

Chapter 329A — Child Care
2015 EDITION
CHILD CARE
EDUCATION AND CULTURE

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OFFICE OF CHILD CARE

329A.010 & 329.020 Deleted for purposes of discussion

329A.030 Central Background Registry; rules.

- (1) The Office of Child Care shall establish a Central Background Registry and may maintain information in the registry through electronic records systems.
- (2) A subject individual shall apply to and must be enrolled in the Central Background Registry as part of the individual's application to operate a program or serve in a position described in subsection (10) of this section.
- (3) Upon receiving an application for enrollment in the Central Background Registry, the office shall complete:
 - (a) A criminal records check under ORS 181A.195;
 - (b) A criminal records check of other registries or databases in accordance with the rules adopted by the Early Learning Council;
 - (c) A child abuse and neglect records check in accordance with rules adopted by the council; and
 - (d) A foster care certification and an adult protective services check in accordance with rules adopted by the council.
- (4)(a) The Office shall enroll the individual in the Central Background Registry if the individual:
 - (A) Is determined to have no criminal, child abuse and neglect, negative adult protective services or negative foster home certification history, or to have dealt with the issues and provided adequate evidence of suitability for the registry;
 - (B) Has paid the applicable fee established pursuant to ORS 329A.275; and
 - (C) Has complied with the rules of the Early Learning Council adopted pursuant to this section.
 - (b) Notwithstanding subsection (3) of this section and paragraph (a) of this subsection, the office may enroll an individual in the registry if the Department of Human Services has completed a background check on the individual and the individual has received approval from the department for the purposes of providing child care.
- (5) Notwithstanding subsections (3) and (4) of this section, the office may not enroll an individual in the Central Background Registry if the individual has a disqualifying condition as defined in rules adopted by the council.
- (6)(a) The office may conditionally enroll an individual in the Central Background Registry pending the results of a nationwide criminal records check through the Federal Bureau of Investigation if the individual has met other requirements of the office for enrollment in the registry.
 - (b) The office may enroll an individual in the registry subject to limitations identified in rules adopted by the council.
- (7) An enrollment in the Central Background Registry may be renewed upon application to the office, payment of the fee established pursuant to ORS 329A.275 and compliance with rules adopted by the Early Learning Council pursuant to this section. However, an individual who is determined to be ineligible for enrollment in the registry after the date of initial enrollment shall be removed or suspended from the registry by the office.
- (8)(a) A child care facility shall not hire or employ an individual if the individual is not enrolled in the Central Background Registry.
 - (b) Notwithstanding paragraph (a) of this subsection, a child care facility may employ on a probationary basis an individual who is conditionally enrolled in the Central Background Registry.
- (9) The Early Learning Council may adopt any rules necessary to carry out the purposes of this section, including but not limited to rules regarding expiration and renewal periods and limitations related to the subject individual's enrollment in the Central Background Registry.
- (10) For purposes of this section, "subject individual" means a subject individual as defined by the Early Learning Council by rule or a person who applies to be:
 - (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.
 - (i) The operator or an employee of an early learning program as defined in rules adopted by the council.
- (11)(a) Information provided to a metropolitan service district organized under ORS chapter 268 about the enrollment status of the persons described in subsection (10)(g) of this section shall be subject to a reciprocal agreement with the metropolitan service district. The agreement must provide for the recovery of administrative, including direct and indirect, costs incurred by the office from participation in the agreement. Any moneys collected under this paragraph shall be deposited in the Child Care Fund established under ORS 329A.010.
- (b) Information provided to a private agency or organization facilitating the provision of respite services, as defined in ORS 418.205, for parents pursuant to a properly executed power of attorney under ORS 109.056 about the enrollment status of the persons described in subsection (10)(h) of this section shall be subject to an agreement with the private agency or organization. The agreement must provide for the recovery of administrative, including direct and indirect, costs incurred by the office from participation in the agreement. Any moneys collected under this paragraph shall be deposited in the Child Care Fund established under ORS 329A.010.
 - (c) Information provided to a private agency or organization about the enrollment status of the persons described in subsection (10)(i) of this section shall be subject to an agreement with the private agency or organization. The agreement must provide for the recovery of administrative, including direct and indirect, costs incurred by the office from participation in the agreement. Any moneys collected under this paragraph shall be deposited in the Child Care Fund established under ORS 329A.010.

