determination

(1) After gathering all the information necessary to complete the abuse investigation, the investigator must determine the abuse finding, if there is reasonable cause to believe that abuse of a child in care occurred as defined in ORS 419B.005 or OAR 407-045-0820.

(2) The possible abuse of a child in care determinations are:

(a) “Substantiated” which means there is reasonable cause to believe that abuse of a child in care occurred.

(b) “Inconclusive” means there is some indication that the abuse of a child in care occurred, but there is insufficient evidence to conclude that there is reasonable cause to believe that the abuse occurred.

(c) “Unsubstantiated” which means there is no evidence that the abuse of a child in care occurred.

(3) When determining whether there is reasonable cause to believe abuse occurred, the investigator must consider the behavior, conditions, and circumstances in the definition of abuse described in OAR 407-045-0820 or ORS 419B.005.

(4) Upon issuance of an abuse determination, OAAPI shall send the report described in OAR 407-045-0890 to the Department personnel designated to make notifications required by Oregon Laws 2016, chapter 106.

Stat. Auth.: ORS 409.050 & 418.005
Stats. Implemented: 419B.005-419B.050 & OL 2016, chapter 106

407-045-0890
Abuse Investigation Report

(1) OAAPI shall prepare a written report that includes the following:

(a) A description of the allegation of abuse being investigated, including the date, location and time (if known);

(b) An outline of steps taken in the investigation, a list of all witnesses interviewed, and a summary of the information provided by each witness;

(c) A summary of findings and conclusion concerning the allegation of abuse;

(d) A specific finding of whether the abuse allegation is substantiated, unsubstantiated, or inconclusive and the basis for that determination;

(e) A list of all individuals and entities who receive the required notices as described in OAR 407-045-0895;

(f) The name and title of the individual completing the report; and

(g) Documentation that a supervisor, or their designee, has reviewed and approved the completed report.

(2) The report shall be completed within 30 business days from the date the case was assigned for investigation.

(a) The OAAPI Director or designee may authorize an extension for good cause shown, such as the ability to obtain critical information is beyond the reasonable control of the investigator.

(b) Documentation of the date of the extension shall be noted in the report.

(c) The investigator shall ensure the contact person for the involved CCA is informed of the approved extension and the new due date for the report's completion.

(d) The investigator will ensure those who received notification of the opened OAAPI investigation per OAR 413-080-0070 are informed in writing of the approved extension and the new due date for the report's completion.

(3) The OAAPI supervisor has one week to review and approve the completed report.

Stat. Auth.: ORS 409.050 & 418.005
Stats. Implemented: ORS 409.185, 409.225, 418.015, 419B.005-419B.050, 419B.035 & OL 2016, chapter 106

407-045-0895
Cross Reporting and Notifications

(1) OAAPI shall immediately report to law enforcement, if not already done:

(a) Any crime that OAAPI suspects has occurred with respect to a child in care, at a child-caring agency or proctor foster home, even if the suspected crime is not related to a report of abuse made under these rules.

(b) If OAAPI has reasonable cause to believe that a child in care has died as a result of abuse or where the death occurred under suspicious or unknown circumstances.

(c) OAAPI shall notify the law enforcement agency within the city or county where the report was made. If the abuse or crime is reported to have occurred in a different city or county, OAAPI shall also cross-report to the law enforcement agency in the city or county where the reported abuse or crime occurred.

Cross-reports to law enforcement agencies may be verbal, by electronic transmission, or by hand delivery.

(2) Unless the Department determines that disclosure is not permitted under ORS 419B.035, the Department will notify the reporter per ORS 419B.020(8), if contact information is available:

(a) Whether contact was made with the child in care;

(b) Whether the Department determined that child abuse or neglect occurred; and

(c) Whether services were provided.

(3) If the OAAPI screener or investigator becomes aware a person accused of abuse is licensed or certified by a public agency or board, OAAPI will provide written notification of the abuse investigation being conducted under these rules to the public agency or board that license or certifies the person accused practicing in the CCA.

(4) The Department shall make all other notifications as required by Oregon Laws 2016, chapter 106 and OAR 413-080-0070.

Stat. Auth.: ORS 409.050 & 418.005
Stats. Implemented: ORS 409.185, 409.225, 418.005, 418.205 - 418.327, 419B.015, 419B.020, 419B.035, 419B.005-419B.050 & OL 2016, chapter 106

407-045-0910
Notice of a Substantiated Finding of Abuse

(1) When OAAPI has substantiated an allegation of abuse of a child in care, OAAPI shall deliver a notice to the person with substantiated abuse or CCA named in the report. The notice shall be delivered:

(a) By certified mail, restricted delivery, return receipt requested to the last known address of the person with substantiated abuse or CCA; or

(b) By hand delivery to the person with substantiated abuse or CCA. If hand delivered, the notice shall be addressed to the person with substantiated abuse or to the OAAPI contact on record for a CCA and a copy of the notice shall be signed and dated by the person with substantiated abuse or CCA representative acknowledging receipt and signed by the individual delivering the notice.

(2) The notice of an OAAPI substantiation of abuse shall include the following:

(a) The case number assigned to the investigation that resulted in the OAAPI substantiation;

(b) The full name of the person with substantiated abuse or CCA who has been identified as responsible for the abuse as documented in the OAAPI report;

(c) A statement that the OAAPI investigation resulted in a substantiated finding of abuse, including a description of the type of abuse identified;

(d) A description of the OAAPI investigation, including a redacted summary of findings and conclusions;

(e) A statement that the person with substantiated abuse or CCA has a right to request a review and may meet with the OSRC in person;

(f) Instructions for making a request for review, including the requirement that the person with substantiated abuse or CCA provide a full explanation why the person with substantiated abuse or CCA believes the OAAPI substantiation is incorrect.

(g) A statement that the Department may not review an OAAPI substantiation if a legal proceeding is pending and that the person with substantiated abuse or CCA may request a review within 30 calendar days of the resolution of the pending legal proceeding unless the proceeding results in a legal finding that is consistent with the OAAPI substantiation;

(h) A statement that the person with substantiated abuse waives the right to request a review if the request for review is not received by OAAPI within 30 calendar days from the date of the notice of OAAPI substantiation, as documented by a returned receipt.

(i) A statement that the OSRC shall consider relevant documentary information, including the OAAPI report and accompanying exhibits, information the person with substantiated abuse or representative of the CCA provides in person to the OSRC, and information submitted with the request for review by the person with substantiated abuse or CCA requesting review.

(j) A statement that the OSRC may not re-interview the victim; interview others associated with the person with substantiated abuse or CCA, or with others mentioned in the report; or conduct a field assessment of the allegation of abuse; and

(k) A statement that OAAPI shall send the person with substantiated abuse or CCA a notice of OSRC decision within 60 calendar days of receiving a request for review.

(3) If a person with substantiated abuse or the CCA believes they are entitled to a notice of OAAPI substantiation but has not received one, the person with substantiated abuse or CCA may contact OAAPI to inquire about a review of the disposition.

(4) OAAPI shall determine whether a notice of OAAPI substantiation was delivered to the person with substantiated abuse or CCA or if the person with substantiated abuse or CCA refused delivery of the notice, as evidenced by the returned receipt.

(5) If a notice was delivered to the person with substantiated abuse or CCA or if the person with substantiated abuse or CCA refused delivery of the notice, as evidenced by a returned receipt, and the time for requesting review has expired, OAAPI shall:

(a) Prepare and deliver a notice of waived rights for review; or

(b) Inform the person with substantiated abuse or CCA by telephone of the information required in the notice of waived rights for review. OAAPI shall document the telephone call.

(c) If no return receipt exists or if it appears that notice was not properly provided, OAAPI shall deliver a notice of OAAPI substantiation as provided in these rules.

(6) If a person with substantiated abuse or CCA asks to review Department records for the purpose of reviewing an OAAPI substantiation, state and federal confidentiality laws, including OAR 413-010-0000 to 413-010-0075 and 413-350-0000 to 413-350-0090, govern the inspection and copying of records.

(7) OAAPI shall maintain records to demonstrate the following, when applicable:

(a) Whether the Department delivered a notice of OAAPI substantiation;

(b) Whether the notice of OAAPI substantiation was received by the addressee, as evidenced by a returned receipt documenting that the notice was received, refused, or not received; and

(c) The date a request for review was received by OAAPI.

(8) OAAPI shall maintain a comprehensive record of completed OAAPI substantiation reviews.

Stat. Auth.: ORS 409.050 & 418.005

Stats. Implemented: ORS 418.005 & OL 2016, chapter 106

407-045-0940
Review of Substantiated Abuse Finding

(1) When OAAPI has determined abuse has occurred, the person with substantiated abuse or a CCA against whom the finding has been made, has the right to request an administrative review of the OAAPI decision by the OSRC. The OSRC shall consist of Department employees who are knowledgeable about the dynamics of child abuse and neglect, including the assessment or investigation of child abuse, and Department employees with knowledge of abuse investigations, especially where abuse is alleged to have occurred in out-of-home settings.

(2) A person with substantiated abuse or CCA requesting a review shall use information contained in the notice of OAAPI substantiation to either meet with the OSRC or prepare a written request for review. The written request for review shall be received by OAAPI within 30 calendar days of the receipt of the notice of OAAPI substantiation. If the request is submitted by mail, it shall be postmarked within 30 calendar days. The request shall include the following:

(a) Date the request for review is written;

(b) Case number found on the notice of OAAPI substantiation;

(c) Full name of the person with substantiated abuse or CCA;

(d) The person with substantiated abuse or CCA's current name (if it has changed from the name noted in section (c) of this rule);

(e) A full explanation, responsive to the information provided in the Department's notice, explaining why the person with substantiated abuse or CCA believes the OAAPI substantiation is wrong and any additional information and documents the person with substantiated abuse or CCA wants considered during the review;

(f) The person with substantiated abuse or CCA's current street address and telephone number; and

(g) The person with substantiated abuse signature or the signature of a CCA employee authorized to sign on behalf of the organization.

