

# OREGON DEPARTMENT OF EDUCATION EARLY LEARNING DIVISION

## DIVISION 350

### CERTIFIED FAMILY CHILD CARE HOMES

#### General Provisions

#### 414-350-0010

##### Definitions

The following words and terms, when used in OAR 414-350-0000 through 414-350-0405, have the following meanings:

- (1) "Activity Area" means the area of the home that is available, during all the hours of operation, for the children's activities. This area excludes the food preparation area of the kitchen, bathrooms, storage areas, and those parts of rooms occupied by heating stoves, furniture and stationary equipment not used by children.
- (2) "Attendance" means children actually present in the home at any given time.
- (3) "Capacity" means the total number of children allowed in the certified family child care home at any one time, based on the available square footage, the ages of the children to be served and the total number of staff.
- (4) "Caregiver" means any person, including the provider, who cares for the children in the certified family child care home and works directly with the children, providing care, supervision and guidance.
- (5) "Central Background Registry" means OCC's Registry of individuals who have been approved to work in a child care facility in Oregon pursuant to ORS 657A.030 and OAR 414-061-0000 through 414-061-0120.
- (6) "Certificate" means the document that is issued by OCC to a certified family child care home pursuant to ORS 657A.280.
- (7) "Certified Family Child Care Home" or "Home" means: a child care facility located in a building constructed as a single family dwelling that has a certificate to care for a maximum of 16 children at any one time.
- (8) "Child Care" means the care, supervision, and guidance on a regular basis of a child, unaccompanied by a parent, guardian, or custodian, during a part of the 24 hours of the day, with or without compensation. Child care does not include the care provided:
  - (a) In the home of the child;
  - (b) By the child's parent or guardian, or person acting in loco parentis;
  - (c) By a person related to the child by blood or marriage within the fourth degree as determined by civil law;
  - (d) On an occasional basis by a person, sponsor, or organization not ordinarily engaged in providing child care;

(e) By providers of medical services; or

(f) By a person who is a member of the child's extended family, as determined by the Office of Child Care on a case-by-case basis.

(9) "Child Care Child" means any child six weeks of age or older and under 13 years of age, or a child with special needs under the age of 18 who requires a level of care over and above the norm for his/her age, and for whom the provider has supervisory responsibility in the temporary absence of the parent.

(10) "Child with Special Needs" means a child under the age of 18 who requires a level of care over and above the norm for his/her age due to a physical, developmental, behavioral, mental or medical disability.

(11) "OCC" means the Office of Child Care of the Department of Education or the Administrator or staff of OCC.

(12) "Child Care Facility" means any facility that provides child care to children, including a child care center, certified family child care home, and registered family child care home. It includes those known under a descriptive name, such as nursery school, preschool, kindergarten, child play school, before and after school care, or child development center, except those excluded under ORS 657A.250. This term applies to the total child care operation. It includes the physical setting, equipment, staff, provider, program, and care of children.

(13) "Civil Penalty" means a fine imposed by OCC on a provider for violation of these rules.

(14) "Enrollment" means all children registered to attend the certified family child care home.

(15) "Guidance and Discipline" means the on-going process of helping children develop self control and assume responsibility for their own acts.

(16) "Infant" means a child who is at least 6 weeks of age but is not yet walking alone.

(17) "Night Care" means care given to children who sleep at the home for all or part of the night.

(18) "Nonserious violation" means OCC has made a valid finding when assessing a complaint alleging a violation not listed in OAR 414-350-0010(32).

(19) "Occasional" means infrequently or sporadically, including but not limited to care that is provided during summer or other holiday breaks when children are not attending school, but not to exceed 70 calendar days in a year.

(20) "Operator" means the person responsible for the overall operation of the home and who has the authority to perform the duties necessary to meet certification requirements. In a certified family child care home, the operator is the provider.

(21) "Oregon Registry" means Pathways for Professional Recognition in Childhood Care and Education is a voluntary, statewide program to document and recognize the professional achievements of people who work in the childhood care and education profession.

