

2017 LEGISLATIVE CHANGES TO DD GROUP HOMES

This table lists all the 2017 legislative changes that impact group homes certified by the Office of Developmental Disabilities Services (referred to here as DD group homes.) Note that a DD group home is the common term for the more technical statutory term of "developmental disabilities residential facility." Also note that in addition to statutory changes impacting this substitute care setting, DHS leadership decided recently that responsibility for investigation reports of abuse involving DD group homes would be transferred to OAAPI (the Office of Adult Abuse Prevention and Investigations) effective January 1, 2018. Therefore, that change is reflected throughout the discussion of the related statutory changes.

The changes are divided into four categories:

1. Changes to CPS hotline processing and OAAPI screening and investigation procedures of reports of abuse in DD group homes
2. Changes impacting notifications that must be made regarding reports of abuse in DD group homes
3. Changes to certification standards for DD group homes
4. Miscellaneous changes impacting DD group homes

The information under "Implementation Plan" includes where the requirement is reflected in rule, if applicable, and related training or other information to show how the Department plans to comply with the requirement by January 1, 2018.

CHANGES TO CPS HOTLINE PROCESSING AND OAAPI SCREENING AND INVESTIGATION PROCEDURES OF REPORTS OF ABUSE IN DD GROUP HOMES

REFERENCE	CHANGE	IMPLEMENTATION PLAN
NA	Leadership decision to transfer responsibility for reports of abuse involving DD group homes to OAAPI.	<ul style="list-style-type: none"> • OAR 413-015-0205(4) directs CPS screeners to determine if OAAPI is required to respond to the report of abuse. Specifically, OAAPI is responsible for reporting involving any of the substitute care settings listed in paragraph (4)(b)(A) which includes ODDS licensed group homes. • OAAPI rules are also amended to reference ODDS licensed group homes. ODDS licensed group homes is defined in OAR 407-045-0820 and then the screening rule describes circumstances under which an

		investigation will be assigned, including when an allegation of abuse is determined through screening to (1) meet the definition of abuse in ORS 419B.005 for a child or SB 243 for a child or young adult in a DD group home; (2) the respondent (alleged perpetrator) is an employee, volunteer, or contractor of a DD group home.
SB 243 § 1 (36)	Applies new definition of abuse to DD group homes.	The OAAPI definitions rule, OAR 407-045-0820, includes "for purposes of screening" both the 419B.005 definition of abuse that applies to all children and the SB 243 definition that applies to children and young adults who reside in or receive services from a DD group home. Further, the OAAPI rule on abuse determination, OAR 407-045-0887, is amended to further describe how both definitions will be applied when an OAAPI investigator is determining whether there is reasonable cause to believe that abuse in a DD group home occurred.
SB 243 § 1 (36)	Clarifies that the new definition of abuse does not apply to "a person under 21 years of age who is residing in" a DD group home "when the care provided is in the home of the child by the child's parent."	According to ODDS, it is unlikely this would be applicable in a group home setting and therefore neither the CPS or OAAPI rule specifically reference this caveat. However, in the OAAPI procedure manual, guidance will be provided to staff that whenever the respondent is the parent of the child or young adult, regardless of setting, CPS is responsible for handling the report as familial abuse.
SB 243 § 1 (36)	Clarifies what constitutes "involuntary seclusion," i.e. that it means "the confinement of a child in care alone in a room which the child in care is physically prevented from leaving" but "does not include age-appropriate discipline, including, but not limited to a time-out."	<ul style="list-style-type: none"> • In the OAAPI definitions rule, OAR 407-045-0820, and the OAAPI abuse determination rule, OAR 407-045-0887 both include this explanation when a report of abuse alleges involuntary seclusion. • ODDS may need to clarify with certification staff and/or in their rules if those are not consistent.
SB 243 § 2 (37)	Requires DHS to immediately commence an investigation to determine whether the report is substantiated, unsubstantiated or inconclusive when a report of abuse is received regarding a child or young adult in a DD group home.	This is reflected in the response timelines that must be assigned for reports that meet the definition of abuse in OAR 407-045-0820. (See OAAPI rule OAR 407-045-0835.) The default is 24 hours, with an option for a 5-day response "only when the screener can clearly document how the information indicates that child 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."
SB 243 § 2 (37)	Requires DHS to, in addition to cross reporting required by ORS 419B.015 and OAR 413-015-0305, " immediately report to law enforcement any crime that the department has reason to believe has occurred with respect to a" child or young adult in a DD group home "or at a" DD group home "even if the suspected crime is not related to a report of abuse.	Arguably, because of the caveat that the crime need not be "related to a report of abuse made under" SB 243, this could be read as an expansion of mandatory reporting requirements for all DHS employees to report crimes in substitute care settings. However, because this requirement is a subsection of a section regarding required DHS actions when DHS become "aware of a report of suspected child abuse" of a child in a DD group home, DHS interprets this requirement to apply to DHS personnel who are responding in some way to reports of abuse, as opposed to a general requirement on all DHS staff who become aware of criminal activity in a substitute care setting. (In most cases, criminal activity in a substitute care setting would trigger a DHS employee's mandatory child abuse reporting obligations, so it is not a substantive distinction, but it's noted to explain why the requirement is only in rules applicable to CPS and OAAPI staff.) <ul style="list-style-type: none"> • OAAPI rules require screeners to do this during screening (see OAR 407-045-0825.) • OAAPI rules require investigators to do this during the investigation (see OAR 407-45-0885.)
SB 243 § 3 (38)	Sets the burden of proof for assessments in DD group homes by defining disposition terminology (substantiated, unsubstantiated, and inconclusive) to relate to reasonable cause to believe abuse occurred.	These were previously defined in the OAAPI definitions rule, OAR 407-045-0805, but to be consistent with CPS, the statutory definitions in SB 243 are moved into the OAAPI abuse determination rule, OAR 407-045-0887.
SB 243 § 3 (38)	Allows DHS to interview a child without the presence of DD group home staff or DHS personnel.	The OAAPI rule on conducting an investigation, OAR 407-045-0885, allows the OAAPI investigator to interview the child or young adult who is the subject of suspected abuse or witnesses without the presence of employees of the CCA, proctor foster home, or ODDS licensed group home or the provider of services at a proctor foster home or Department personnel.

