



TEMPORARY ADMINISTRATIVE ORDER

INCLUDING STATEMENT OF NEED & JUSTIFICATION

OTIS 7-2026

CHAPTER 419

DEPARTMENT OF HUMAN SERVICES

OFFICE OF TRAINING, INVESTIGATIONS AND SAFETY

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FILING CAPTION: Revisions to OTIS child abuse determinations rules following Oregon Court of Appeals opinion.

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NEED FOR THE RULE(S):

These rules relate to the definitions for abuse determinations made by the Oregon Department of Human Services (ODHS) Office of Training, Investigations and Safety (OTIS) following investigation of reported child abuse, as described in OAR chapter 419, divisions 210 (child-in-care), 220 (childcare), 230 (schools) and 240 (third-party). OTIS is a shared service with the ODHS Child Welfare Program for ORS 419B.005 through ORS 419B.050.

OTIS must immediately amend its abuse determination rules as described in each Rule Summary to ensure child abuse definitions in rule are consistent with the statutory definition of abuse in ORS 419B.005(1)(a), as recently analyzed by the Oregon Court of Appeals in Oregon Education Assn. v Dept. of Human Services, 353 Or App 198 (September 23, 2026) (hereinafter "OEA opinion"). The OEA opinion held that certain OTIS rules interpreting the definition of abuse in ORS 419B.005(1)(a)(F) (negligent treatment or maltreatment of a child) depart from the statute and are invalid. Specifically, the Court analyzed OAR 419-230-0170(2)(c) and paragraphs (C), (D) & (E) of subsection (c) defining "neglect" for investigations of abuse in school settings under ORS 419B.019. The OEA opinion held that the language "supervision, protection or nurturing" in OAR 419-230-0170(2)(c), and paragraphs of that rule that further define neglect to include lack of supervision and protection, desertion, and psychological neglect, OAR 419-230-0170(2)(c)(C),

(D) and (E), respectively, are invalid. These temporary rules remove the invalidated language and ensure that OTIS definitions of neglect, as well as its definitions of threat of harm and exposure to and manufacturing of controlled substances closely align with the statutory definition of abuse in ORS 419B.005(1)(a).

Because OTIS uses the same abuse definitions in its rule sets addressing child abuse determinations for child-in-care (OAR chapter 419, division 210), childcare (OAR chapter 419, division 220) and third-party (OAR 419, division 240) child abuse investigations, all three rule sets require immediate amendments. The Child Welfare program is adopting similar temporary rules in OAR chapter 413, division 015.

These changes will provide needed clarity for the investigation of abuse and the protection of children.

JUSTIFICATION OF TEMPORARY FILING:

OTIS' amendment of these rules ensures the definitions of abuse in its rules align with the OEA opinion and with the statutory definition of abuse in ORS 419B.005(1)(a). The amended rules apply to OTIS' child abuse investigations and abuse determinations. Individuals involved in and impacted by an OTIS child abuse investigation could be seriously prejudiced if OTIS were to engage in a lengthy process of permanent rulemaking. Immediate adoption of temporary rules will minimize the risk of confusion about what is child abuse, the risk of abuse determinations that are inconsistent with the statute and the OEA opinion, the risk that individuals and professionals subject to OTIS rules will lack proper notice about how OTIS interprets and applies the definition of abuse to its investigation findings and provide clarity about whether to exercise their contested case hearing rights, and ultimately alleviates the risk that children will be unsafe in the settings for which OTIS is responsible for investigating allegations of child abuse.

OTIS additionally finds that its failure to act promptly will result in serious prejudice to agency partners, service providers, educators, and those who contract with or regulate educators and service providers. OTIS partners include: law enforcement agencies, Tribes, Child Advocacy Centers, related ODHS programs (Child Welfare, Developmental Disabilities Services, Children's Care Licensing Program, Background Check Unit), the Oregon Health Authority, the Oregon Youth Authority, the Oregon Department of Early Learning and Care, the Oregon Department of Education, Teacher Standards & Practices Commission, and the Oregon Office of Administrative Hearings. Impacted service providers include child caring agencies, proctor foster homes, developmental disabilities residential programs (24-hour group homes, host homes, child foster care), as well as the providers' employees, agents, contractors, volunteers, caregivers, foster parents and others providing substitute care. In addition, service providers for children under 18 years old, including education programs through grade 12 (schools), child care (day care), Oregon Youth Authority's regulated foster homes; and those providers' employees, agents, contractors, volunteers, caregivers and foster parents could be seriously prejudiced. Each of these agency partners, providers, educators, individuals, and the children who are the subject of abuse investigations, could be seriously prejudiced if OTIS does not immediately adopt these temporary rules.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