RESOURCE AND REFERRAL PROGRAMS

329A.100 through 329A.190 [deleted for purposes of discussion]

CHILD CARE FACILITIES

(Generally)

329A.250 Definitions for ORS 329A.030 and 329A.250 to 329A.450. As used in ORS 329A.030 and 329A.250 to 329A.450, unless the context requires otherwise:

- (1) "Babysitter" means a person who goes into the home of a child to give care during the temporary absence of the parent or legal guardian or custodian.
- (2) "Certification" means the certification that is issued under ORS 329A.280 by the Office of Child Care to a family child care home, child care center or other child care facility.
- (3) "Child" means a child under 13 years of age or a child under 18 years of age who has special needs or disabilities and requires a level of care that is above normal for the child's age.
- (4) Subject to ORS 329A.440, "child care" means the care, supervision and guidance on a regular basis of a child, unaccompanied by a parent, guardian or custodian, provided to a child during a part of the 24 hours of

the day, in a place other than the child's home, with or without compensation. "Child care" does not include care provided:

- (a) In the home of the child;
- (b) By the child's parent, 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 not ordinarily engaged in providing child care;
- (e) By providers of medical services;
- (f) By a babysitter;
- (g) By a person who cares for children from only one family other than the person's own family;
- (h) By a person who cares for no more than three children other than the person's own children; or
- (i) By a person who is a member of the child's extended family, as determined by the office on a case-by-case basis.

(5) "Child care facility" means any facility that provides child care to children, including a day nursery, nursery school, child care center, certified or registered family child care home or similar unit operating under any name, but not including any:

- (a) Preschool recorded program.
- (b) Facility providing care for school-age children that is primarily a single enrichment activity, for eight hours or less a week.
- (c) Facility providing care that is primarily group athletic or social activities sponsored by or under the supervision of an organized club or hobby group.
- (d) Facility operated by:
 - (A) A school district as defined in ORS 332.002;
 - (B) A political subdivision of this state; or
 - (C) A governmental agency.
- (e) Residential facility licensed under ORS 443.400 to 443.455.
- (f) Babysitters.
- (g) Facility operated as a parent cooperative for no more than four hours a day.
- (h) Facility providing care while the child's parent remains on the premises and is engaged in an activity offered by the facility or in other nonwork activity.
- (i) Facility operated as a school-age recorded program.

(6) "Family" has the meaning given that term in ORS 329.145.

(7) "Occasional" means that care is provided for no more than 70 days in any calendar year.

(8) "Parent cooperative" means a child care program in which:

- (a) Care is provided by parents on a rotating basis;
- (b) Membership in the cooperative includes parents;
- (c) There are written policies and procedures; and
- (d) A board of directors that includes parents of the children cared for by the cooperative controls the policies and procedures of the program.

(9) "Preschool recorded program" means a facility providing care for preschool children that is primarily educational for four hours or less per day and where no child is present at the facility for more than four hours per day.

(10) "Record" means the record that is issued under ORS 329A.255 to a preschool recorded program or under ORS 329A.257 to a school-age recorded program.

(11) "Registration" means the registration that is issued under ORS 329A.330 by the Office of Child Care to a family child care home where care is provided in the family living quarters of the provider's home.

(12) “School age” means of an age eligible to be enrolled in the first grade or above and, during the months of summer vacation from school, means of an age eligible to be enrolled in first grade or above in the next school year.