SB 243 § 3 (38)	Requires DHS to inform the child that the child may have the child's parent or guardian (if the child has not been committed to the custody of the Department or OYA) or attorney present during an interview.	This is in OAR 407-045-0885, the OAAPI rule on conducting an investigation.
HB 2903 § 6	Prohibits the use of "alleged perpetrator" and requires use of "respondent" when "compiling records, reports and other information during an investigation" in a DD group home "and in issuing findings, letters of concern or reprimands..."	"Respondent" is defined in OAR 407-045-0820 as "the individual or entity about whom an allegation of abuse has been made" and used throughout the rules in place of "alleged perpetrator."
CHANGES TO NOTIFICATIONS REGARDING REPORTS OF ABUSE IN DD GROUP HOMES		
SB 243 § 2 (37)	Requires DHS to "immediately notify appropriate personnel within the department " including, but not limited to, licensing and certification staff for DD group homes.	<ul style="list-style-type: none"> • A new OAAPI screening notifications rule has been added to clarify everyone who is notified of an abuse report. (See OAR 407-045-0855.) For reports involving a DD group home, OAAPI notifies "all appropriate Department personnel." Rather than listing out who this includes, the language is left intentionally vague and procedure will flesh out who is "appropriate" based on the circumstances. Typically, OAAPI would notify any ODDS state or county staff assigned to the group home or children or young adults in the group home, but there may be times when other Department personnel are appropriate, such as when Child Welfare is also involved with a child or young adult.
SB 243 § 2 (37)	Requires DHS to "immediately notify any governmental agency that has a contract with the" DD group home "to provide care or services to the child in care" when a report of abuse is received regarding a DD group home.	ODDS does not believe this will be applicable to DD group homes, who only serve people receiving services through ODDS.
SB 244 § 4 (38)	Requires DHS to notify "case managers for the child" when a report of abuse is received regarding a child in a DD group home.	As noted above, OAAPI will be required in the screening rule to notify "appropriate personnel within the Department" which will always include any assigned caseworkers for the child. Additionally, language is added to OAR 407-045-0855 that when the child or young adult is in DHS or OYA custody, OAAPI is required to notify the legal guardian, which would be the assigned DHS or OYA case manager for the child or young adult.