(22) "Owner" means the person who holds the certified family child care business as property and has a major financial stake in the operation of the home.

(23) "Parent" means parent(s), custodian(s), or guardian(s) exercising physical care and legal custody of the child.

(24) "Potentially hazardous food" means any food or beverage containing milk or milk products, eggs, meat, fish, shellfish, poultry, cooked rice, beans or pasta, and all other previously cooked foods, including leftovers.

(25) "Premises" means the structure that is identified on the application, including indoors and outdoors and space not directly used for child care.

(26) "Preschool Age Child" means a child 36 months of age up to the summer vacation months prior to being eligible to be enrolled in the first grade in public school.

(27) "Program" means all activities and care provided for the children during their hours of attendance at the certified family child care home.

(28) "Provider" means the person in the certified family child care home who is responsible for the children in care, is the children's primary caregiver, and in whose name the certificate is issued. In a certified family child care home, the provider is the operator.

(29) "Qualifying Teaching Experience" means 1,500 hours, gained in at least three-hour blocks, within a 36-month period, with a group of children in an on-going group setting. Such a setting includes a kindergarten, preschool, child care center, certified or registered family child care home, Head Start program, or equivalent. Qualifying teaching experience must be documented. Time spent in a college practicum or practice teaching is considered qualifying teaching experience. The following does not constitute qualifying teaching experience: leader of a scout troop; Sunday school teacher; and coaching.

(30) "Sanitizing" means using a bactericidal treatment that provides enough heat or concentration of chemicals for enough time to reduce the bacterial count, including disease-producing organisms, to a safe level on utensils, equipment, and toys.

(31) "School-Age Child" means a child eligible to be enrolled in the first grade or above in public school including the months of summer vacation prior to being eligible to be enrolled in the first grade, up to age 13.

(32) "Serious complaint" means a complaint filed against a certified child care home by a person who has alleged that:

- (a) Children are in imminent danger;
- (b) There are more children in care than allowed by certified capacity;
- (c) Corporal punishment is being used;
- (d) Children are not being supervised;
- (e) Multiple or serious fire, health or safety hazards are present in the home;
- (f) Extreme unsanitary conditions are present in the home; or
- (g) Adults are in the home who are not enrolled in the Central Background Registry.

(33) "Serious Violation" means OCC has made a valid finding when assessing a complaint that alleges:

- (a) Children are in imminent danger;
- (b) There are more children in care than allowed by law;
- (c) Corporal punishment is being used;

- (d) Children are not being supervised;
- (e) Multiple or serious fire, health or safety hazards are present in the home;
- (f) Extreme unsanitary conditions are present in the home; or
- (g) Adults are in the home who are not enrolled in the Office of Child Care's Central Background Registry

(34) "Substitute Caregiver" means a person who acts as the children's primary caregiver in the certified family child care home in the temporary absence of the provider.

(35) "Supervision" means the act of caring for a child or group of children. This includes awareness of and responsibility for the ongoing activity of each child. It requires a caregiver to be within sight and/or sound of the children, knowledge of children's needs, and accountability for children's care and well-being. Supervision also requires that staff be near and have ready access to children in order to intervene when needed.

(36) "Toddler" means a child who is able to walk alone but is under 36 months of age. "Younger toddler" means a child who is able to walk alone but is under 24 months of age; "older toddler" means a child who is at least 24 months of age but under 36 months of age.

(37) "Useable Exit" means an unobstructed door or window through which caregivers and children can evacuate the home in case of a fire or emergency. Doors must be able to be opened from the inside without a key, and window openings must be at least 20 inches wide and 22 inches in height, with a net clear opening of 5 square feet and a sill no more than 48 inches above the floor.