- September 23, 2026, Oregon Court of Appeals Opinion A183962:
<https://cdm17027.contentdm.oclc.org/digital/collection/p17027coll5/id/42860/rec/15>
- 2025 EDITION, ORS 419B.005: https://www.oregonlegislature.gov/bills_laws/ors/ors419B.html

RULES:

419-210-0170, 419-220-0170, 419-230-0170, 419-240-0170

AMEND: 419-210-0170

RULE TITLE: Abuse Determination

RULE SUMMARY: Revise subsection (2)(c), the definition of neglect:

- Remove “supervision, protection or nurturing”;
- Delete the three rule examples in paragraphs (2)(c)(C), (D) & (E) for lack of supervision and protection, desertion and psychological neglect (respectively);
- Move subparagraphs (2)(c)(A)(ii) and (iii), child abuse definitions related to methamphetamines (as written) and controlled substances (with minor edit to remove “of physical neglect”) to their own subsection (2)(g) and (2)(h), respectively. As these two definitions are their own statutory basis in ORS 419B.005(1)(a)(I) and (J);
- Add reference that “neglect” is negligent treatment or maltreatment of a child to match ORS text; and
- Reorder subsection (2)(c)(A) due to moved text.

Also revise subsection (2)(f), the definition of threat of harm to match ORS 419B.005(1)(a)(G).

RULE TEXT:

(1) Abuse Determination Requirements.

(a) Except as provided in OAR 419-210-0160 (Exception to Completing an Investigation), an abuse determination must be made for all reports of abuse that are determined to require an investigation under OAR 419-210-0130.

(b) When making an abuse determination the standard of proof is reasonable cause to believe.

(c) Based on the available evidence after conducting an investigation, the possible abuse determinations are:

(A) "Substantiated", which means there is reasonable cause to believe the abuse occurred.

(B) "Unsubstantiated", which means there is no evidence the abuse occurred.

(C) "Inconclusive", which means there is some indication that the abuse occurred but there is insufficient evidence to conclude that there is reasonable cause to believe that the abuse occurred. The “Inconclusive” determination may only be used in the following circumstances:

(i) After extensive efforts have been made, the OTIS investigator is unable to locate the alleged victim; or

(ii) After completing the investigation, there is insufficient information to support an abuse determination of substantiated or unsubstantiated and the alleged victim is unable or unwilling to provide consistent information; or there is conflicting information from collateral contacts.

(2) Except as provided in section (4) of this rule, abuse of a child, for the purpose of making an abuse determination on a report subject to ORS 419B.005, means:

(a) Child selling, including the selling of a child that consists of buying, selling, bartering, trading, or offering to buy or sell the legal or physical custody of a child.

(b) Mental injury which shall include only cruel or unconscionable acts or statements made, or threatened to be made, to a child if the acts, statements or threats result in severe harm to the child’s psychological, cognitive, emotional or social well-being and functioning.

(c) Neglect is the negligent treatment or maltreatment of a child, including but not limited to the failure, through action or omission, to provide and maintain adequate food, clothing, shelter or medical care that is likely to endanger the health or welfare of the child. Neglect may include but is not limited to the following:

(A) Physical neglect, which includes failing to provide for the child’s basic physical needs including adequate shelter, food, and clothing.

(B) Medical neglect is a refusal or failure to seek, obtain, or maintain necessary medical, dental, or mental health care.

Medical neglect includes withholding medically indicated treatment from infants who have disabilities and life-threatening conditions. However, failure to provide a child with immunizations or routine care alone does not constitute medical neglect. When the OTIS investigator is making a determination of medical neglect, this determination must be consistent with medical findings.