SB 243 § 3 (38)	Requires DHS to notify "the attorney for the child" when a report of abuse is received regarding a child in a DD group home.	<ul style="list-style-type: none"> • First, note that DHS interprets this to apply on to children in DHS custody. For children privately placed by their parents in a DD residential setting, DHS assumes a child or young adult does not have an attorney or, if they do, the parent, as the child's legal guardian, could share information with the attorney. • In light of that interpretation, OAAPI does not notify attorneys, but rather is required to notify the DHS caseworker when the child or young adult is in DHS custody. The caseworker, in turn, is required by OAR 413-080-0051 to notify legal parties, including an attorney for the child or young adult, that a report has been assigned for an OAAPI investigation.
SB 243 § 3 (38)	Requires DHS to notify the child's CASA when a report of abuse is received regarding a child in a DD group home.	<ul style="list-style-type: none"> • First, note that DHS interprets this to apply on to children in DHS custody. For children privately placed by their parents in a DD residential setting, DHS assumes a child or young adult does not have a CASA and therefore the requirement would not make sense. • In light of that interpretation, OAAPI does not notify the CASA, but rather is required to notify the DHS caseworker when the child or young adult is in DHS custody. The caseworker, in turn, is required by OAR 413-080-0051 to notify legal parties, including a CASA for the child or young adult, that a report has been assigned for an OAAPI investigation.
SB 243 § 3 (38)	Requires DHS to notify "parents or guardians of the child" when a report of abuse is received regarding a child in a DD group home.	<p>Depending on the circumstances of the child, OAAPI or the assigned DHS Child Welfare caseworker will make the notification:</p> <ul style="list-style-type: none"> • For children in DHS custody, OAAPI is required under OAR 407-045-0855 to notify the DHS caseworker. In turn, when a report has been assigned for OAAPI investigator, the caseworker is required by OAR 413-080-0051 to notify legal parties, which includes parents or guardians.

		<ul style="list-style-type: none"> • For children not in DHS custody, OAAPI is required under OAR 407-045-0886 to notify the parent or guardian prior to making contact with the child or young adult. • Therefore, under either circumstance, the parent receives notification, but is varies regarding who is required to make the contact.
SB 243 § 3 (38)	Requires DHS to notify "any attorney representing a parent or guardian of the child" when a report of abuse is received regarding a child in a DD group home.	<ul style="list-style-type: none"> • First, note that DHS interprets this to apply on to children in DHS custody. For children privately placed by their parents in a DD residential setting, DHS assumes that although a parent may have a personal attorney, DHS would not be at liberty to communicate with that attorney if the attorney is not engaged for a purpose related to DHS, as would be the case in a dependency case regarding DHS' custody of the child or young adult. • In light of that interpretation, OAAPI does not notify attorneys, but rather is required to notify the DHS caseworker when the child or young adult is in DHS custody. The caseworker, in turn, is required by OAR 413-080-0051 to notify legal parties, including any attorneys representing the parents or guardians, that a report has been assigned for an OAAPI investigation.
SB 243 § 3 (38)	Requires DHS to notify the Director of DHS and Director of Child Welfare when a report is substantiated regarding a DD group home.	<ul style="list-style-type: none"> • OAR 407-045-0895 requires OAAPI to notify the Directors of DHS, Child Welfare, and ODDS whenever a report of abuse is substantiated in a DD group home. (Although notification to the Director of ODDS is not required, it is added here because there are times when Child Welfare will not be involved with the child or young adult in the report, but ODDS will always be involved.)
SB 243 § 3 (38) and SB 244 § 4 (38)	Requires DHS to notify DD group home certification personnel and "case managers" for the child or young adult when a report is substantiated regarding a DD group home.	<ul style="list-style-type: none"> • OAR 407-045-0895 requires OAAP to notify "all appropriate Department personnel" when any abuse determination (not only substantiated) is made regarding a DD group home. This will be fleshed out in procedure because who is appropriate will depend on the circumstances, but it would always include personnel responsible for

		<p>oversight of the home and responsible for managing the case of the child or young adult who is the subject of the report.</p> <ul style="list-style-type: none"> • Additionally, that rule specifically requires notification to the legal guardian when the child or young adult is in DHS or OYA custody and the legal guardian in those cases is the child's or young adult's caseworker.
<p>SB 243 § 3 (38) and SB 244 § 4 (38)</p>	<p>Requires DHS to notify the attorney for the child or young adult when a report is substantiated regarding a DD group home.</p>	<ul style="list-style-type: none"> • First, note that DHS interprets this to apply on to children in DHS custody. For children privately placed by their parents in a DD residential setting, DHS assumes that the parent can share any appropriate information with a child's attorney. • In light of that interpretation, OAAPI does not notify attorneys, but rather is required to notify the DHS caseworker when the child or young adult is in DHS custody on all dispositions. (See OAR 407-045-0895.) The caseworker, in turn, is required by OAR 413-080-0051 to notify legal parties, including any attorney representing the child, that an OAAPI abuse determination has been made. (This applies to all determinations, not just substantiated.)
<p>SB 243 § 3 (38) and SB 244 § 4 (38)</p>	<p>Requires DHS to notify the CASA for the child or young adult when a report is substantiated regarding a DD group home.</p>	<ul style="list-style-type: none"> • First, note that DHS interprets this to apply on to children in DHS custody. For children privately placed by their parents in a DD residential setting, there would be no CASA assigned to a child or young adult. • In light of that interpretation, OAAPI does not notify a CASA, but rather is required to notify the DHS caseworker when the child or young adult is in DHS custody on all dispositions. (See OAR 407-045-0895.) The caseworker, in turn, is required by OAR 413-080-0051 to notify legal parties, including the CASA, that an OAAPI abuse determination has been made. (This applies to all determinations, not just substantiated.)