(3) Except as provided in OAR 407-045-0950, within 60 calendar days of OAAPI's receipt of a completed request for review, the OSRC shall conduct a review and issue a notice of OSRC decision that includes the following:

(a) Whether there is reasonable cause to believe that abuse occurred;

(b) Whether there is reasonable cause to believe that the person with substantiated abuse or CCA was responsible for the abuse;

(c) Whether the OSRC is changing the OAAPI substantiation;

(d) If the OAAPI substantiation is changed, whether the changed conclusion is being changed to "unsubstantiated" or "inconclusive;" and

(e) A summary of the information used by the OSRC and its reasoning in reaching its decision.

(4) The OSRC shall operate as follows:

(a) The OSRC shall consider relevant documentary information contained in the OAAPI investigation file, investigative report and exhibits, and information provided by the person with substantiated abuse.

(b) The OSRC may not re-interview the victim; interview or meet with others associated with the person with substantiated abuse or CCA, or with others mentioned in the report; or conduct a field assessment of the allegation of abuse.

(c) All OSRC decisions shall be decided by majority vote of the three participating committee members, all of whom shall be present.

(d) The OSRC shall make a determination as to:

(A) Whether there is reasonable cause to believe that abuse occurred; and

(B) Whether there is reasonable cause to believe that the person with substantiated abuse or CCA is responsible for the abuse.

(e) The OSRC shall decide to either uphold the OAAPI substantiation, or change that conclusion to unsubstantiated or inconclusive.

(5) OSRC shall send the notice of OSRC decision to the person with substantiated abuse or CCA, the OAAPI investigator who conducted the investigation, applicable public agencies, other entities or individuals who received notice of the original substantiation, and the OAAPI Director.

(6) The Department shall provide the person with substantiated abuse a notice of rights to appeal the OSRC determination.

Stat. Auth.: ORS 409.050 & 418.005
Stats. Implemented: ORS 418.005 & OL 2016, chapter 106

407-045-0950
Exception to the Right to Request a Review and Providing Notice of Legal Proceeding

(1) If OAAPI has knowledge of a pending legal proceeding, the OSRC may not review the disposition until the legal proceeding is completed.

(2) If OAAPI has knowledge of a pending legal proceeding, OAAPI shall prepare and deliver a notice of legal proceeding within 30 calendar days after receipt of a request for review informing the person with substantiated abuse or CCA that the Department may not review the substantiation until the legal proceeding is completed and may not take further action on the request.

(3) If the completed legal proceeding results in a legal finding consistent with the OAAPI substantiation, the Department may not conduct a review. In that case, OAAPI shall provide a notice of legal finding to the person with substantiated abuse or CCA.

(4) If the completed legal proceeding results in a legal finding which is inconsistent with the OAAPI substantiation, the person with substantiated abuse or CCA may, at the conclusion of the legal proceeding, re-submit a request for review within 30 calendar days from the date of resolution of legal proceeding.

Stat. Auth.: ORS 409.050 & 418.005
Stats. Implemented: ORS 418.005 & OL 2016, chapter 106

407-045-0955
Confidentiality

(1) The report and underlying investigatory documents are confidential and not available for public inspection except may be disclosed as provided in ORS 419B.035. The name and identifying information about the person who reported abuse may not be disclosed.

(a) Investigatory documents, including portions of the abuse investigation report that contain "individually identifiable health information," as defined in ORS 192.519 and 45 CFR160.103, are confidential under HIPAA privacy rules, 45 CFR Part 160 and 164, and ORS 192.520 and 179.505 to 179.509. Disclosure of substance abuse treatment records are governed by 42 U.S.C. 290dd-2 and 42 CFR Part 2.

(b) The Department shall make otherwise confidential records available to individuals identified in ORS 419B.035(1), and may release records if permitted by ORS 419B.035(3) whenever such disclosure:

(i) Is necessary for administration of child welfare services and is in the best interests of the child in care;

(ii) Is necessary to investigate, prevent or treat child abuse; or

(iii) To protect children generally from abuse.

(2) Except as provided in section (1) of this rule, the Department shall make the confidential information, including any photographs, available, if appropriate, to any law enforcement agency, to any public agency that licenses or certifies facilities, and to any public agency providing protective services for the child in care.

(3) Subject to ORS 419B.035(3), the Department may make the abuse investigation report or relevant materials, in redacted form, available to the CCA or to any person who was determined to have abused the child in care under these rules. The Department may not disclose confidential information which is prohibited by state or federal law.

(4) Individuals or entities receiving confidential information pursuant to this rule shall maintain the confidentiality of the information and may not re-disclose the confidential information to unauthorized individuals or entities, if disclosure is prohibited by state or federal law.

Stat. Auth.: ORS 409.050 & 418.005
Stats. Implemented: ORS 409.185, 409.225, 418.015, 418.205 – 418.327, 419B.005-419B.050, 419B.035 & OL 2016, chapter 106

CHAPTER 407
DEPARTMENT OF HUMAN SERVICES

DIVISION 45
OFFICE OF ADULT ABUSE PREVENTION AND INVESTIGATIONS

~~Abuse Reporting and Protective Services in Children's Residential Care Agencies, Day Treatment Programs, Therapeutic Boarding Schools, Foster Care Agencies, and Outdoor Youth Programs~~
Investigation of Reported Abuse in Certain Child-Caring Agencies

407-045-0800
~~Scope~~

~~These rules (~~**Purpose and Applicability**

(1) The purpose of OAR 407-045-0800 to 407-045-~~0980) prescribe standards and procedures for investigating, assessing, and providing protective services in certain therapeutic or treatment programs, when abuse or neglect of a child~~ 0955 is ~~reported~~ to ~~have occurred. Specifically, these rules govern children's residential care agencies, day treatment programs, therapeutic boarding schools, foster care agencies, and outdoor youth programs (hereafter, "children's care providers" or "CCPs"). These rules also set forth~~describe the ~~nature and content~~responsibility of the ~~abuse investigation, the protective services report, and review rights and procedure.~~

~~Stat. Auth.: ORS 409.050 & 418.005~~
~~Stats. Implemented: ORS 409.185, 418.015, 418.205-418.327, & 419B.005-419B.050~~

~~**407-045-0810**~~
~~**General Policy and Applicability**~~

~~(1) Every child deserves safe, respectful, and dignified treatment provided in a caring environment. All CCPs governed by these rules, and their staff, shall conduct themselves in such a manner that children are free from abuse.~~

~~(2) In these rules, the term "abuse" is defined in some detail because of the unique vulnerabilities of children served by CCPs and the nature of the settings where abuse may occur. All forms of abuse are prohibited. CCPs and their staff must always be aware of the potential for abuse in interactions with children.~~

~~(3)~~Office of Adult Abuse Prevention and Investigations (OAAPI) to investigate reports of abuse in certain Child-Caring Agencies (CCA). These rules govern reports of abuse or neglect in which the ~~CCP,~~CCA, CCA employees or ~~its~~their staff, or proctor foster parent is reported to be responsible~~.~~ for alleged abuse of a child in care. All such reports shall be investigated by ~~the Department of Human Services's (Department) Office of Investigations and Training (OAAPI).~~

~~(4)~~ OAAPI ~~shall evaluate each case based on available facts and on the individual circumstances of the child, including the child's particular vulnerabilities~~.

~~(5~~(2) These rules apply to the following CCA entities as defined in OAR 413-215-0000:

(a) Residential care agencies for children;

(b) Day treatment programs;

(c) Therapeutic boarding schools;

(d) Foster care agencies and the proctor foster homes certified by the CCA; and

(e) Outdoor youth programs.

(3) Nothing in these rules relieves any mandatory reporter, including a ~~CCP~~CCA or proctor foster parent, from reporting abuse ~~or neglect~~ alleged to have been caused by other individuals, including but not limited to family members. ~~Those reports shall continue to be investigated~~

(4) Reported child abuse involving CCA entities not listed in section (2) of this rule, as well as by other persons not listed in section (1) of this rule shall be screened and assessed for investigation by the ~~Department's Children, Adults and Families Division (CAF) or by law enforcement~~Department's Child Welfare Program in accordance to OAR 413-015-0200 through 413-015-0225 and 413-015-0620 through 413-015-0640.

(5) Every child deserves safe, respectful and dignified treatment provided in a caring environment. All CCAs and proctor foster parents shall conduct themselves in such a manner that every child is free from abuse.

Stat. Auth~~:~~.: ORS 409.050, 418.005 & 418.189
Stats. Implemented: ORS 418.189 ~~&~~, 418.205 – 418.327, 409.185, 418.015, 419B.005-419B.050 & OL 2016, chapter 106

407-045-0820
Definitions

The following definitions apply to OAR 407-045-0800 through 407-045-0980:

(1) "Abuse" ~~includes but is not limited to:~~

~~(a) Any assault, as defined in ORS Chapter 163,~~ of a child in care has the meaning given in ORS 419B.005~~and~~ or means one or more of the following:

(a) Any physical injury to a child ~~which has been~~ in care caused by other than accidental means, ~~including any injury~~or which appears to be at variance with the explanation given of the injury.

~~(b) Any mental injury to a child, which shall include only observable and substantial impairment of the child's mental or psychological ability to function caused by cruelty to the child, with due regard to the culture of the child.~~

(b) Neglect of a child in care.