(d) Physical abuse, including an injury to a child that is inflicted or allowed to be inflicted by non-accidental means that results in harm. Physical abuse may include injury that could not reasonably be the result of the explanation given.

Physical abuse may also include injury that is a result of discipline or punishment. Examples of injuries that may result

from physical abuse include, but are not limited to:

- (A) Head injuries;
- (B) Bruises, cuts, lacerations;
- (C) Internal injuries;
- (D) Burns or scalds;
- (E) Injuries to bone, muscle, cartilage, and ligaments;
- (F) Poisoning;
- (G) Electrical shock; and
- (H) Death.

(e) Sexual abuse, which includes:

(A) A person's use of a child for the person's own sexual gratification, the sexual gratification of another person, or the sexual gratification of the child. Sexual abuse includes incest, rape, sodomy, sexual penetration, fondling, and voyeurism.

(B) Sexual exploitation, including, but not limited to, the use of a child in a sexually explicit way for personal gain to make money, in exchange for goods, services, or drugs, or to gain status. Sexual exploitation also includes using children in prostitution or using children to create pornography.

(C) Sex trafficking.

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

(g) Permitting a child to enter or remain in or upon premises where methamphetamines are being manufactured.

(h) Unlawful exposure of a child to a controlled substance, as defined in ORS 475.005, or to the unlawful manufacturing of a cannabinoid extract, as defined in ORS 475C.009, that subjects a child to a substantial risk of harm to the child's health or safety. When the OTIS investigator is making a determination based on a substantial risk of harm to the child's health due to unlawful exposure to a substance, this determination must be consistent with medical findings.

(3) Except as provided in section (4) of this rule, abuse of a child-in-care, for the purpose of making an abuse determination on a report subject to ORS 418.257, includes, among others, the following:

(a) 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, proctor foster parent, ODDS licensed group home, ODDS host home, ODDS foster parent, other individual, or an employee, volunteer, or contractor of a child-caring agency, proctor foster home, ODDS licensed group home, ODDS host home, or ODDS foster home.

(b) Financial exploitation.

(A) Financial exploitation includes:

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

(ii) 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-in-care would reasonably believe that the threat conveyed would be carried out.

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

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

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

(c) The use of involuntary seclusion of a child-in-care in violation of ORS 418.521 or ORS 418.523.

(d) Neglect:

(A) Neglect includes:

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

(ii) The failure of a child-caring agency, proctor foster parent, ODDS licensed group home, ODDS host home, ODDS foster parent, other person, or an employee, contractor, or volunteer of a child-caring agency, proctor foster home, ODDS licensed group home ODDS host home, or ODDS foster home to make a reasonable effort to protect a child-in-care from abuse.

(B) For purposes of this subsection, "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.

(e) Physical abuse, which includes:

(A) Any physical injury to a child-in-care caused by other than accidental means, or that appears to conflict with the explanation given of the injury; or

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

(f) Sexual abuse:

(A) Sexual abuse includes:

(i) 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;

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

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

(iv) 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; and

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

(B) For purposes of this subsection, "sexual exploitation," as defined in ORS 419B.005(1)(a)(E), includes, but is not limited to:

(i) Contributing to the sexual delinquency of a minor, as defined in ORS chapter 163, and any other conduct that 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 that, in whole or in part, depicts sexual conduct or contact, as defined in ORS 167.002 or described in ORS 163.665 and ORS 163.670, sexual abuse involving a child or rape of a child, but not including any conduct that is part of any investigation conducted pursuant to ORS 419B.020 or that is designed to serve educational or other legitimate purposes; and

(ii) Allowing, permitting, encouraging or hiring a child to engage in prostitution as described in ORS 167.007 or a commercial sex act as defined in ORS 163.266, to purchase sex with a minor as described in ORS 163.413 or to engage in commercial sexual solicitation as described in ORS 167.008.

(C) For purposes of this subsection, "sexual contact," as defined in ORS 163.305, means any touching of the sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the actor for the purpose of arousing or gratifying the sexual desire of either party.

(g) Verbal abuse:

(A) Verbal abuse includes threatening severe harm, either physical or emotional, to a child-in-care through the use of:

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

(ii) Harassment, coercion, threats, compelling or deterring conduct by threats, humiliation, mental cruelty, or inappropriate sexual comments.

