



Oregon

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December 1, 2014



To: Christina Hartman
DD Rules and Policy Analyst

From: Kimberly Colkitt-Hallman, Administrative Rules Coordinator
Aging and People with Disabilities and
Developmental Disabilities

Subject: Hearing Officer's Report
*November 19, 2014 Rulemaking Hearing for ODDS- Foster
Homes for Children with Intellectual or Developmental
Disabilities*

The purpose of the hearing was to take public testimony regarding the Department of Human Services' (DHS), Office of Developmental Disability Services' (ODDS) proposal to update the rules in OAR chapter 411, division 346 for foster homes for children with intellectual or developmental disabilities (CFH).

The proposed rules:

- Make permanent temporary rule language that became effective on July 1, 2014;
- Incorporate the general definitions in OAR 411-317-0000, update the definitions to reflect correct terminology, and include definitions for terms created by the temporary rulemaking;
- Include portability of background check approval to allow alternate caregivers, employees of foster providers, and volunteers to have approval to work in multiple foster homes within a county when working in the same employment role at each foster home;
- Incorporate the hearing process for provider notices of involuntary reductions, transfers, and exits adopted in OAR 411-318-0030;
- Clarify nursing services to provide consistency with the rules for community nursing services in OAR chapter 411, division 048;

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- Reflect new ODDS terminology and current practice; and
- Correct formatting and punctuation.

Public Comments

No one testified at the rulemaking hearing on November 19, 2014.

Written Comments

Department of Human Services, Background Check Unit, Kelly Myrick-Duckett, Policy Analyst – Exhibit #1

The written comments provided by Ms. Myrick-Duckett are summarized in Attachment A.

Clackamas County Health, Housing, and Human Services, Claire Weiss, Developmental Disabilities Children's Team Supervisor – Exhibit #2

The written comments provided by Ms. Weiss are summarized below.

Ms. Weiss states when comparing OAR chapter 411, division 360 to OAR chapter 411, division 346, OAR chapter 411, division 346 is missing the section on relief care (located in OAR 411-360-0190(9)). Ms. Weiss says that similar to adults, children funded through in-home support plans or family support funding may spend occasional relief care hours and overnights in CFHs. Relief care is allowed in both the family support rule (OAR 411-305-0120(10) - the text was cited and emphasis added to (10)(b)(D) - and the in-home support for children rules (OAR 411-308-0120(7) -text was cited and emphasis added to (7)(b)(A)).

Ms. Weiss states the temporary rule in OAR 411-360-0190(2)(b)(A)-(C) and 411-360-0190(9) has extended the sections on relief care done by non-adult foster residents in adult foster homes (AFH) and includes statements about who is eligible to provide relief care in an AFH home, how individuals are referred to AFH homes, and information that must be given to the relief care/adult foster care provider to provide for the health and safety of the individual receiving relief care. Ms. Weiss says the only reference to relief care in the temporary foster care rule for children is in OAR 411-346-0180(3)(f).

Ms. Weiss recommends an equivalent section be added to this rule that would allow and give guidance for relief care done for children in CFHs when those children are not child foster care residents. Ms. Weiss says at a minimum, the language should state referrals are done by the CDDP to the CFH (i.e. re Ms. Weiss says referrals to CFHs are not done directly by provider agencies, personal support workers, or families). Ms. Weiss states the language should be consistent with what is permissible in the family support and the in-home support for children rules, including that no more than seven consecutive days of relief care are allowed for children. Ms. Weiss said the language could match the AFH language in OAR 411-360-0190(9)(b)-(d) (e.g. requiring the provider receive sufficient information to protect the health and safety of the individual, the provider receive the individual's medications and a basic summary sheet, the provider must practice fire drills with the relief care individual, and no use of PRN psychotropic medication is allowed).

The public comment period closed at 5 p.m. on November 28, 2014.

ODDS Response

Response to written comments provided by Ms. Myrick-Duckett:

Included in Attachment A.

Response to written comments provided by Ms. Weiss:

ODDS considered the comments of Ms. Weiss but did not make changes at this time for the reasons specified below. However, ODDS recognizes the value in maintaining uniform language that provides consistency across rules. ODDS has noted the comments for consideration during the next rulemaking session.