(13) “School-age recorded program” means a program for school-age children:

- (a) That is not operated by a school district as defined in ORS 332.002;
- (b) That is not required to be certified under ORS 329A.280 or registered under ORS 329A.330; and
- (c) In which youth development activities are provided to children during hours that school is not in session and does not take the place of a parent’s care.

(14) “Youth development activities” means care, supervision or guidance that is intended for enrichment, including but not limited to teaching skills or proficiency in physical, social or educational activities such as tutoring, music lessons, social activities, sports and recreational activities.

329A.252 Provision of care by persons whose enrollment in registry is denied, revoked or under suspension.

(1) Notwithstanding ORS 329A.250 (4), care provided to children other than the children of the person providing the care by a person whose enrollment in the Central Background Registry established by ORS 329A.030 has been denied for cause, has been revoked or is under suspension, or whose certification or registration has been denied for cause, has been revoked or is under suspension, or who has voluntarily surrendered the person’s certification or registration while under investigation by the Office of Child Care, is “child care” for purposes of ORS 329A.030 and 329A.250 to 329A.450.

(2) Notwithstanding ORS 329A.250 (5), a facility providing care for four hours or less per day that is primarily educational to preschool children that is operated by a person whose enrollment in the Central Background Registry established by ORS 329A.030 has been denied for cause, has been revoked or is under suspension, or whose certification or registration has been denied for cause, has been revoked or is under suspension, or who has voluntarily surrendered the person’s certification or registration while under investigation by the Office of Child Care, is a “child care facility” for purposes of ORS 329A.030 and 329A.250 to 329A.450.

329A.255 through 329.270 Deleted for purposes of discussion

329A.275 Rules; fees and charges.

(1) The Early Learning Council shall adopt rules establishing fees for certification, registration and recording under ORS 329A.250 to 329A.450.

(2) Subject to prior approval of the Oregon Department of Administrative Services and a report to the Legislative Assembly prior to adopting the fees and charges, the fees and charges established under ORS 181A.195, 329A.030 and 329A.250 to 329A.450 may not exceed the cost of administering the program of the Office of Child Care pertaining to the purpose for which the fee is established, as authorized by the Legislative Assembly within the budget of the office.

(3) Notwithstanding subsection (2) of this section and any other provision of this chapter, the following fees established by the Early Learning Council under ORS 329A.030 and 329A.250 to 329A.450 may not exceed:

- (a) For Certified Family Child Care Home Initial Certification, \$25;
- (b) For Certified Family Child Care Home Annual Fee Per Certified Space, \$2;
- (c) For Child Care Center Initial Certification, \$100;
- (d) For Child Care Center Annual Fee Per Certified Space, \$2;
- (e) For Registered Family Child Care Home Registration, \$30;
- (f) For Preschool Recorded Program Recording, \$20;
- (g) For School-Age Recorded Program Recording, \$20;
- (h) For administering a class on child care abuse and neglect issues, \$10; and

(i) For enrollment in the Central Background Registry, the cost of administering the program, including fees for:

- (A) Duplicate enrollment in the Central Background Registry;
- (B) Law Enforcement Data System criminal records check; and
- (C) Federal Bureau of Investigation fingerprint check.

(Certification)

329A.280 When certification required; rules.

(1) A person may not operate a child care facility, except a facility subject to the registration requirements of ORS 329A.330, without a certification for the facility from the Office of Child Care.

(2) The Early Learning Council shall adopt rules for the **certification of a family child care home caring for not more than 16 children**. The rules shall be specifically adopted for the regulation of certified child care facilities operated in a facility constructed as a single-family dwelling. Notwithstanding fire and other safety regulations, the rules that the **council adopts for certified child care facilities shall set standards that can be met without significant architectural modification of a typical home**. In adopting the rules, the council may consider and set limits according to factors including the age of children in care, the ambulatory ability of children in care, the number of the provider's children present, the length of time a particular child is continuously cared for and the total amount of time a particular child is cared for within a given unit of time.