(B) Verbal abuse does not include age-appropriate discipline that may involve the threat to withhold privileges.

(h) The use of restraint of a child-in-care in violation of ORS 418.521 or ORS 418.523.

(A) ODHS may not substantiate an allegation of abuse against a respondent for the sole reason their certification issued under ORS 418.529 is not current.

(B) "Restraint" means as defined in ORS 418.519.

(4) Abuse does not include reasonable discipline unless the discipline results in one of the conditions described in sections (2) or (3) of this rule.

STATUTORY/OTHER AUTHORITY: ORS 409.050, 418.005

STATUTES/OTHER IMPLEMENTED: ORS 409.050, 443.400 - 443.455, 419B.005 - 419B.050, 418.005, 418.257 -

418.259, 418.519 - 418.532, 409.185, Senate Bill 1532 (2026 Oregon Law chapter 28, §19)

RULE TITLE: Abuse Determination

RULE SUMMARY: Revise subsection (2)(c), the definition of neglect:

- Remove “supervision, protection or nurturing”;
- Delete the three rule examples in paragraphs (2)(c)(C), (D) & (E) for lack of supervision and protection, desertion and psychological neglect (respectively);
- Move subparagraphs (2)(c)(A)(ii) and (iii), child abuse definitions related to methamphetamines (as written) and controlled substances (with minor edit to remove “of physical neglect”) to their own subsection (2)(g) and (2)(h), respectively. As these two definitions are their own statutory basis in ORS 419B.005(1)(a)(I) and (J);
- Add reference that “neglect” is negligent treatment or maltreatment of a child to match ORS text; and
- Reorder subsection (2)(c)(A) due to moved text.

Also revise subsection (2)(f), the definition of threat of harm to match ORS 419B.005(1)(a)(G).

RULE TEXT:

(1) Except as provided in OAR 419-220-0160 (Exception to Completing an Investigation), an abuse determination must be made for all reports of abuse that are determined to require an investigation under OAR 419-220-0130.

(a) When making an abuse determination, the standard of proof is reasonable cause to believe.

(b) Based on the available evidence after conducting an investigation, the possible abuse determinations are:

(A) “Founded,” which means there is reasonable cause to believe the abuse occurred.

(B) “Unfounded,” which means there is no evidence the abuse occurred.

(C) “Unable to Determine,” which means there is insufficient evidence to conclude that there is reasonable cause to believe the abuse occurred. “Unable to Determine” may only be used in the following circumstances:

(i) After extensive efforts have been made, the OTIS investigator is unable to locate the alleged victim; or

(ii) After completing the investigation, there is insufficient information to support an abuse determination of Founded or Unfounded and the alleged victim is unable or unwilling to provide consistent information or there is conflicting information from collateral contacts.

(2) Except as provided in section (3), abuse of a child, for the purpose of making an abuse determination on a report subject to ORS 419B.005, means:

(a) Child selling, including the selling of a child that consists of buying, selling, bartering, trading, or offering to buy or sell the legal or physical custody of a child.

(b) Mental injury which shall include only cruel or unconscionable acts or statements made, or threatened to be made, to a child if the acts, statements or threats result in severe harm to the child’s psychological, cognitive, emotional or social well-being and functioning.

(c) Neglect is the negligent treatment or maltreatment of a child, including but not limited to the failure, through action or omission, to provide and maintain adequate food, clothing, shelter or medical care that is likely to endanger the health or welfare of the child. Neglect may include but is not limited to the following:

(A) Physical neglect, which includes failing to provide for the child's basic physical needs including adequate shelter, food, and clothing.

(B) Medical neglect is a refusal or failure to seek, obtain, or maintain necessary medical, dental, or mental health care. Medical neglect includes withholding medically indicated treatment from infants who have disabilities and life-threatening conditions. However, failure to provide a child with immunizations or routine care alone does not constitute medical neglect. When the OTIS investigator is making a determination of medical neglect, this determination must be consistent with medical findings.

(d) Physical abuse, including an injury to a child that is inflicted or allowed to be inflicted by non-accidental means that results in harm. Physical abuse may include injury that could not reasonably be the result of the explanation given.