(c) ~~Rape~~Abandonment, including desertion or willful forsaking of a child~~, which includes but is not limited to rape, sodomy, unlawful sexual penetration, and incest, as defined in ORS Chapter 163.~~

~~(d) Sexual abuse, as defined~~ in ~~ORS Chapter 163.~~

~~(e) Sexual exploitation which includes but is not limited to:~~

~~(A) 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 163.665 and 163.670;~~

~~(B) 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; or~~

~~(C) Allowing, permitting, encouraging, or hiring a child to engage in prostitution, as defined in ORS Chapter 167.~~

~~(f) Negligent treatment or maltreatment of a child which includes but is not limited to failure to provide adequate food, clothing, shelter, or medical care that is likely to endanger the child's health or welfare.~~

~~(g) Threatened harm to a child, which means subjecting a child to a substantial risk of harm to the child's health or welfare.~~

~~(h) Buying or selling an individual under 18 years of age, as described in ORS 163.537.~~

~~(i) Permitting an individual under 18 years of age to enter or remain in or upon premises where methamphetamines are being manufactured.~~

~~(j) Unlawful exposure to a controlled substance, as defined in ORS 475.005, that subjects a child to a substantial risk of harm to the child's health or safety.~~

~~(2) "Child" means an unmarried individual under 18 years of age.~~

~~(3) "Children's~~ care ~~provider (CCP)" means a licensed residential~~ or the withdrawal or neglect of duties and obligations owed a child in care by a child-caring agency, ~~day treatment program, foster care agency, therapeutic boarding school, or outdoor youth program that has assumed responsibility for all or a portion of the care of a child. The term includes the CCP's employees, agents, contractors and their employees, and volunteers~~caretaker or other person.

~~(4) "~~(d) Willful infliction of physical pain or injury upon a child in care.

(e) 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.

(f) Verbal abuse.

(g) Financial exploitation.

(h) Sexual abuse.

(i) Involuntary seclusion of a child in care for the convenience of a child-caring agency or caretaker or to discipline the child in care.

(j) A wrongful use of a physical or chemical restraint of a child in care, 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.

(2) "Child in care" means an individual who is under 21 years of age who is residing in or receiving care or services from a child-caring agency or proctor foster home that is subject to ORS 418.205 to ORS 418.327, ORS 418.470, ORS 418.475, or ORS 418.950 to ORS 418.970.

(3) "Child-caring agency" (CCA) is defined in ORS 418.205 and means:

(a) Any private school, private agency or private organization that provides:

(A) Day treatment ~~program" means a licensed CCP that provides day treatment services.~~

~~(5) "Day treatment services" means comprehensive, interdisciplinary, nonresidential, community based, psychiatric treatment, family treatment, and therapeutic activities integrated with an accredited education program provided to~~ for children with emotional disturbances~~.~~;

~~(6~~(B) Adoption placement services;

(C) Residential care, including but not limited to foster care or residential treatment for children;

(D) Residential care in combination with academic education and therapeutic care, including but not limited to treatment for emotional, behavioral or mental health disturbances;

(E) Outdoor youth programs; or

(F) 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 defined in ORS 418.950.

(c) Child-caring agency does not include:

(A) Residential facilities or foster care homes certified or licensed by the Department of Human Services 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 section, respite services means the voluntary assumption of short-term care and control of a minor child without compensation or reimbursement of expenses for the purpose 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.

(4) "Financial exploitation" means:

(a) Wrongfully taking the assets, funds or property belonging to or intended for the use of a child in care.

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

(c) Misappropriating, misusing or transferring without authorization any moneys from any account held jointly or singly by a child in care.

(d) Failing to use the income or assets of a child in care effectively for the support and maintenance of the child in care.

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

(5) "Department" means the Department of Human Services.

(~~7~~6) "Designated medical professional" means a medical professional as defined in ORS 418.747 who has been trained to conduct child abuse medical assessments pursuant to 418.782.

~~(8) "Foster care agency" means a licensed child-caring agency that offers to place children by taking physical custody of and then placing the children in homes certified by that agency.~~

~~(9) "Inconclusive" means a preponderance of evidence is not available to determine whether the alleged abuse did or did not occur. Evidence may be inconclusive because relevant witnesses, documents, or records are unavailable, or because there is conflicting or inconsistent information from witnesses, documents, or records, with the result that at the conclusion of the investigation there is insufficient evidence to support a "substantiated" or a "not substantiated" conclusion.~~

(7) "Inconclusive" means there is some indication that the abuse of a child in care occurred, but there is insufficient evidence to conclude that there is reasonable cause to believe that the abuse occurred.

(8) "Intimidation" means compelling or deterring conduct by threat. Intimidation does not include age-appropriate discipline that may involve the threat to withhold privileges.

(9) "Law enforcement agency" means:

(a) Any city or municipal police department;

(b) Any county sheriff's office;

(c) The Oregon State Police;

(d) Any district attorney;

(e) A police department established by a university under ORS 352.121 or ORS 353.125.

(10) "Legal finding" means a court or administrative finding, judgment, order, stipulation, plea, or verdict~~ that determines who was responsible for the child abuse that is the subject of an OIT substantiation~~.

~~(11) "Likely to endanger the health or welfare of the child" means negligent treatment or maltreatment that is likely to result in harm to the child, based on the available facts, and on the individual child's particular physical, emotional, behavioral, or mental health needs, circumstances, or vulnerabilities.~~

~~(12) "Maltreatment" means any action toward a child which carries a risk of harm to the child's physical, emotional, behavioral, or mental health or welfare. Examples of staff behaviors that must be reported as potential abuse by maltreatment include but are not limited to the willful infliction of pain or injury (e.g. hitting, kicking, pushing, arm twisting, head twisting, etc.); exposure to domestic violence; inappropriate or excessive force during a containment hold or restraint; or other physical contact with the child inconsistent with prescribed treatment or care. All injuries during a restraint or hold must be reported, including minor injuries. Other behaviors that must be reported include the use of derogatory names, phrases, profanity, ridicule, harassment, intimidation, or coercion. While such behaviors do not automatically mean abuse has occurred, such actions may be abuse if the investigation determines the actions were likely to endanger the child's health or welfare.~~

~~(13) "Mandatory reporter" means an individual or entity having a duty to report as defined in ORS 419B.005 to 419B.050.~~

~~(14) "Negligent treatment" means failure to perform duties or failure to take action required to protect the child's health or welfare. Examples of staff behaviors that must be reported as potential abuse by negligent treatment include but are not limited to failure to supervise a child or failure to intervene when a child needs assistance or care. While such failures do not automatically mean abuse has~~

~~occurred, such actions may be abuse if the investigation determines the failures were likely to endanger the child's health or welfare.~~

~~(15) "Not substantiated" means the preponderance of evidence establishes the alleged abuse did not occur.~~

~~(16) "OIT~~(11) "Neglect" of a child in care means:

(a) Failure to provide the care, supervision or services necessary to maintain the physical and mental health of a child in care; or

(b) The failure of a child-caring agency, proctor foster home, caretaker or other person to make a reasonable effort to protect a child in care from abuse.

(12) "OAAPI" means the Department's Office of Adult Abuse Prevention and Investigations~~ and Training~~.

(~~17) "OIT~~13) "OAAPI investigator" means ~~an~~a Department employee ~~of the Department's OIT~~ who is authorized and ~~trained to~~ receives OAAPI approved training to screen or investigate ~~reports~~allegation of ~~child~~ abuse ~~or neglect~~ under these rules.

(~~18) "OIT~~14) "OAAPI Substantiation Review Committee (OSRC)" means a group of three Department employees selected by the Department's Deputy Director or designee, none of whom was involved in any part of the investigation that resulted in the ~~OIT substantiation under review. The committee must consist of Department employees who are knowledgeable about the dynamics of child abuse and neglect, including the assessment or investigation of child abuse and neglect, and Department employees with knowledge of abuse investigations, especially where abuse is alleged to have occurred in out-of-home settings~~OAAPI substantiation under review.

~~(19) "Outdoor youth program" means a licensed program that provides, in an outdoor living setting, services to youth who are enrolled in the program because they have behavioral or mental 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 Department authority. It does not include outdoor activities for youth designed to be primarily recreational such as YMCA, Outward Bound, Boy Scouts, Girl Scouts, Campfire, church groups, or other similar activities.~~

~~(20) "~~(15) "Person with substantiated abuse" means the person ~~OIT~~OAAPI has reasonable cause to believe is responsible for ~~child~~ abuse of a child in ~~a substantiated OIT report~~care under these rules, and about whom a substantiated finding has been made.

~~(21) "Protective action~~(16) "Proctor foster home" means a foster home certified by a child-caring agency under Oregon Laws 2016, chapter 106~~set of services or activities undertaken~~, section 6 that is not subject to ORS 418.625 to 418.645.

(17) "Restraint," if applicable, as defined in OAR 413-215-0076~~address~~:

(a) "Chemical restraint" meaning the administration of medication for the management of uncontrolled behavior, is prohibited. Chemical restraint is different from the use of medication for treatment of symptoms of severe emotional disturbances or disorders.

(b) "Physical restraint" means the act of restricting a child in care's voluntary movement as an emergency measure in order to manage and ~~meet a child's~~protect the child in care or others from injury when no alternate actions are sufficient to manage the child in care's behavior. "Physical restraint" does not include temporarily holding a child in care to assist him or her or assure his or her safety~~ needs after a report of~~, such as preventing a child in care from running onto a busy street.

(18) "Screening" means the process used by the Department to determine the response when information alleging abuse ~~has been~~or neglect is received~~ by OIT~~.

~~(22) "Residential care agency" means a licensed~~(19) "Seclusion" means that a child in care is involuntarily confined to an area or room, and is physically prevented from leaving.

(20) "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 in care.