(3) In addition to rules adopted for and applied to a certified family child care home providing child care for not more than 16 children, the council shall adopt and apply separate rules appropriate for any child care facility that is a child care center.

(4) Any person seeking to operate a child care facility may apply for a certification for the facility from the Office of Child Care and receive a certification upon meeting certification requirements.

329A.290 Qualifications of applicant for certification. A person applying for a certification for a child care facility shall demonstrate to the satisfaction of the Office of Child Care that:

(1) The moral character and habits of the person will not endanger the well-being of children for whom the person is to provide care.

(2) The attitude of the person toward children and understanding of their needs qualify the person to care for children.

(3) The person is physically and mentally capable of caring for children.

(4) The facility and its operation are adequate to protect the health, the safety and the physical, moral and mental well-being of the children to be cared for in the facility, including but not limited to:

(a) Adequate staffing by suitable persons qualified by education or experience to meet their respective responsibilities in the care of children.

(b) Adequate physical facilities for the care of children, such as building construction, sanitation, plumbing, heating, lighting, ventilation, maintenance, indoor and outdoor activity areas and fire protection.

(c) A program of activities conforming to recognized practices in the areas of child welfare, education and physical and mental health to provide opportunity for development and recreation.

(d) Exclusion from the facility of individuals whose presence may be detrimental to the welfare of children, including exclusion of any individual with a criminal record indicating conviction of any crime which would bar the individual from operating or being employed in a child care facility under ORS 329A.260. [Formerly 657A.290]

329A.300 & 329.310 Deleted for purposes of discussion

(Registration)

329A.330 Registration requirements; fee; waiver; renewal; rules; work sheet.

- (1) A provider operating a family child care home where care is provided in the family living quarters of the provider's home that is not subject to the certification requirements of ORS 329A.280 may not operate a child care facility without registering with the Office of Child Care.
- (2) A child care facility holding a registration may care for a maximum of 10 children, including the provider's own children. Of the 10 children:
 - (a) No more than six may be younger than school age; and
 - (b) No more than two may be 24 months of age or younger.
- (3)(a) To obtain a registration, a provider must apply to the Office of Child Care by submitting a completed application work sheet and a nonrefundable fee. The fee shall vary according to the number of children for which the facility is requesting to be registered, and shall be determined and applied through rules adopted by the Early Learning Council under ORS 329A.275. The fee shall be deposited as provided in ORS 329A.310
- (2). The office may waive any or all of the fee if the office determines that imposition of the fee would impose a hardship on the provider.
 - (b) Upon receipt of an initial or renewal application satisfactory to the office, the office shall conduct an on-site review of the child care facility under this section. The on-site review shall be conducted within 30 days of the receipt of a satisfactory application.
- (4) The office shall issue a registration to a provider operating a family child care home if:
 - (a) The provider has completed a child care overview class administered by the office;
 - (b) The provider has completed two hours of training on child abuse and neglect issues;
 - (c) The provider is currently certified in infant and child first aid and cardiopulmonary resuscitation;
 - (d) The provider is certified as a food handler under ORS 624.570; and
 - (e) The office determines that the application meets the requirements of ORS 181A.200, 329A.030 and 329A.250 to 329A.450 and the rules promulgated pursuant to ORS 181A.195, 181A.200, 181A.215, 329A.030 and 329A.250 to 329A.450, and receives a satisfactory records check, including criminal records and protective services records.
- (5) Unless the registration is revoked as provided in ORS 329A.350, the registration is valid for a period of two years from the date of issuance. The office may renew a registration of a provider operating a family child care home if the provider:
 - (a) Is currently certified in infant and child first aid and cardiopulmonary resuscitation;
 - (b) Has completed a minimum of eight hours of training related to child care during the most recent registration period; and
 - (c) Is certified as a food handler under ORS 624.570.
- (6) A registration authorizes operation of the facility only on the premises described in the registration and only by the person named in the registration.
- (7) The Early Learning Council shall adopt rules:
 - (a) Creating the application work sheet required under subsection (3) of this section;
 - (b) Defining full-time and part-time care;
 - (c) Establishing under what circumstances the adult to child ratio requirements may be temporarily waived; and
 - (d) Establishing health and safety procedures and standards on:
 - (A) The number and type of toilets and sinks available to children;
 - (B) Availability of steps or blocks for use by children;
 - (C) Room temperature;
 - (D) Lighting of rooms occupied by children;
 - (E) Glass panels on doors;

- (F) Condition of floors;
- (G) Availability of emergency telephone numbers; and
- (H) Smoking.