Physical abuse may also include injury that is a result of discipline or punishment. Examples of injuries that may result from physical abuse include, but are not limited to:

- (A) Head injuries;
- (B) Bruises, cuts, lacerations;
- (C) Internal injuries;
- (D) Burns or scalds;
- (E) Injuries to bone, muscle, cartilage, and ligaments;
- (F) Poisoning;
- (G) Electrical shock; and
- (H) Death.

(e) Sexual abuse, which includes:

(A) A person's use of a child for the person's own sexual gratification, the sexual gratification of another person, or the sexual gratification of the child. Sexual abuse includes incest, rape, sodomy, sexual penetration, fondling, and voyeurism.

(B) Sexual exploitation, including, but not limited to, the use of a child in a sexually explicit way for personal gain to make money, in exchange for goods, services, or drugs, or to gain status. Sexual exploitation also includes using children in prostitution or using children to create pornography.

(C) Sex trafficking.

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

(g) Permitting a child to enter or remain in or upon premises where methamphetamines are being manufactured.

(h) Unlawful exposure of a child to a controlled substance, as defined in ORS 475.005, or unlawful manufacturing of a cannabinoid extract, as defined in ORS 475C.009, that subjects a child to a substantial risk of harm to the child's health or safety. When the OTIS investigator is making a determination based on a substantial risk of harm to the child's health due to unlawful exposure to a substance, this determination must be consistent with medical findings.

(3) Abuse does not include reasonable discipline unless the discipline results in one of the conditions described in section (2) of this rule.

STATUTORY/OTHER AUTHORITY: ORS 409.050

STATUTES/OTHER IMPLEMENTED: ORS 419B.005 - 419B.050

RULE TITLE: Abuse Determination

RULE SUMMARY: Revise subsection (2)(c), the definition of neglect:

- Remove “supervision, protection or nurturing”;
- Delete the three rule examples in paragraphs (2)(c)(C), (D) & (E) for lack of supervision and protection, desertion and psychological neglect (respectively);
- Move subparagraphs (2)(c)(A)(ii) and (iii), child abuse definitions related to methamphetamines (as written) and controlled substances (with minor edit to remove “of physical neglect”) to their own subsection (2)(g) and (2)(h), respectively. As these two definitions are their own statutory basis in ORS 419B.005(1)(a)(I) and (J);
- Add reference that “neglect” is negligent treatment or maltreatment of a child to match ORS text; and
- Reorder subsection (2)(c)(A) due to moved text.

Also revise subsection (2)(f), the definition of threat of harm to match ORS 419B.005(1)(a)(G).

And minor correction of re-ordering school specific abuse definitions for events of seclusion, restraint and corporal punishment from subsection (2)(g) to (2)(i), due to moved child abuse definitions for methamphetamine and controlled substances and consistency with other OTIS child rules.

RULE TEXT:

(1) Except as provided in OAR 419-230-0160 (Exception to Completing an Investigation), an abuse determination must be made for all reports of abuse that are determined to require an investigation under OAR 419-230-0130.

(a) When making an abuse determination the standard of proof is reasonable cause to believe.

(b) Based on the available evidence after conducting an investigation, the possible abuse determinations are:

(A) "Founded," which means there is reasonable cause to believe the abuse occurred.

(B) "Unfounded," which means there is no evidence the abuse occurred.

(C) "Unable to Determine," which means there is insufficient evidence to conclude that there is reasonable cause to believe the abuse occurred. "Unable to Determine" may only be used in the following circumstances:

(i) After extensive efforts have been made, the OTIS investigator is unable to locate the alleged victim; or

(ii) After completing the investigation, there is insufficient information to support an abuse determination of founded or unfounded; and the alleged victim is unable or unwilling to provide consistent information; or there is conflicting information from collateral contacts.

(2) Except as provided in section (3), abuse of a child, for the purpose of making an abuse determination on a report subject to ORS 419B.005, means:

(a) Child selling, including the selling of a child that consists of buying, selling, bartering, trading, or offering to buy or sell the legal or physical custody of a child.

