

CCEC Administrative Rule Briefing

Title/OAR #: Office of Child Care Central Background Registry/414-061-0000 to 414-061-0120

Date: September 13, 2016

Program Name: Office of Child Care

Staff/Office: Dawn Woods, Child Care Director; Kathleen Hynes, Legal and Compliance Administrator

Statutory Authority: ORS 329A.030 (7)

☐ Temporary Rule ☐ New Rule

☒ Amend Existing Rule

☐ Repeal Rule

Prompted by: ☒ State law changes

☒ Federal law changes

☒ Other

Last Revised: February 2015

Action Requested:

☐ Adoption of Temporary Rule

☒ Adoption of Final Rule

Program Summary: The Early Learning Division, Office of Child Care (OCC) administers the Central Background Registry (CBR) pursuant to ORS 329A.030. OCC conducts background checks on individuals associated with child care facilities. Subject individuals (defined below) may submit an application for enrollment in the CBR to OCC. OCC then conducts a criminal and child welfare (child abuse and neglect) background check on the applicant and determines whether the applicant is suitable for enrollment in the CBR. The enrollment period is two years at which time the individual must apply for renewal of their enrollment. OCC conducts a quarterly LEDS (Law Enforcement Data System) check of all enrollees in the CBR.

Eligible Population: Subject Individuals include:

- (a) The operator or an employee of a child care or treatment program;
- (b) The operator or an employee of an Oregon prekindergarten program under ORS 329.170 to 329.200;
- (c) The operator or an employee of a federal Head Start program regulated by the United States Department of Health and Human Services;
- (d) An individual in a child care facility who may have unsupervised contact with children as identified by the office;
- (e) A contractor or an employee of the contractor who provides early childhood special education or early intervention services pursuant to ORS 343.455 to 343.534;
- (f) A child care provider who is required to be enrolled in the Central Background Registry by any state agency;
- (g) A contractor, employee or volunteer of a metropolitan service district organized under ORS chapter 268 who may have unsupervised contact with children and who is required to be enrolled in the Central Background Registry by the metropolitan service district; or
- (h) A provider of respite services, as defined in ORS 418.205, for parents pursuant to a properly executed power of attorney under ORS 109.056 who is providing respite services as a volunteer with a private agency or organization that facilitates the provision of such respite services. ORS 329A.030(8)

Population Served: Child Care Providers and individuals associated with child caring programs

Stakeholders Impacted: Applicants for the CBR and child caring programs that employ or are associated with subject individuals.

Stakeholders Consulted: Stakeholders were informed of the new fingerprinting requirements during public engagement sessions on development of the CCDF State Plan. There has been no stakeholder engagement thus far regarding the additional rule changes stemming from Legislative Counsel and Attorney General guidance.

Need for Rule:

Overview of Changes for Central Background Registry Rule

Amend rules to allow OCC to conduct FBI fingerprint checks in all circumstances. We can no longer access criminal information from other states without having fingerprint identification for all applicants. Oregon State Police (OSP) removed access to the multistate offender flag because a federal audit found that for OSP to be in compliance, any noncriminal justice agency having access to that flag, must provide a fingerprint card for the individual applying. The purpose of fingerprinting is that it provides a more certain identification.

Additionally, the new federal rules require us to conduct fingerprints on all applicants as a condition for receiving federal CCDBG funds.

- ELD's current suitability factors for background checks no longer match OSP's suitability factors found in ORS 181A.195 as they were revised as a result of HB 3168. The intent of HB 3168 was to streamline background checks for residents. ORS 329A.030 (3) requires ELD to conduct checks under ORS 181A.195. The proposed language will bring the suitability factors back into alignment with the OSP suitability factors.
- Remove rule language flagged by Legislative Counsel to ensure that we are meeting statutory requirements related to information reviewed prior to enrolling individuals in the Central Background Registry. The current statute limits the history that ELD may consider for enrollment in the CBR to a criminal records check under ORS 181A.195 and an Oregon child welfare check. Legislative counsel advised that rule is overly broad, vague and in their opinion exceeds ELD's statutory authority.
- For example, the rules authorize ELD to consider any adult and disabled individuals abuse history. Legislative counsel has advised that this information is beyond ELD's statutory authority, and cannot be enforced without a statutory change.

Policy matters or questions to be addressed:

The fingerprint requirement will enable OCC to conduct a more complete and accurate background check, i.e. OCC will now conduct national background checks on all applicants and will be assured of greater accuracy regarding the identity of the applicant.

The increased cost of background checks due to the federally mandated fingerprint check will impact applicants and child care facilities. ELD has identified funds to mitigate the additional costs at least

temporarily. However, the additional cost may have an impact on availability of child care workers and child care facilities.

Fiscal Impact:

The ELD, as mentioned above, has identified funds to temporarily mitigate the additional costs to child care providers and facilities. The cost of a background check will increase from \$3.00 to 35.00 for the period January 1, 2017 through June 30, 2017. After that time, the fee may increase to cover the actual cost of the background check.

Equity Analysis:

- **Who are the racial/ethnic and underserved groups affected?** Low income child care providers and CBR applicants may not be able to pay the additional costs.
- **Do the proposed rules ignore or worsen existing disparities or produce other unintended consequences?** The rules reflect federal mandates. May have greater financial impact on low income providers and applicants.
- **What is the impact of the rules on eliminating the opportunity gap?** No impact.
- **What are the barriers to more equitable outcomes? (e.g., mandated, political, emotional, financial, programmatic or managerial).** The rules reflect federal mandates.
- **How have you intentionally involved stakeholders who are also members of the communities affected?** Stakeholders were informed of the new fingerprinting requirements during public engagement sessions on development of the CCDF State Plan. Additional informational material, including an FAQ is being or has been developed and distributed to providers.
- **How will you modify or enhance strategies and rules to ensure each learner and communities' individual and cultural needs are met?** The rules reflect federal mandates.