<p>SB 243 § 3 (38) and SB 244 § 4 (38)</p>	<p>Requires DHS to notify the parents or guardians of the child or young adult when a report is substantiated regarding a DD group home.</p>	<p>Depending on the circumstances of the child, OAAPI or the assigned DHS Child Welfare caseworker will make the notification:</p> <ul style="list-style-type: none"> • For children in DHS custody, OAAPI is required under OAR 407-045-0895 to notify the DHS caseworker. In turn, the caseworker is required by OAR 413-080-0051 to notify legal parties, which includes parents or guardians, that an OAAPI abuse determination has been made. (This applies to all abuse determinations, not just substantiated.) • For children not in DHS custody, OAAPI is required under OAR 407-045-0895 to notify the parent or guardian of the abuse determination. <p>Therefore, under either circumstance, the parent receives notification, but it varies regarding who is required to make the contact.</p>
<p>SB 243 § 3 (38) and SB 244 § 4 (38)</p>	<p>Requires DHS to notify any attorney representing a parent or guardian of the child or young adult when a report is substantiated regarding a DD group home.</p>	<ul style="list-style-type: none"> • First, note that DHS interprets this to apply on to children in DHS custody. For children privately placed by their parents in a DD residential setting, DHS assumes that although a parent may have a personal attorney, DHS would not be at liberty to communicate with that attorney if the attorney is not engaged for a purpose related to DHS, as would be the case in a dependency case regarding DHS' custody of the child or young adult. • In light of that interpretation, OAAPI does not notify attorneys, but rather is required to notify the DHS caseworker when the child or young adult is in DHS custody. The caseworker, in turn, is required by OAR 413-080-0051 to notify legal parties, including any attorneys representing the parents or guardians, that an OAAPI abuse determination has been made. (This applies to all abuse determinations, not just substantiated.)
<p>SB 243 § 3 (38)</p>	<p>Requires DHS to notify the CRB when a report is substantiated regarding a DD group home.</p>	<ul style="list-style-type: none"> • First, note that DHS interprets this to apply on to children in DHS custody. For children privately placed by their parents in a DD residential setting, DHS assumes there is no reason for a CRB to be

		<p>notified because the child or young adult is not subject to oversight by a CRB.</p> <ul style="list-style-type: none"> In light of that interpretation, OAAPI does not notify the CRB, but rather is required to notify the DHS caseworker when the child or young adult is in DHS custody. The caseworker, in turn, is required by OAR 413-080-0051 to notify legal parties, including Oregon Judicial Department personnel who refer information to the appropriate CRB, that an OAAPI abuse determination has been made. (This applies to all abuse determinations, not just substantiated.)
SB 243 § 3 (38)	<p>Requires DHS to notify the legislature each quarter regarding:</p> <ul style="list-style-type: none"> "The name of any...developmental disabilities residential facility...where the department conducted an investigation...that resulted in a finding that the report of abuse was substantiated during that quarter..." Approximate date of abuse Nature of abuse and brief narrative Whether physical injury, sexual abuse, or death resulted Corrective actions taken or ordered by the Department and outcome of those actions 	<p>OAAPI rules do not reflect this requirement, but they have a process in place that has worked well for the same reports on CCAs that will be applied to DD group homes.</p>
CHANGES TO CERTIFICATION STANDARDS FOR DD GROUP HOMES		
SB 243, § 2 (37)	<p>Requires the Department to require, as a condition of licensure or certification, that DD group homes have procedures and protocols on abuse reporting that require immediate reporting of abuse; provide for annual training and written materials about the hotline; advise and educate employees to report abuse under both SB 243 and ORS 419B.005; and inform employees that the responsibility to report abuse is personal to the employee. This does not apply if the home does not have any "employees, staff, or volunteers."</p>	<ul style="list-style-type: none"> ODDS plans to include this in their rules and communicate the requirement to providers. Additionally, training materials have been created to explain the new reporting requirements for DD group homes.

SB 243, § 2 (37)	Gives DHS the authority to suspend or revoke certification for a DD group home for “interference or hindering an investigation of abuse of a child in care.”	<ul style="list-style-type: none"> • ODDS intends to add this to their rules.
MISC. CHANGES RELATING TO DD GROUP HOMES		
SB 243, § 2 (37)	Provides immunity from civil and criminal liability and employment-related discipline for good-faith abuse reporting and allows disclosure of otherwise confidential information.	None.