(b) Mental injury which shall include only cruel or unconscionable acts or statements made, or threatened to be made, to a child if the acts, statements or threats result in severe harm to the child's psychological, cognitive, emotional or social well-being and functioning.

(c) Neglect is the negligent treatment or maltreatment of a child, including but not limited to the failure, through action or omission, to provide and maintain adequate food, clothing, shelter or medical care that is likely to endanger the health or welfare of the child. Neglect may include but is not limited to the following:

(A) Physical neglect, which includes failing to provide for the child's basic physical needs including adequate shelter, food, and clothing.

(B) Medical neglect is a refusal or failure to seek, obtain, or maintain necessary medical, dental, or mental health care.

Medical neglect includes withholding medically indicated treatment from infants who have disabilities and life-

threatening conditions. However, failure to provide a child with immunizations or routine care alone does not constitute

medical neglect. When the OTIS investigator is making a determination of medical neglect, this determination must be consistent with medical findings.

(d) Physical abuse, including an injury to a child that is inflicted or allowed to be inflicted by non-accidental means that results in harm. Physical abuse may include injury that could not reasonably be the result of the explanation given.

Physical abuse may also include injury that is a result of discipline or punishment. Examples of injuries that may result from physical abuse include, but are not limited to:

- (A) Head injuries;
- (B) Bruises, cuts, lacerations;
- (C) Internal injuries;
- (D) Burns or scalds;
- (E) Injuries to bone, muscle, cartilage, and ligaments;
- (F) Poisoning;
- (G) Electrical shock; and
- (H) Death.

(e) Sexual abuse, which includes:

(A) A person's use of a child for the person's own sexual gratification, the sexual gratification of another person, or the sexual gratification of the child. Sexual abuse includes incest, rape, sodomy, sexual penetration, fondling, and voyeurism.

(B) Sexual exploitation, including, but not limited to, the use of a child in a sexually explicit way for personal gain to make money, in exchange for goods, services, or drugs, or to gain status. Sexual exploitation also includes using children in prostitution or using children to create pornography.

(C) Sex trafficking.

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

(g) Permitting a child to enter or remain in or upon premises where methamphetamines are being manufactured.

(h) Unlawful exposure of a child to a controlled substance, as defined in ORS 475.005, or unlawful manufacturing of a cannabinoid extract, as defined in ORS 475C.009, that subjects a child to a substantial risk of harm to the child's health or safety. When the OTIS investigator is making a determination based on a substantial risk of harm to the child's health due to unlawful exposure to a substance, this determination must be consistent with medical findings.

(i) For incidents on or after July 1, 2023:

(A) The restraint or seclusion of a child in violation of ORS 339.285, 339.288, 339.291, 339.303 or 339.308.

(B) The infliction of corporal punishment on a child in violation of ORS 339.250 (9).

(C) Failure by a public education program as described in ORS 339.296 and OAR 419-230-0173.

(3) Abuse does not include reasonable discipline unless the discipline results in one of the conditions described in section (2) of this rule.

STATUTORY/OTHER AUTHORITY: ORS 409.050, ORS 419B.019

STATUTES/OTHER IMPLEMENTED: ORS 419B.005 - 419B.050, Section 8, chapter 581, OL 2023 (Note ORS 419B.027), ORS 339.296

RULE TITLE: Abuse Determination

RULE SUMMARY: Revise subsection (2)(c), the definition of neglect:

- Remove “supervision, protection or nurturing”;
- Delete the three rule examples in paragraphs (2)(c)(C), (D) & (E) for lack of supervision and protection, desertion and psychological neglect (respectively);
- Move subparagraphs (2)(c)(A)(ii) and (iii), child abuse definitions related to methamphetamines (as written) and controlled substances (with minor edit to remove “of physical neglect”) to their own subsection (2)(g) and (2)(h), respectively. As these two definitions are their own statutory basis in ORS 419B.005(1)(a)(I) and (J);
- Add reference that “neglect” is negligent treatment or maltreatment of a child to match ORS text; and
- Reorder subsection (2)(c)(A) due to moved text.

Also revise subsection (2)(f), the definition of threat of harm to match ORS 419B.005(1)(a)(G).

RULE TEXT:

(1) Abuse Determination Requirements.