(21) "Sexual abuse" means:

(a) Sexual harassment, sexual exploitation or inappropriate exposure to sexually explicit material or language;

(b) Any sexual contact between a child in care and an employee of a child-caring agency ~~that provides~~or proctor foster home, caretaker or other person responsible for the provision of care or services to ~~children 24 hours a day.~~a child in care;

(c) Any sexual contact between a person and a child in care that is unlawful under ORS chapter 163 and not subject to a defense under that chapter; or

(d) Any sexual contact that is achieved through force, trickery, threat or coercion.

(22) "Sexual contact" has the meaning given that term in ORS 163.305(1)(a)(E).

(23) "Sexual exploitation" as described in ORS 419B.005(1)(a)(E).

(24) "Substantiated" means there is reasonable cause to believe that ~~a preponderance of evidence establishes the alleged~~ abuse of a child in care occurred.

(~~24~~25) "Suspicious physical injury" is defined in ORS 419B.~~005~~023(1)(b) and includes but is not limited to:

(a) Burns or scalds;

(b) Extensive bruising or abrasions on any part of the body;

(c) Bruising, swelling, or abrasions on the head, neck, or face;

(d) Fractures of any bone ~~in~~of a child in care under the age of three;~~ multiple~~

(e) Multiple bone fractures ~~in~~of a child ~~of any age;~~in care;

(f) Dislocations, soft tissue swelling, or moderate to severe cuts;

(g) Loss of the ability to walk or move normally according to the child's developmental ability;

(h) Unconsciousness or difficulty maintaining consciousness;

(i) Multiple injuries of different types;

(j) Injuries causing serious or protracted disfigurement or loss or impairment of the function of any bodily organ; or~~ any other injury that threatens the physical well-being of the child.~~

~~(25) "Therapeutic boarding school" means a licensed 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 24 hours a day; and~~

~~(c) Holds itself out as serving children with emotional or behavioral problems, providing therapeutic services, or ensuring that children receive therapeutic services.~~

(k) Any other injury that threatens the physical well-being of the child in care.

(26) "Unsubstantiated" means there is no evidence that the abuse of a child in care occurred.

(27) "Verbal abuse" means to threaten significant physical or emotional harm to a child in care through the use of:

(a) Derogatory or inappropriate names, insults, verbal assaults, profanity or ridicule; or

(b) Harassment, coercion, threats, intimidation, humiliation, mental cruelty or inappropriate sexual comments.

Stat. Auth.: ORS 409.050 & 418.005
Stats. Implemented: ORS 409.185, 418.005, 418.189, 418.205 - 418.327, 418.747, 418.751, 419B.005-419B.050~~419B.005 - 419B.050 & 419B.328~~ & OL 2016, chapter 106

407-045-~~0830~~0825
~~**Training of Children's Care Providers**~~

Screening Reports of Abuse

(1) Within 24 hours of receiving a report of abuse, OAAPI shall determine if:

(a) The report meets the definition of abuse of a child in care as defined by OAR 407-045-0820 or ORS 419B.005;

(b) The CCA is listed in OAR 407-045-0800(2) or is a CCA certified proctor foster parent;

(c) The CCA, CCA employees, volunteers, contractors or their employees or their staff, or proctor foster home parent, is suspected or reported as responsible for the alleged abuse;

(d) The alleged victim of abuse is a child in care as defined by OAR 407-045-0820.

(2) The screener shall gather firsthand information to determine the appropriate Department ~~shall provide training~~ response.

(3) If OAAPI determines the report of alleged abuse meets the conditions listed in section (1) of this rule, the report shall be assigned for investigation. The screener shall also determine the response time for the assigned OAAPI investigator:

(a) A within 24 hours response time line is required unless (b) of this subsection applies.

(b) A within five days response time line must only be used when the screener can clearly document how the information indicates the child in care's safety will not be compromised by not responding within 24 hours and ~~consultation to CCPs~~whether an intentional delay to ~~identify abuse and~~ allow for a planned response is less likely to ~~prevent abuse~~ compromise the safety of the child in care.

(c) An OAAPI supervisor may change the response time line. When changing from ~~occurring~~a within 24 hours to within five days, the supervisor must explain in writing why the time line was changed and how safety was considered when the change was approved.

(~~2) The~~ 4) In instances where a child in care is reported to be in need of immediate protection or a condition exists which places other children at risk, OAAPI shall collaborate with law enforcement and Department ~~shall provide training to assist CCPs~~personnel or other appropriate entities to ~~understand the~~ ensure child safety is provided.

(5) If an OAAPI screener becomes aware of conditions that do not constitute abuse as defined by this rule and ORS 419B.005, but may pose a risk to the health, safety, or welfare of a child, including possible licensing violations or inadequate living conditions or access to food and personal supplies, the OAAPI screener shall make a report to Department personnel designated to accept such reports and make notifications as defined in OAR 407-045-0895.

(6) If OAAPI determines the report of alleged abuse does not meet the conditions listed in section (1) of this rule, the report shall be closed at screening. Supervisor approval is required prior to closing a report at screening.

(7) OAAPI shall document the information supporting the decision to either assign a report for investigation or close a report at screening.

(a) Immediately when a "within 24 hours" response time line is assigned;

(b) Within the same day when a "within five days" response time line is assigned; or

(c) No later than the next working day after the screening determination is made when the report is closed at screening.

(8) OAAPI shall immediately make all applicable cross reports and notifications as described in OAR 407-045-0895 and shall send the screening report to the Department personnel designated to make notifications required by Oregon Laws 2016, chapter 106~~process and the CCP's~~ and OAR 413-080-0070.

(9) The OAAPI Director or designee may grant an extension of an additional 24 hours to the 24 hour screening deadline if critical information, such as the child's location, is still needed to determine the Department response. The screener shall document in the Department's electronic information system the reason for the extension, including the critical information that remains to be collected, and the Director or designee's approval. Such an extension does not relieve the Department of the responsibility ~~in cooperating with the investigation~~to make notifications as described in 407-045-0895.

Stat. Auth.: ORS 409.050 & 418.005
Stats. Implemented: ORS 418.~~189 &~~005, 418.~~702~~205 - 418.327, 419B.015, 419B.017, 419B.020 & OL 2016, chapter 106

407-045-~~0850~~0885
~~Responsibilities~~Investigating Reports of ~~the CCP~~Abuse

~~(1) CCPs and their staff are mandatory reporters governed by ORS 419B.005 to 419B.050. Mandatory reporters must immediately report when they have reasonable cause to believe any child with whom they have come in contact has suffered abuse or that any person with whom they have come in contact has abused a child. For purposes of reporting, the belief need only be a reasonable suspicion, and does not need to rise to the level of probable cause. All reports must be made verbally or in writing to the Department or to a law enforcement agency within the county where the individual making the report is located at the time of the contact.~~

~~(2) Concurrent with reporting the suspected abuse or neglect of a child, CCPs shall immediately assess the safety of the child and take any action necessary to remove the child from danger and keep the child safe. CCPs shall cooperate with OIT in establishing a safety plan for the child who is the subject of the report, and for other children who may be at risk of abuse or neglect. In establishing a safety plan, CCPs may not take any actions beyond determining:~~

~~(a) Whether the alleged victim is in danger or in need of immediate protective services, in light of the nature of the report; and~~

~~(b) Whether any immediate personnel action needs to be taken.~~

~~(c) When taking protective action as described in section (2) above, the CCP may not conduct an internal investigation without prior authorization from OIT. For purposes of this section, a prohibited internal investigation includes:~~

~~(A) Interviews with the alleged victim,~~ (1) In conducting abuse investigations, the OAAPI investigator or designee must attempt and, when possible, complete:

(a) In-person contact with the child in care who is the alleged victim of the suspected abuse within 24 hours of the investigation being assigned, unless the screener documents a five day response time line per OAR 407-045-0825(3)(b).

(b) During the investigation, if the investigator knows or has reason to know that the child in care is an Indian child, the investigator must give notice within 24 hours to the Indian child's tribe that an abuse investigation is being conducted unless the Department's Child Welfare Program or Abuse Hotline screener documented completion of this notification in the referral to OAAPI.

(c) If an investigator believes a child in care is in need of immediate protection or a condition exists which places the child or other children at risk, the investigator shall collaborate with law enforcement, Department personnel or other appropriate entities to ensure child safety.

(d) Interview the child in care, any witnesses, the person accused or person~~, or any~~ responsible for the agency accused of abuse, and other ~~individual or witness~~individuals who may have knowledge of the facts of the abuse allegation or related circumstances ~~that include questions beyond those necessary for immediate protection of the child or other children; or~~. The OAAPI investigator shall conduct in-person interviews where practicable.

~~(B) Review of relevant evidence, other than the initial report or other documents necessary for immediate protection of the child or other children.~~

~~(3) CCPs shall document all reports of suspected abuse or neglect of a child including, to the extent possible, the following information:~~

~~(a) The name, age, and present location of the~~(e) The interviewee shall be informed that they may decline to be interviewed and should be interviewed in a place and manner that allows them to leave or terminate the interview at any time.

(A) OAAPI may interview witnesses and the child in care who is the subject of suspected abuse without the presence of child-caring agency employees, proctor foster parent or Department personnel.