(8) The office shall adopt the application work sheet required by subsection (3) of this section. The work sheet must include, but need not be limited to, the following:

- (a) The number and ages of the children to be cared for at the facility; and
- (b) The health and safety procedures in place and followed at the facility.

(9) The office, upon good cause shown, may waive one or more of the registration requirements. The office may waive a requirement only if appropriate conditions or safeguards are imposed to protect the welfare of the children and the consumer interests of the parents of the children. The office may not waive the on-site review requirement for applicants applying for an initial registration or renewal of a registration.

(10) The Early Learning Council, by rule, shall develop a list of recommended standards consistent with standards established by professional organizations regarding child care programs for child care facilities. Compliance with the standards is not required for a registration, but the office shall encourage voluntary compliance and shall provide technical assistance to a child care facility attempting to comply with the standards. The child care facility shall distribute the list of recommended minimum standards to the parents of all children cared for at the facility.

(11) In adopting rules relating to registration, the Early Learning Council shall consult with the appropriate legislative committee in developing the rules to be adopted. If the rules are being adopted during a period when the Legislative Assembly is not in session, the Early Learning Council shall consult with the appropriate interim legislative committee. [Formerly 657A.330; 2015 c.758 §10]

(Orientation)

329A.340 Certain child care providers required to attend orientation; content of orientation; effect of ceasing to provide services; cost.

[Deleted for purposes of discussion]

(Discipline; Enforcement)

329A.350 Denial, revocation or suspension of certification or registration. An initial application from a child care facility for certification or registration or a renewal application from a child care facility for certification or registration may be denied, or a temporary or regular certification or regular registration may be revoked or suspended, if the Office of Child Care finds:

- (1) That the facility or its operation does not comply with ORS 181A.200, 329A.030 and 329A.250 to 329A.450 or with applicable rules or with any term or condition imposed under the certification or registration; or
- (2) That visitation, on-site review or inspection of a facility or its records authorized by ORS 329A.390 or 329A.400 has not been permitted.

329A.360 Notice; hearing; decision; judicial review.

- (1) Upon deciding to deny, revoke, suspend or not to renew a certification or registration, the Office of Child Care shall give notice and opportunity for hearing as provided in ORS chapter 183.
- (2) The Office of Child Care shall make the final decision and notice thereof shall be sent by certified mail to the address of the child care facility as shown on the records of the office. The decision of the office is reviewable by the Court of Appeals in the manner provided in ORS 183.480 for the review of orders in contested cases.

329A.370 Injunction. Without the necessity of prior administrative proceedings or hearing and entry of an order or at any time during such proceedings if they have been commenced, the Office of Child Care may institute proceedings to enjoin the operation of any child care facility operating in violation of ORS 181A.200, 329A.030 and 329A.250 to 329A.450 or the rules promulgated pursuant to ORS 181A.195, 181A.200, 181A.215, 329A.030 and 329A.250 to 329A.450.

(Inspection)

329A.390 Inspection; right to enter premises and to inspect records; investigation.

(1) Whenever an authorized representative of the Office of Child Care is advised or has reason to believe that child care that is subject to regulation by the office is being provided without a certification, registration or record, the authorized representative may visit and conduct an on-site investigation of the premises of the facility at any reasonable time to determine whether the facility is subject to the requirements of ORS 181A.200, 329A.030 and 329A.250 to 329A.450.