- The definition of relief care in the CFH rule (OAR chapter 411, division 346) is more prescriptive regarding the recipient of relief care services; it indicates that relief care is provided to support a child in foster care. The definition of relief care in the other rules mentioned by Ms. Weiss (family support rule, OAR chapter 411, division 305; in-home supports for children rule, OAR chapter 411, division 308; and AFH rule, OAR chapter 411, division 360) are less prescriptive as they do not specify a service element (i.e. foster care) when referring to the recipient of relief care services (for example, the family supports rule indicates that relief

care services are provided to a child). When considering the comments of Ms. Weiss during the next rulemaking session, ODDS will review the definitions of relief care in each of the rules to determine if any changes need to be made to the definition in the CFH-DD rule to ensure it does not imply that relief care provided by the foster provider is not exclusive to children in foster care.

- While the existing rule does not include language specific to relief care referral responsibilities, it does indicate that the certifying agency or ODDS must approve the relief care service prior to placement [refer to 411-346-0180(3)(e)]. This language ensures oversight of relief care placements, but does not provide guidance on the relief care referral process. ODDS will consider adding language to provide guidance on the referral process for relief care services.
- Relief care provided to children in foster care is limited to 14 consecutive days; this requirement is outlined in the standards and procedures for CFHs. This also mirrors the maximum relief care service duration outlined in the AFH rule. While the CFH rule does not include language regarding maximum relief care service duration for children served in other programs (such as in-home supports), such language is outlined in the rules for those specific programs. For example, if a child receiving in-home supports is placed in a CFH for relief care services, relief care must not exceed 7 consecutive overnight stays as prescribed in the in-home supports rule. When considering the comments of Ms. Weiss during the next rulemaking session, ODDS will review the relief care service duration requirements across rules and determine if language should be incorporated in the CFH rule for additional guidance.
- The existing rule contains language regarding the foster provider's responsibility for ensuring the foster child's health, safety, and environmental needs are met when placed in an alternate caregiver's home for relief care services. However, there is currently no language that identifies the foster provider's responsibilities when a child receiving in-home supports or family support is placed in the CFH for the provision of relief care services. Such language does exist in the AFH rule. ODDS will review the language in the AFH rule and consider adding similar language to the CFH rule for consistency and guidance.

ATTACHMENT A

| Rule Number and Proposed Rule Language | Comment | ODDS Response |
|---|---|--|
| 411-346-0110 Definitions | | |
| <p>(66) "Qualified Entity Initiator" has the meaning set forth in OAR 407-007-0210 (Criminal Records and Abuse Checks for Providers).</p> | <p>Myrick-Duckett - Ms. Myrick-Duckett suggests DD removes this definition</p> | <p>ODDS considered the comments made by Ms. Myrick-Duckett and removed the definition for Qualified Entity Initiator.</p> |
| 411-346-0150 General Requirements for Certification | | |
| <p>(8)(a) Alternate caregivers, employees of foster providers, and volunteers may be approved to work in multiple homes within a county only when working in the same employment role at each home. The indication of worksite location must be included by a qualified entity initiator for each alternate caregiver, employee of the foster provider, or volunteer who intends to work at various child foster homes within the licensing jurisdiction of the county.</p> | <p>Myrick-Duckett - Ms. Myrick-Duckett says to her knowledge there are no CFHs (or local licensing entities that process background checks) that have qualified entity initiators. This means all the background checks BCU received for DD CFHs are through "qualified entity designees." Ms. Myrick-Duckett suggests changing 346-0150(8) to: "(a) Alternate caregivers, employees of foster providers, and volunteers may be approved to work in multiple homes within a county only when working in the same employment role at each home. The indication of worksite location must be included by a qualified entity initiator <u>in the background check request</u> for each alternate caregiver, employee of the foster provider, or volunteer who intends to work at various CFHs within the licensing jurisdiction of the county."</p> | <p>ODDS considered the comments made by Ms. Myrick-Duckett and made the edits suggested.</p> <p><i>(a) Alternate caregivers, employees of foster providers, and volunteers may be approved to work in multiple homes within a county only when working in the same employment role at each home. The indication of worksite location must be included in the background check request for each alternate caregiver, employee of the foster provider, or volunteer who intends to work at various child foster homes within the licensing jurisdiction of the county.</i></p> |