(B) Prior to interviewing any child~~;~~

~~(b) The names and addresses of individuals, programs, or facilities responsible for the child's care;~~

~~(c) The nature and extent of the alleged abuse;~~

~~(d) Any information that led the individual making the report to suspect abuse had occurred;~~

~~(e) Any information that the individual believes might aid in establishing the cause of the abuse and the identity of the individual alleged to be responsible for the abuse; and~~

~~(f) The date of the incident.~~

~~(4) Every CCP~~ in care, OAAPI shall ~~cooperate fully with OIT under these rules. Cooperation includes but is not limited to:~~

~~(a) Providing the investigator with access to the child, the facility, and to all potential witnesses; and~~

~~(b) Producing all records and reports requested, including but not limited to medical, psychiatric and psychological records and reports, and individual service or behavioral support plans for the child.~~

~~Stat. Auth.: ORS 409.050 & 418.005~~
~~Stats. Implemented: ORS 419B.010–419B.015~~

~~407-045-0860~~
~~Responsibilities of the Office of Investigations and Training~~

~~(1) When OIT receives a report of abuse, OIT shall notify a law enforcement agency within the county where the report was made. If the abuse is reported to have occurred in a different county, OIT must also cross-report to the law enforcement agency in the county where the reported abuse occurred.~~

~~(2) OIT shall cross-report to law enforcement on the same day the OIT screener determines the report requires an immediate or a 24-hour response.~~

~~(a) Required same day cross-reports include but are not limited to reports of moderate to severe physical abuse, visible injuries to a child, sexual abuse, or the suspicious or unexpected death of a child. Same day reports may be cross-reported verbally, by electronic transmission, or by hand delivery.~~

~~(b) When a cross-report is verbal and OIT and law enforcement do not respond to the report together, OIT must send a completed screening report to law enforcement.~~

~~(3) All other reports, including those investigated at screening but closed, must be cross-reported to law enforcement no later than ten days after the Department receives the report. The cross-report may be made by electronic transmission, hand delivery, or regular mail.~~

~~(4) When OIT receives a report of alleged abuse or neglect, OIT shall notify the child's parent or legal guardian that an allegation has been made, unless notice is prohibited by law or court order or would compromise the child's safety or a criminal investigation. If the child is in the legal custody of the Department, OIT shall notify the child's assigned Department caseworker, if notice has not already been provided. If the child has been placed at the CCP through the Oregon Youth Authority (OYA), OIT shall notify OYA. If OIT has reason to believe the child is an Indian child, OIT shall notify the tribe within 24 hours from the time the report was received by the Department. In cases in which OIT finds reasonable cause to believe that a child has died as a result of abuse or where the death occurred under suspicious or unknown circumstances, OIT shall notify the appropriate law enforcement agency.~~

~~Stat. Auth: ORS 409.050 & 418.005~~
~~Stats. Implemented: ORS 418.005 & 419B.005 - 419B.050~~

~~407-045-0870~~
~~Office of Investigations and Training Screening Decision Time Frames~~

~~(1) When the information received constitutes a report of abuse in which a child may be unsafe, OIT shall interview the child, conduct a site visit, or coordinate with CCP staff to assure that the child is safe within 24 hours after the report is received. If OIT plans to interview the child, OIT must~~ notify the child's parent or legal guardian, unless notification is prohibited by law or court order~~ or would compromise the child's safety or a criminal investigation.~~

~~(2) When it has not been reported that the child is unsafe and there are no other indicators the child is unsafe, OIT may decide to open the case for investigation or to close it at screening. OIT must make the decision to open or close the case within five calendar days from the date the report is received by the Department. The OIT screener may request approval for an extension of time beyond five days if~~

~~extenuating circumstances exist. Extensions may only be granted by the OIT Director or the Director's designee.~~

~~(3) OIT shall screen all reports to identify the nature and cause of the reported abuse.~~

~~(a) In all cases, the screener shall evaluate whether the child is safe or unsafe, assess the need for protective action, request that protective action be taken and necessary services provided, and assess the need for further investigation.~~

~~(b) In conducting the screening process, OIT may:~~

~~(A) Coordinate in-person or by telephone with any CCP staff authorized to take protective action on behalf of the child;~~

~~(B) Conduct a site visit at the CCP;~~

~~(C) Interview the child or other witnesses;~~

~~(i) Prior to interviewing a child victim or child witness, OIT shall give notice of its intent to interview to the child's legal guardian, unless notice is prohibited by law or court order~~, or would compromise the child's safety or a criminal investigation.

(C) When OAAPI interviews a child in care, the child shall be informed they have a right to decline the interview and may have present:

(i) The child in care's parent or guardian, if the child has not been committed to the custody of the Department or the Oregon Youth Authority (OYA), or

(ii) The child in care's attorney.

(D) If ~~OIT~~OAAPI determines contact with the child in care should occur at the child's school, ~~OIT~~OAAPI shall comply with the requirements of ORS 419B.045.

(~~D) Gather~~f) Obtain and ~~secure physical~~review all relevant and material evidence~~ as necessary;~~, which includes but is not limited to:

~~(E) Take photographs of the child and obtain a medical assessment, as necessary, consistent with OAR 407-045-0880(2)(d) and (e) of this rule;~~

~~(F) Take photographs of the facility as necessary or appropriate; and~~

~~(G) Receive, review~~(A) Conducting a site visit at the CCA or proctor foster home; and

(B) Receiving, reviewing, or ~~copy~~copying records pertaining to the child in care or the incident, including but not limited to incident reports, evaluations, treatment or support plans, treatment notes or progress records, or other documents concerning the welfare of the child.

~~(4) If OIT decides the information received does not constitute a report of child abuse or neglect as defined in these rules, the report shall be closed at screening. If the report is closed at screening, the screener shall document the information supporting the decision to close. If the child is in the legal custody of the Department, OIT shall notify the child's assigned caseworker of the decision to close the case. If the child has been placed in the CCP by OYA, OIT shall notify OYA. OIT shall notify the CCP and the individual who made the report that the report has been closed. All notices of the decision to close shall be made within three days of the decision.~~

~~(5) If, after screening, OIT determines that the information constitutes a report of child abuse or neglect under these rules, it shall open the case for investigation. If OIT decides to investigate, OIT shall immediately notify the child's legal guardian, unless notification is prohibited by law or by court order,~~

~~or could compromise the child's safety or a criminal investigation. OIT shall also notify the child's caseworker if the child is in the legal custody of the Department and shall notify OYA or the child's tribe, as applicable.~~

~~(6) Whenever an OIT investigator takes photographs of physical injuries to a child who is in the custody of the Department, the investigator shall promptly forward copies of the photographs to the CAF caseworker assigned to the child. When conducting screenings or investigations in foster home settings, the investigator shall ascertain whether any other children living in the foster home are in the custody of the Department and if so, shall notify each child's caseworker that a report of abuse or neglect in the foster home is being investigated or screened, and the nature of the investigation.~~

~~Stat. Auth: ORS 409.050 & 418.005~~
~~Stats. Implemented: ORS 418.005, 419B.015, 419B.017 & 419B.020~~

~~407-045-0880~~
~~OIT Investigative Process in Cases Opened for Investigation~~

~~(1) OIT shall conduct thorough and unbiased investigations of abuse allegations.~~

~~(2) In conducting abuse investigations, the OIT investigator shall:~~

~~(a) Make in-person contact with the child;~~

~~(b) Interview the child, any witnesses, the accused person, and other individuals who may have knowledge of the facts of the abuse allegation or related circumstances;~~

~~(c) Review all relevant and material evidence;~~

~~(d) Take photographs as appropriate or necessary.~~ (g) Take photographs as appropriate or necessary.

(2) If the investigator observes a child in care who has suffered a suspicious physical injury and the investigator is certain or has a reasonable suspicion that the injury is or may be the result of abuse, the investigator ~~must~~shall pursuant to ORS 419B.023, in accordance with the protocols and procedures of the county multidisciplinary child abuse team described in ORS 418.747:

(a) Immediately photograph or cause to have photographed the suspicious physical injury~~,~~ pursuant to ORS ~~418.747~~419B.023, unless the child is age 18 or older and exercises their right to decline being photographed; and

~~(e) If the investigator observes a child who has suffered a suspicious physical injury and the investigator has a reasonable suspicion that the injury may be the result of abuse, the investigator must, pursuant to ORS 418.747,~~(b) Ensure that a designated medical professional conducts a medical assessment within 48 hours of the observation, or sooner if dictated by the ~~child's~~child in care's medical needs~~.~~, unless the child is age 18 or older and exercises their right to decline. If a designated medical professional is not available to conduct a medical assessment within 48 hours, the investigator ~~must~~shall ensure that an available physician, physician's assistant or nurse practitioner conducts the medical assessment. The investigator ~~must~~shall document the efforts made to locate the designated medical professional.

~~(3) A person accused of abuse may have a peer consultant present during the OIT interview. Any individual providing peer support shall be obligated to maintain the confidentiality of information declared to be confidential under state or federal law. Peer supporters shall not be involved in the investigation as witnesses or potential witnesses. CCP certification or human resources staff shall not serve as peer supporters. An accused person wishing to have a peer supporter present during the~~

~~interview shall notify the OIT investigator in advance of the scheduled interview and shall provide the investigator with the peer's name and job title.~~

(A) The investigator must facilitate an assessment by a medical professional if the alleged abuse involves injury to the anal or genital region.

(B) When there are indications of severe physical trauma to the child in care, the investigator must make arrangements to immediately transport the child in care to a medical facility, which may include calling 911. The investigator must also make arrangements for medical examination of a child in care for mild or moderate physical trauma. To make arrangements for the medical examination of a child in care, the investigator must work with the Department's Child Welfare Program to assure OAR 413-015-0415(10)(e) to (i) occurs.

(C) When the investigator determines that the child in care is in need of a medical assessment as part of an abuse investigation, the investigator must consult with an OAAPI supervisor as soon as possible, but not at the expense of delaying medical treatment.

(D) As provided in ORS 147.425, a child in care who is the alleged victim of a person crime and at least 15 years old at the time of the alleged abuse may have a personal representative present during a medical examination.

(i) The personal representative needs to be over 18 years old and is selected by the child in care who is the alleged victim.

(ii) The personal representative may not be a person who is a suspect in, a party to or witness to, the crime.