Stat. Auth.: ORS 329A.260

Stats. Implemented: ORS chapter 329A

Hist.: CSD 12-1988, f. 6-29-88, cert. ef. 7-1-88; CSD 2-1989, f. & cert. ef. 1-25-89; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0705; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 5-1999(Temp), f. 10-21-99, cert. ef. 10-23-99 thru 1-1-00; CCD 10-1999, f. 12-29-99, cert. ef. 1-1-00; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 6-2003, f. 12-23-03, cert. ef. 12-28-03; CCD 7-2003, f. 12-23-03, cert. ef. 12-28-03; CCD 3-2004, f. 7-30-04 cert. ef 8-1-04; CCD 6-2005(Temp), f. 12-29-05, cert. ef. 1-1-06 thru 6-29-06; CCD 3-2006, f. & cert. ef. 6-13-06; CCD 1-2007(Temp), f. & cert. ef. 3-20-07 thru 9-16-07; CCD 2-2007, f. & cert. ef. 7-13-07; CCD 4-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 4-2010, f. 6-29-10, cert. ef. 7-1-10; CCD 9-2010, f. 12-29-10, cert. ef. 1-1-11

#### **414-350-0030**

##### **Issuance of a Child Care Certificate**

(1) A certificate shall not be issued by OCC to an applicant who holds a medical marijuana card, grows or uses medical marijuana or distributes medical marijuana.

(2) A certificate shall be issued by OCC when it has been determined the home is in compliance with OAR 414-350-0000 through 414-350-0405. There are two types of certification. These are:

(a) A regular certificate which, except as provided in OAR 414-350-0020(4)(b)(A), is valid for no more than one year; and

(b) A temporary certificate. A certified family child care home may not operate under a temporary certificate for more than 180 days in any 12-month period. A temporary certificate is issued when:

(A) The home is in compliance with most requirements;

(B) There are no deficiencies identified by OCC that are hazardous to children; and

(C) The provider demonstrates an effort to be in full compliance.

(3) A certificate is not transferable to any other location or to another organization or individual.

(4) A certificate is granted in the name of the operator/provider. An operator/provider is limited to one certificate at one address. (5) An owner can have multiple sites under the following conditions:

(a) If the owner is the provider/operator in one of the homes, the owner can have two certified family child care homes; or

(b) If the owner does not directly care for any children, the owner can have more than two certified family child care homes.

(c) If the owner is the provider/operator in a home certified for more than 12 children, the owner may be the provider for only that certified family child care home. The provider may be the owner of other facilities. See OAR 414-350-0100 (5).

(6) Any changes in the conditions of certificate shall be requested in writing to OCC and approved by OCC before the condition(s) of the current certificate may be changed. Changes include, but are not limited to, facility capacity, age range of children, or hours of operation.

Stat. Auth.: ORS 329A.260

Stats. Implemented: ORS chapter 329A

Hist.: CSD 12-1988, f. 6-29-88, cert. ef. 7-1-88; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0715; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 6-2005(Temp), f. 12-29-05, cert. ef. 1-1-06 thru 6-29-06; CCD 3-2006, f. & cert. ef. 6-13-06; CCD 4-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 4-2010, f. 6-29-10, cert. ef. 7-1-10; CCD 9-2010, f. 12-29-10, cert. ef. 1-1-11

## **Staff**

### **414-350-0090**

#### **General Requirements**

(1) As required by Oregon civil rights law, ORS Chapter 659, the provider shall not discriminate in employment on the basis of race, color, gender, marital status, religion, national origin, age, or because of a mental or physical handicap unrelated to specific job performance.

(2) All caregivers, including the provider, shall:

(a) Have competence, sound judgment, and self-control in working with children;

(b) Be mentally, physically, and emotionally capable of performing duties related to child care; and

(c) Have the required training and/or experience for the positions they hold, as specified in OAR 414-350-0100 and 0110.

(3) If there is evidence that casts doubt on the physical or mental competence of a person to care for children or have access to children, OCC may require that the provider provide OCC with an evaluation or other information, as specified by OCC.

(4) No one shall have access to child care children who has demonstrated behavior that may have a detrimental effect on a child. Residents of the home are considered to have access to the child care children even if they are not generally at home during hours of operation. This does not apply to parents of children in care when they drop off and pick up their children.