(a) Except as provided in OAR 419-240-0160 (Exception to Completing an Investigation), an abuse determination must be made for all reports of abuse that are determined to require an investigation.

(b) When making an abuse determination, the standard of proof is reasonable cause to believe.

(c) Based on the available evidence after conducting an investigation, the possible abuse determinations are:

(A) "Founded," which means there is reasonable cause to believe the abuse occurred.

(B) "Unfounded," which means there is no evidence the abuse occurred.

(C) "Unable to Determine," which means there is some indication that the abuse occurred but there is insufficient evidence to conclude that there is reasonable cause to believe that the abuse occurred. "Unable to Determine" may only be used in the following circumstances:

(i) After extensive efforts have been made, the OTIS investigator is unable to locate the alleged victim; or

(ii) After completing the investigation, there is insufficient information to support an abuse determination of Founded or Unfounded and the alleged victim is unable or unwilling to provide consistent information or there is conflicting information from collateral contacts.

(2) Except as provided in section (3), abuse of a child, for the purpose of making an abuse determination on a report subject to ORS 419B.005, means:

(a) Child selling, including the selling of a child that consists of buying, selling, bartering, trading, or offering to buy or sell the legal or physical custody of a child.

(b) Mental injury which shall include only cruel or unconscionable acts or statements made, or threatened to be made, to a child if the acts, statements or threats result in severe harm to the child's psychological, cognitive, emotional or social well-being and functioning.

(c) Neglect is the negligent treatment or maltreatment of a child, including but not limited to the failure, through action or omission, to provide and maintain adequate food, clothing, shelter or medical care that is likely to endanger the health or welfare of the child. Neglect may include but is not limited to the following:

(A) Physical neglect, which includes failing to provide for the child's basic physical needs including adequate shelter, food, and clothing.

(B) Medical neglect is a refusal or failure to seek, obtain, or maintain necessary medical, dental, or mental health care. Medical neglect includes withholding medically indicated treatment from infants who have disabilities and life-threatening conditions. However, failure to provide a child with immunizations or routine care alone does not constitute medical neglect. When the OTIS investigator is making a determination of medical neglect, this determination must be consistent with medical findings.

(d) Physical abuse, including an injury to a child that is inflicted or allowed to be inflicted by non-accidental means that results in harm. Physical abuse may include injury that could not reasonably be the result of the explanation given. Physical abuse may also include injury that is a result of discipline or punishment. Examples of injuries that may result from physical abuse include, but are not limited to:

- (A) Head injuries;
- (B) Bruises, cuts, lacerations;
- (C) Internal injuries;
- (D) Burns or scalds;
- (E) Injuries to bone, muscle, cartilage, and ligaments;
- (F) Poisoning;
- (G) Electrical shock; and
- (H) Death.

(e) Sexual abuse, which includes:

- (A) A person's use of a child for the person's own sexual gratification, the sexual gratification of another person, or the sexual gratification of the child. Sexual abuse includes incest, rape, sodomy, sexual penetration, fondling, and voyeurism.
 - (B) Sexual exploitation, including, but not limited to, the use of a child in a sexually explicit way for personal gain to make money, in exchange for goods, services, or drugs, or to gain status. Sexual exploitation also includes using children in prostitution or using children to create pornography.
 - (C) Sex trafficking.
 - (f) Threatened harm to a child, which means subjecting a child to a substantial risk of harm to the child's health or welfare.
 - (g) Permitting a child to enter or remain in or upon premises where methamphetamines are being manufactured.
 - (h) Unlawful exposure of a child to a controlled substance, as defined in ORS 475.005, or unlawful manufacturing of a cannabinoid extract, as defined in ORS 475C.009, that subjects a child to a substantial risk of harm to the child's health or safety. When the OTIS investigator is making a determination based on a substantial risk of harm to the child's health due to unlawful exposure to a substance, this determination must be consistent with medical findings.
- (3) Abuse does not include reasonable discipline unless the discipline results in one of the conditions described in section (2) of this rule.

STATUTORY/OTHER AUTHORITY: ORS 409.050

STATUTES/OTHER IMPLEMENTED: ORS 419B.005 - 419B.050