(iii) If an investigator believes that a personal representative would compromise the abuse investigation, an investigator may prohibit a personal representative from being present during the medical examination.

(3) A law enforcement officer, child welfare worker or the OAAPI investigator may take photographs for the purpose of documenting the child in care's condition at the time of the abuse investigation as required in subsection (2)(a) of this section. Photographs of the anal or genital region may be taken only by medical personnel.

(a) The OAAPI investigator will photograph or cause to be photographed any suspicious injuries if the investigator is certain or has a reasonable suspicion the suspicious injuries are the result of abuse regardless of whether the child in care has previously been photographed or assessed during an abuse investigation:

(A) During the investigation of a new allegation of abuse; and

(B) Each time, during the investigation, an injury is observed that was not previously observed by the assigned investigator.

(b) When a child in care is photographed pursuant to this section, the person taking the photographs or causing to have the photographs taken must, within 48 hours or by the end of the next regular business day, whichever occurs later:

(A) Provide hard copies or prints of the photographs and, if available, copies of the photographs in an electronic format to the designated medical professional; and

(B) Place hard copies or prints of the photographs and, if available, copies of the photographs in an electronic format in the Department record labeled with the case name, case number, name of the child in care, and date taken.

(C) If a county multidisciplinary team staffing of the case is held, photographs of the injury will be made available to each team member involved in the case staffing at the first meeting regarding the child in care's case.

(D) Whenever an OAAPI investigator takes photographs of physical injuries of a child in care who is in the custody of the Department, the investigator shall promptly forward copies of the photographs to the Department's Child Welfare caseworker assigned to the child.

(4) When a law enforcement agency is conducting an investigation of the alleged abuse, the ~~OIT~~OAAPI investigator shall cooperate with the law enforcement agency. When a law enforcement agency is conducting a criminal investigation of the alleged abuse, ~~OIT may~~OAAPI shall also conduct its own investigation, as long as it does not interfere with the law enforcement agency investigation~~, when:~~.

~~(a) There is potential for action by a licensing agency;~~

~~(b) Timely investigation by law enforcement is not likely; or~~

~~(c) When the law enforcement agency does not complete a criminal investigation.~~

(5) During the course of the investigation, ~~if~~ the OAAPI investigator ~~knows or has reason to believe~~shall coordinate with others in the ~~child is an Indian child,~~ Department, including but not limited to the ~~investigator must give notice to the child's tribe within 24 hours that an investigation is being conducted, if~~Office of Licensing and Regulatory Oversight, the Child Welfare Well Being Unit, a child protective service worker assigned to investigate abuse of the ~~tribe has not already been notified.~~

~~Stat. Auth.: ORS 409.050 & 418.005~~
~~Stats. Implemented: ORS 409.185, 418.005, 418.747, 419B.045 & 419B.005-419B.050~~

~~407-045-0890~~
~~Abuse Investigation and Protective Services Report~~

~~(1) When~~child in care, and the child in care's Child Welfare caseworker if the child is in the custody of the Department.

(6) When the OAAPI investigation is complete, ~~OIT~~OAAPI shall issue a final ~~decision~~abuse investigation report as described in OAR 407-045-0890 stating whether the allegation is substantiated, ~~not substantiated,~~unsubstantiated or inconclusive and explain the basis for that determination.

(7) Any deviations from the investigative process shall be staffed and approved by a supervisor. Deviations and approval shall be documented clearly in the investigative report.

(8) If during the course of an investigation and OAAPI investigator becomes aware of conditions that do not constitute abuse as defined by this rule and ORS 419B.005, but may pose a risk to the health, safety, or welfare of a child, including possible licensing violations or inadequate living conditions or access to food and personal supplies, the OAAPI investigator shall make a report to Department personnel designated to accept such reports and make notifications and take actions as required in Oregon Laws 2016, chapter 106 and OAR 413-080-0070.

Stat. Auth.: ORS 409.050 & 418.005
Stats. Implemented: ORS 147.425, 409.185, 418.005, 418.205 - 418.327, 418.747, 419B.045, 419B.005-419B.050 & OL 2016, chapter 106

407-045-0886
Exception to Completing Investigation of Reported Abuse

(1) The only exception to completing the investigation processes required by these rules per OAR 407-045-0885 on an assigned case is when an OAAPI investigator, in consultation with a supervisor, determines prior to the initial contact that the referral does not require an investigation under these rules because:

(a) The investigation was opened in error; or

(b) There is no longer an allegation of abuse or neglect. The investigator received information after being assigned the case that information in combination with the corresponding screening report no longer constitutes a report of child abuse as defined in ORS 419B.005 or OAR 407-045-0820. This exception may be used only when the investigator and the supervisor determine the information:

(A) Relates directly to and specifically negates all allegations in the screening report; and

(B) Is considered on the basis of the objectivity of the individual providing the information and the quality of the information.

(2) The exception in section (1) of this rule is not permitted and an investigation must be completed when the investigator has already made contact with the alleged victim, unless the alleged victim is the original reporter.

(3) The investigator must document the determination and explain the basis for the determination that an OAAPI abuse investigation is not necessary, and list the supervisor who was consulted and approved the change.

Stat. Auth.: ORS 409.050 & 418.005
Stats. Implemented: 419B.005-419B.050 & OL 2016, chapter 106

407-045-0887
Abuse Determination

(1) After gathering all the information necessary to complete the abuse investigation, the investigator must determine the abuse finding, if there is reasonable cause to believe that abuse of a child in care occurred as defined in ORS 419B.005 or OAR 407-045-0820.

(2) The possible abuse of a child in care determinations are:

(a) “Substantiated” which means there is reasonable cause to believe that abuse of a child in care occurred.

(b) “Inconclusive” means there is some indication that the abuse of a child in care occurred, but there is insufficient evidence to conclude that there is reasonable cause to believe that the abuse occurred.

(c) “Unsubstantiated” which means there is no evidence that the abuse of a child in care occurred.

(3) When determining whether there is reasonable cause to believe abuse occurred, the investigator must consider the behavior, conditions, and circumstances in the definition of abuse described in OAR 407-045-0820 or ORS 419B.005.

(4) Upon issuance of an abuse determination, OAAPI shall send the report described in OAR 407-045-0890 to the Department personnel designated to make notifications required by Oregon Laws 2016, chapter 106.

Stat. Auth.: ORS 409.050 & 418.005
Stats. Implemented: 419B.005-419B.050 & OL 2016, chapter 106~~, and~~

407-045-0890
Abuse Investigation Report

(1) OAAPI shall prepare a written report ~~which must include~~that includes the following:

(a) A description of the allegation of abuse being investigated, including the date, location and time~~;~~ (if known);

(b) An outline of steps taken in the investigation, a list of all witnesses interviewed, and a summary of the information provided by each witness;

(c) A summary of findings and conclusion concerning the allegation of abuse;

(d) A specific finding of whether the abuse allegation is substantiated, ~~not substantiated~~unsubstantiated, or inconclusive and the basis for that determination;

(e) A list of ~~protective services provided to~~all individuals and entities who receive the ~~child at the date of the report;~~

~~(f) A plan of action necessary to prevent further abuse of the child;~~

~~(g) Any additional corrective action~~ required ~~by the CCP and deadlines for completing the action;~~

~~(h) A list of any~~ notices ~~made to licensing or certifying agencies; and~~as described in OAR 407-045-0895;

(~~i~~f) The name and title of the individual completing the report~~.~~; and

(g) Documentation that a supervisor, or their designee, has reviewed and approved the completed report.

(2) The report ~~must~~shall be ~~competed~~completed within 30 business days from the date the case was ~~opened~~assigned for investigation.

(a) The ~~OIT~~OAAPI Director or designee may authorize an extension ~~of time~~ for good cause shown, such as the ability to obtain critical information is beyond the reasonable control of the investigator.

~~(3) The report and underlying investigatory documents are confidential and not available for public inspection. Except as provided in ORS 419B.035, names of witnesses and the alleged abuse victim are confidential unless the provisions of ORS 419B.035(1)(h) and (2)(a) apply. The names and identifying information about a reporter are confidential and may not be disclosed. Investigatory documents, including portions of the abuse investigation and protective services report that contain "individually identifiable health information," as that term is defined in ORS 192.519 and 45 CFR160.103, are confidential under HIPAA privacy rules, 45 CFR Part 160 and 164, and ORS 192.520 and 179.505 to 179.509. Disclosure of substance abuse treatment records are governed by 42 U.S.C. 290dd-2 and 42 CFR Part 2. The Department shall make otherwise confidential records available to individuals identified in ORS 419B.035(1), and may release records if permitted by ORS 419B.035(3) and other federal and state confidentiality laws.~~

~~(4) Except as provided in section (3) of this rule, the Department shall make the confidential information, including any photographs, available, if appropriate, to any law enforcement agency, to any~~

~~public agency that licenses or certifies facilities, and to any public agency providing protective services for the child.~~

~~(5) Subject to ORS 419B.035(3), the Department may make the protective services report or relevant materials, in redacted form, available to the CCP, any public agency that licenses or certifies the individuals working in a CCP, or to any person who was alleged to have abused or neglected the child. The Department may not disclose confidential information which is prohibited by state or federal law.~~

~~(6) Individuals or entities receiving confidential information pursuant to this rule shall maintain the confidentiality of the information and may not re-disclose the confidential information to unauthorized individuals or entities, if disclosure is prohibited by state or federal law.~~

(b) Documentation of the date of the extension shall be noted in the report.

(c) The investigator shall ensure the contact person for the involved CCA is informed of the approved extension and the new due date for the report's completion.

(d) The investigator will ensure those who received notification of the opened OAAPI investigation per OAR 413-080-0070 are informed in writing of the approved extension and the new due date for the report's completion.