(2) At any reasonable time, an authorized representative of the Office of Child Care may conduct an on-site investigation of the premises of any certified or registered child care facility to determine whether the child care facility is in conformity with ORS 181A.200, 329A.030 and 329A.250 to 329A.450 and the rules promulgated pursuant to ORS 181A.195, 181A.200, 181A.215, 329A.030 and 329A.250 to 329A.450.

(3) An authorized representative of the Office of Child Care shall conduct an on-site investigation of the premises of any certified or registered child care facility or of any other child care facility that is subject to regulation by the office if the office receives a serious complaint about the child care facility. The Early Learning Council, by rule, shall adopt a definition for "serious complaint."

(4) Any state agency that receives a complaint about a certified or registered child care facility, a preschool recorded program or a school-age recorded program shall notify the Office of Child Care about the complaint and any subsequent action taken by the state agency based on that complaint.

(5) The director and operator of a child care facility, a preschool recorded program or a school-age recorded program shall permit an authorized representative of the office to inspect records of the facility or program and shall furnish promptly reports and information required by the office. [Formerly 657A.390; 2015 c.758 §12]

329A.400 through 329.460 Deleted for purposes of discussion

CHILD CARE PROVIDER TRAINING

329A.490 & 329.493 Deleted for purposes of discussion

EMPLOYMENT-RELATED CHILD CARE

329A.500 & 329A.505 [Deleted for purposes of discussion]

CHILD CARE TAX CREDIT PROGRAM

329A.700 through 329A.718. [Deleted for purposes of discussion]

PENALTIES

329A.990 Criminal penalty. A person who violates ORS 329A.280 commits a Class A misdemeanor. Each day of violation is a separate offense. [Formerly 657A.990]

329A.992 Suspension; revocation; civil penalty; rules; deposit into Child Care Fund.

(1) In addition to any other provision of law or rule adopted pursuant to ORS 329A.260 for enforcement of the provisions of ORS chapter 329A, the Office of Child Care may suspend or revoke a certification or registration issued under ORS 329A.030 and 329A.250 to 329A.450, or impose a civil penalty in the manner provided in ORS 183.745, for violation of:

(a) Any of the provisions of ORS 329A.030 and 329A.250 to 329A.450;

(b) The terms and conditions of a certification or registration issued under ORS 329A.030 and 329A.250 to 329A.450; or

(c) Any rule of the Early Learning Council adopted under ORS 329A.030 and 329A.250 to 329A.450.

(2) The Early Learning Council shall adopt by rule a schedule establishing the civil penalties that may be imposed under this section. The schedule must provide for categories of violations for which a penalty may be imposed, including “nonserious” and “serious” to be defined by the council by rule under ORS 329A.260.

(3) The office must issue a written warning for a nonserious or serious violation before assessing a civil penalty under this section. The written warning must prescribe a reasonable time in which to correct a violation.

(4) The office may not impose a civil penalty of more than \$100 for a first violation.

(5) The office may not impose a civil penalty for a subsequent violation that exceeds the penalty imposed for the previous violation by more than \$100. Penalties imposed under this subsection may not exceed \$500 per violation, or \$1,000 total for multiple violations per quarter.

(6) Notwithstanding any other provision of this section, the maximum civil penalty that may be imposed:

(a) For violation of ORS 329A.330 by a registered family child care home provider is \$100.

(b) For violation of ORS 329A.280 by an operator of a child care facility that is not a child care center is \$200.

(c) For violation of ORS 329A.280 by an operator of a child care facility that is a child care center is \$500.

(7) A civil penalty imposed under this section may be remitted or reduced upon such terms and conditions as the office considers proper and consistent with the public health and safety.

(8) All moneys received under this section shall be deposited in the Child Care Fund established under ORS 329A.010 (4) and may be used for the administration of ORS 181A.200, 329A.030 and 329A.250 to 329A.450.

Note: 329A.992 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 329A or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.