(a) The owner, the provider, all caregivers and other residents of the home 18 years of age or older must be enrolled in OCC's Central Background Registry prior to the issuance of an initial or renewal certificate. Residents of the home who are under 18 years of age must be enrolled in the Registry by their 18th birthday. Certification may be denied, suspended, or revoked if the provider or other resident of the home has been removed or suspended from the Central Background Registry.

(b) Prior to any new caregiver caring for children or prior to an individual residing in the home, visiting the home on a regular basis, or substituting for or assisting the provider, the caregiver/individual shall be enrolled in the Central Background Registry and the provider shall receive verification from OCC of the enrollment. This does not apply to parents of children in care unless they are residing in the home or assisting in the provision of child care.

(c) When a provider is notified by OCC that a caregiver or other individual has been removed from the Central Background Registry, the provider shall not permit the caregiver or other individual to be in the home during hours the child care business is conducted or to have access to child care children.

(d) If any person listed in section (4)(a) & (b) of this rule has been charged with, arrested for, or a warrant is out for any of the crimes which OCC has determined indicate behavior which may have a detrimental effect on a child, with final disposition not yet reached, certification may be denied or suspended until the charge, arrest, or warrant has been resolved if the person continues to operate, be employed in or reside in the home, or have access to children in the home.

(e) If a criminal record check shows that a warrant has been issued for any person checked, OCC will inform the originating law enforcement agency of the person's name, employment address and telephone number.

(f) Any visitor to the home or other adult who is not enrolled in the Central Background Registry shall not have unsupervised access to children.

(5) Volunteers must meet the following requirements:

(a) If volunteers are counted in determining the staff/child ratios, they must meet the qualifications of the position they are filling and be enrolled in the Central Background Registry.

(b) If volunteers may have unsupervised access to children, they must be enrolled in the Central Background Registry.

(c) If volunteers do not have unsupervised access to children at any time, including during emergencies, the provider must have a written policy to this effect, the policy must be known to all caregivers and volunteers, and the volunteers do not have to be enrolled in the Central Background Registry.

(6) No person shall smoke or carry any lighted smoking instrument in the certified family child care home or within ten feet of any entrance, exit, window that opens or any ventilation intake that serves an enclosed area, during child care hours or when child care children are present. This includes e-cigarettes. No person shall use smokeless tobacco in the certified family child care home during child care hours or when child care children are present. No person shall smoke, carry any lighted smoking instrument or use smokeless tobacco in motor vehicles while child care children are passengers. This includes e-cigarettes.

(7) No one shall consume alcohol on the certified family child care home premises during the hours the child care business is conducted or when child care children are present. No one shall be under the influence of alcohol on the family child care home premises during the hours the child care business is conducted or when child care children are present.

(8) Notwithstanding OAR 414-350-0000(6), no one shall possess, use or store illegal controlled substances on the certified family child care home premises. No one shall be under the influence of illegal controlled substances on the certified family child care home premises.

(9) Notwithstanding OAR 414-350-0000(6), no one shall possess, use or store medical marijuana on the premises of the certified family child care home. No one under the influence of medical marijuana shall be on the premises of the certified family child care home.

(10) Notwithstanding OAR 414-350-0000(6), marijuana plants, derivatives and associated paraphernalia shall not be kept on the certified family child care home premises.

Stat. Auth.: ORS 329A.260

Stats. Implemented: ORS chapter 329A

Hist.: CSD 12-1988, f. 6-29-88, cert. ef. 7-1-88; CSD 10-1990, f. & cert. ef. 4-23-90; CSD 4-1991, f. & cert. ef. 3-7-91; CCD 1-1994, f. & cert. ef. 1-12-94; Renumbered from 412-010-0730; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 3-2002, f. 10-14-02, cert. ef. 10-15-02; CCD 4-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 4-2010, f. 6-29-10, cert. ef. 7-1-10; CCD 4-2010, f. 6-29-10, cert. ef. 7-1-10; CCD 9-2010, f. 12-29-10, cert. ef. 1-1-11