(3) The OAAPI supervisor has one week to review and approve the completed report.

Stat. Auth.: ORS 409.050 & 418.005
Stats. Implemented: ORS 409.185, 409.225, 418.015, 419B.005-419B.050~~419B.005-050 &~~, 419B.035 & OL 2016, chapter 106

407-045-~~0900~~0895
Cross Reporting and Notifications

(1) OAAPI shall immediately report to law enforcement, if not already done:

(a) Any crime that OAAPI suspects has occurred with respect to a child in care, at a child-caring agency or proctor foster home, even if the suspected crime is not related to a report of abuse made under these rules.

(b) If OAAPI has reasonable cause to believe that a child in care has died as a result of abuse or where the death occurred under suspicious or unknown circumstances.

(c) OAAPI shall notify the law enforcement agency within the city or county where the report was made. If the abuse or crime is reported to have occurred in a different city or county, OAAPI shall also cross-report to the law enforcement agency in the city or county where the reported abuse or crime occurred. Cross-reports to law enforcement agencies may be verbal, by electronic transmission, or by hand delivery.

(2) Unless the Department determines that disclosure is not permitted under ORS 419B.035, the Department will notify the reporter per ORS 419B.020(8), if contact information is available:

(a) Whether contact was made with the child in care;

(b) Whether the Department determined that child abuse or neglect occurred; and

(c) Whether services were provided.

(3) If the OAAPI screener or investigator becomes aware a person accused of abuse is licensed or certified by a public agency or board, OAAPI will provide written notification of the abuse investigation

being conducted under these rules to the public agency or board that license or certifies the person accused practicing in the CCA.

(4) The Department shall make all other notifications as required by Oregon Laws 2016, chapter 106~~**Right to Request Review of a Substantiated Finding of Abuse**~~

~~(1) When OIT has substantiated that abuse of a child has occurred, the person against whom the finding has been made, or a CCP against whom the finding has been made, has the right to request an administrative review of the OIT decision following the procedure set forth in OAR 407-045-0940.~~

~~(2) When OIT issues a substantiated abuse report, OIT shall also include written notice of the right to request an administrative review.~~

and OAR 413-080-0070.

Stat. Auth.: ORS 409.050 & 418.005
Stats. Implemented: ORS 409.185, 409.225, 418.005, 418.205 - 418.327, 419B.015, 419B.020, 419B.035, 419B.005-419B.050~~419B.010 & 419.370~~ & OL 2016, chapter 106

407-045-0910
~~**Providing**~~ **Notice of a Substantiated Finding of Abuse**

(1) When OAAPI has substantiated an ~~**OIT Substantiation**~~

~~OIT must~~allegation of abuse of a child in care, OAAPI shall deliver a notice ~~of an OIT substantiation of abuse or neglect~~ to the person ~~identified as the person substantiated in the OIT report or to a~~ with substantiated ~~CCP.~~abuse or CCA named in the report. The notice ~~must~~shall be delivered:

(~~1~~a) By certified mail, restricted delivery, return receipt requested to the last known address of the person ~~or CCP~~with substantiated abuse or CCA; or

(~~2~~b) By hand delivery to the person with substantiated abuse or ~~CCP~~CCA. If hand delivered, the notice ~~must~~shall be addressed to the person ~~or~~ with substantiated abuse or to the ~~OIT~~OAAPI contact on record for a ~~CCP~~CCA and a copy of the notice ~~must~~shall be signed and dated by the person with substantiated abuse or ~~CCP~~CCA representative acknowledging receipt and ~~also~~ signed by the ~~person~~individual delivering the notice.

~~Stat. Auth.: ORS 409.050 & 418.005~~
~~Stats. Implemented: ORS 418.005~~

~~**407-045-0920**~~
~~**Claim of Lack of Notice**~~

~~(1) If a person or CCP believes they are entitled to a notice of OIT substantiation but has not received one, the person or CCP may contact OIT to inquire about a review of the disposition.~~

~~(2) OIT must determine whether a notice of OIT substantiation was delivered to the person or CCP or if the person or CCP refused delivery of the notice, as evidenced by the returned receipt.~~

~~(3) If a notice was delivered to the person or CCP or if the person or CCP refused delivery of the notice, as evidenced by a returned receipt, and the time for requesting review has expired, OIT must:~~

~~(a) Prepare and deliver a notice of waived rights for review; or~~

~~(b) Inform the person or CCP by telephone of the information required in the notice of waived rights for review. OIT must document the telephone call.~~

~~(4) If no return receipt exists or if it appears that notice was not properly provided, OIT must deliver a notice of OIT substantiation as provided in these rules.~~

~~Stat. Auth.: ORS 409.050 & 418.005~~
~~Stats. Implemented: ORS 418.005~~

~~407-045-0930~~
~~Information Included in~~ (2) The notice of an **~~OIT Substantiation~~**

~~The notice of an OIT~~OAAPI substantiation ~~must~~of abuse shall include the following:

(~~1~~a) The case number assigned to the investigation that resulted in the ~~OIT~~OAAPI substantiation;

(~~2~~b) The full name of the person ~~or CCP~~with substantiated abuse or CCA who has been identified as responsible for the ~~child~~ abuse as ~~recorded~~documented in the ~~OIT~~OAAPI report;

(~~3~~c) A statement that the ~~OIT~~OAAPI investigation resulted in a ~~substantiation~~substantiated finding of abuse, including a description of the type of ~~child~~ abuse ~~or neglect~~ identified;

(~~4~~d) A description of the ~~OIT~~OAAPI investigation, including a redacted summary of findings and conclusions;

(~~5~~e) A statement that the person ~~or CCP~~with substantiated abuse or CCA has a right to request a review and may meet with the OSRC in person;

(~~6~~f) Instructions for making a request for review, including the requirement that the person ~~or CCP~~with substantiated abuse or CCA provide a full explanation why the person with substantiated abuse or CCA believes the ~~OIT~~OAAPI substantiation is ~~wrong;~~incorrect.

(~~7~~g) A statement that the Department may not review an ~~OIT~~OAAPI substantiation if a legal proceeding is pending and that the person ~~or CCP~~with substantiated abuse or CCA may request a review within 30 calendar days of the resolution of the pending legal proceeding unless the proceeding results in a legal finding that is consistent with the ~~OIT~~OAAPI substantiation;

(~~8~~h) A statement that the person with substantiated abuse waives the right to request a review if the request for review is not received by ~~OIT~~OAAPI within 30 calendar days from the date of the notice of ~~OIT~~OAAPI substantiation, as documented by a returned receipt.

(~~9~~i) A statement that the OSRC shall consider relevant documentary information, including the ~~OIT~~OAAPI report and accompanying exhibits, information the person with substantiated abuse or representative of the CCA provides in person to the OSRC, and information submitted with the request for review by the person ~~or CCP~~with substantiated abuse or CCA requesting review.

(~~10~~j) A statement that the OSRC may not re-interview the victim; interview ~~or meet with the person or CCP, with~~ others associated with the person ~~or CCP~~with substantiated abuse or CCA, or with others mentioned in the report; or conduct a field assessment of the allegation of ~~child~~ abuse; and

(~~11~~k) A statement that ~~OIT~~OAAPI shall send the person ~~or CCP~~with substantiated abuse or CCA a notice of OSRC decision within 60 calendar days of receiving a request for review.

~~Stat. Auth.: ORS 409.050 & 418.005~~
~~Stats. Implemented: ORS 418.005~~

~~407-045-0940~~
~~Requesting Review of an OIT Substantiation~~

(3) If a person with substantiated abuse or CCP requesting a review must use information contained in the CCA believes they are entitled to a notice of OITOAAPI substantiation to prepare a written request for review. The written request for review must bebut has not received by OIT within 30 calendar days ofone, the receipt of the noticeperson with substantiated abuse or CCA may contact OAAPI to inquire about a review of the disposition.

(4) OAAPI shall determine whether a notice of OITOAAPI substantiation. If was delivered to the request is submitted by mail, it must be postmarked within 30 calendar days. The request must includeperson with substantiated abuse or CCA or if the following:person with substantiated abuse or CCA refused delivery of the notice, as evidenced by the returned receipt.

(1) Date the request for review is written;

(2) Case number found on the notice of OIT(5) If a notice was delivered to the person with substantiated abuse or CCA or if the person with substantiated abuse or CCA refused delivery of the notice, as evidenced by a returned receipt, and the time for requesting review has expired, OAAPI shall:

(a) Prepare and deliver a notice of waived rights for review; or

(b) Inform the person with substantiated abuse or CCA by telephone of the information required in the notice of waived rights for review. OAAPI shall document the telephone call.

(c) If no return receipt exists or if it appears that notice was not properly provided, OAAPI shall deliver a notice of OAAPI substantiation;

(3) Full name of the person or CCP;

(4) The person's or CCP's current name (if it has changed from the name noted in section (3) of this rule);

(5) A full explanation, responsive to the information as provided in the Department's notice, explaining why the person or CCP believes the OIT substantiation is wrong and any additional information and documents the person or CCP wants considered during the review;these rules.

(6) The person's or CCP's current street address and telephone number; and

(7) The person's signature or the signature of a CCP employee authorized to sign on behalf of the organization.

Stat. Auth.: ORS 409.050 & 418.005
Stats. Implemented: ORS 418.005

407-045-0950
When Legal Findings Precludes Right to Request a Review and Providing Notice of Legal Proceeding

(1) If OIT has knowledge of a pending legal proceeding, the OSRC may not review the disposition until the legal proceeding is completed.

(2) If OIT has knowledge of a pending legal proceeding, OIT must prepare and deliver a notice of legal proceeding within 30 calendar days after receipt of a request for review informing the person or CCP that the Department may not review the substantiation until the legal proceeding is completed and may not take further action on the request.

(3) If the completed legal proceeding results in a legal finding consistent with the OIT substantiation, the Department may not conduct a review. In that case, OIT shall provide a notice of legal finding to the person or CCP.

~~(4) If the completed legal proceeding results in a legal finding which is inconsistent~~ with ~~the OIT substantiation, the person or CCP may, at the conclusion of the legal proceeding, re-submit a request for review within 30 calendar days from the date of resolution of legal proceeding.~~

~~Stat. Auth.: ORS 409.050 & 418.005~~
~~Stats. Implemented: ORS 418.005~~

~~407-045-0960~~
~~OIT Responsibilities Related to Notices and Reviews~~

~~(1) If a person~~substantiated abuse or ~~CCP~~CCA asks to review Department records for the purpose of reviewing an ~~OIT~~OAAPI substantiation, state and federal confidentiality laws, including OAR 413-010-0000 to 413-010-0075 and 413-350-0000 to 413-350-0090, govern the inspection and copying of records.

~~(2) OIT must~~(7) OAAPI shall maintain records to demonstrate the following, when applicable:

(a) Whether the Department delivered a notice of ~~OIT~~OAAPI substantiation;

(b) Whether the notice of ~~OIT~~OAAPI substantiation was received by the addressee, as evidenced by a returned receipt documenting that the notice was received, refused, or not received; and

(c) The date a request for review was received by ~~OIT~~OAAPI.

~~(3) The OIT Director or designee must~~ (8) OAAPI shall maintain a comprehensive record of completed ~~OIT~~OAAPI substantiation reviews.

Stat. Auth.: ORS 409.050 & 418.005
Stats. Implemented: ORS 418.005 & OL 2016, chapter 106

407-045-~~0970~~0940
~~OSRC~~ Review of Substantiated Abuse Finding

~~(1)~~(1) When OAAPI has determined abuse has occurred, the person with substantiated abuse or a CCA against whom the finding has been made, has the right to request an administrative review of the OAAPI decision by the OSRC. The OSRC shall consist of Department employees who are knowledgeable about the dynamics of child abuse and neglect, including the assessment or investigation of child abuse, and Department employees with knowledge of abuse investigations, especially where abuse is alleged to have occurred in out-of-home settings.

(2) A person with substantiated abuse or CCA requesting a review shall use information contained in the notice of OAAPI substantiation to either meet with the OSRC or prepare a written request for review. The written request for review shall be received by OAAPI within 30 calendar days of the receipt of the notice of OAAPI substantiation. If the request is submitted by mail, it shall be postmarked within 30 calendar days. The request shall include the following:

(a) Date the request for review is written;

(b) Case number found on the notice of OAAPI substantiation;

(c) Full name of the person with substantiated abuse or CCA;

(d) The person with substantiated abuse or CCA's current name (if it has changed from the name noted in section (c) of this rule);

(e) A full explanation, responsive to the information provided in the Department's notice, explaining why the person with substantiated abuse or CCA believes the OAAPI substantiation is wrong and any additional information and documents the person with substantiated abuse or CCA wants considered during the review;

(f) The person with substantiated abuse or CCA's current street address and telephone number; and

(g) The person with substantiated abuse signature or the signature of a CCA employee authorized to sign on behalf of the organization.

(3) Except as provided in OAR 407-045-0950, within 60 calendar days of OAAPI's receipt of a completed request for review, the OSRC shall conduct a review and issue a notice of OSRC decision ~~within 60 calendar days from the date OIT receives a request for review.~~that includes the following:

~~(2) The OSRC shall operate as follows:~~

~~(a) The OSRC shall consider relevant documentary information contained in the OIT investigation file, investigative report and exhibits, and information provided by the person.~~

~~(b) The OSRC may not re-interview the victim; interview or meet with the person or CCP staff, with others associated with the person or CCP, or with others mentioned in the report; or conduct a field assessment of the allegation of child abuse or neglect.~~

~~(c) All OSRC decisions must be decided by majority vote of the three participating committee members, all of whom must be present.~~

~~(d) The OSRC shall make a determination as to:~~

(a) Whether there is reasonable cause to believe that ~~child~~ abuse ~~or neglect~~ occurred;~~ and~~

(b) Whether there is reasonable cause to believe that the person ~~or CCP is responsible for the child abuse or neglect.~~

~~(e) The OSRC shall decide to either uphold the OIT substantiation,~~with substantiated abuse or ~~change that conclusion to not substantiated or inconclusive.~~

~~(3) Within 60 calendar days from the date the OSRC receives the request for review, the OSRC shall prepare and send to the requestor by certified mail or restricted delivery, with return receipt requested, a notice of OSRC decision that includes the following:~~

~~(a) Whether there is reasonable cause to believe that child abuse occurred;~~

~~(b) Whether there is reasonable cause to believe that the person or CCP~~CCA was responsible for the ~~child~~ abuse;

(c) Whether the OSRC is changing the ~~OIT~~OAAPI substantiation;

(d) If the ~~OIT~~OAAPI substantiation is changed, whether the changed conclusion is being changed to "~~not substantiated~~unsubstantiated" or "inconclusive~~;"~~;" and

(e) A summary of the information used by the OSRC and its reasoning in reaching its decision.

~~(4~~(4) The OSRC shall operate as follows:

(a) The OSRC shall consider relevant documentary information contained in the OAAPI investigation file, investigative report and exhibits, and information provided by the person with substantiated abuse.

(b) The OSRC may not re-interview the victim; interview or meet with others associated with the person with substantiated abuse or CCA, or with others mentioned in the report; or conduct a field assessment of the allegation of abuse.

(c) All OSRC decisions shall be decided by majority vote of the three participating committee members, all of whom shall be present.

(d) The OSRC shall make a determination as to:

(A) Whether there is reasonable cause to believe that abuse occurred; and

(B) Whether there is reasonable cause to believe that the person with substantiated abuse or CCA is responsible for the abuse.

(e) The OSRC shall decide to either uphold the OAAPI substantiation, or change that conclusion to unsubstantiated or inconclusive.

(5) OSRC shall send the notice of OSRC decision to the person with substantiated abuse or ~~CCP, CAF~~CCA, the ~~OIT~~OAAPI investigator who conducted the investigation, applicable public agencies, other entities or individuals who received notice of the original substantiation, and the ~~OIT~~OAAPI Director.

(6) The Department shall provide the person with substantiated abuse a notice of rights to appeal the OSRC determination.

Stat. Auth.: ORS 409.050 & 418.005
Stats. Implemented: ORS 418.005 & OL 2016, chapter 106

407-045-~~0980~~0950
~~Retaliation Prohibited~~

~~No individual, including~~**Exception to the Right to Request a** ~~child who reports suspected abuse,~~**Review and Providing Notice of Legal Proceeding**

(1) If OAAPI has knowledge of a pending legal proceeding, the OSRC may not review the disposition until the legal proceeding is completed.

(2) If OAAPI has knowledge of a pending legal proceeding, OAAPI shall ~~be subject to retaliatory~~prepare and deliver a notice of legal proceeding within 30 calendar days after receipt of a request for review informing the person with substantiated abuse or CCA that the Department may not review the substantiation until the legal proceeding is completed and may not take further action ~~by a CCP~~on the request.

(3) If the completed legal proceeding results in a legal finding consistent with the OAAPI substantiation, the Department may not conduct a review. In that case, OAAPI shall provide a notice of legal finding to the person with substantiated abuse or CCA.

(4) If the completed legal proceeding results in a legal finding which is inconsistent with the OAAPI substantiation, the person with substantiated abuse or CCA may, at the conclusion of the legal proceeding, re-submit a request for review within 30 calendar days from the date of resolution of legal proceeding.

Stat. Auth.: ORS 409.050 & 418.005
Stats. Implemented: ORS 418.005 & OL 2016, chapter 106

407-045-0955
Confidentiality

(1) The report and underlying investigatory documents are confidential and not available for public inspection except may be disclosed as provided in ORS 419B.035. The name and identifying information about the person who reported abuse may not be disclosed.

(a) Investigatory documents, including portions of the abuse investigation report that contain "individually identifiable health information," as defined in ORS 192.519 and 45 CFR160.103, are confidential under HIPAA privacy rules, 45 CFR Part 160 and 164, and ORS 192.520 and 179.505 to 179.509. Disclosure of substance abuse treatment records are governed by 42 U.S.C. 290dd-2 and 42 CFR Part 2.

(b) The Department shall make otherwise confidential records available to individuals identified in ORS 419B.035(1), and may release records if permitted by ORS 419B.035(3) whenever such disclosure:

(i) Is necessary for administration of child welfare services and is in the best interests of the child in care;

(ii) Is necessary to investigate, prevent or treat child abuse; or

(iii) To protect children generally from abuse.

(2) Except as provided in section (1) of this rule, the Department shall make the confidential information, including any photographs, available, if appropriate, to any law enforcement agency, to any public agency that licenses or certifies facilities, and to any public agency providing protective services for the child in care.

(3) Subject to ORS 419B.035(3), the Department may make the abuse investigation report or relevant materials, in redacted form, available to the CCA or to any person who was determined to have abused the child in care under these rules. The Department may not disclose confidential information which is prohibited by state or federal law.

(4) Individuals or entities receiving confidential information pursuant to this rule shall maintain the confidentiality of the information and may not re-disclose the confidential information to unauthorized individuals or entities, if disclosure is prohibited by state or federal law.

Stat. Auth.: ORS 409.050 & 418.005
Stats. Implemented: ORS 409.185, 409.225, 418.015, 418.205 – 418.327, 419B.005-419B.050, 419B.035 & OL 2016, chapter 106