

Rules Materials

Board Action Summary

AGENDA ITEM: Relief Nursery Rules – 1st Reading

Summary of Recommended Board Action

ACTION: No Action – First Reading

ISSUE: Administrative Rule Promulgation – Relief Nursery Programs

The Early Learning Council (ELC) is being updated on the Child Care and Education Committee’s consideration and development of administrative rule recommendations for Relief Nursery programs.

BACKGROUND: Prior to 2012, the State Commission on Children & Families had authority for rule promulgation for Relief nurseries. Funds allocated to relief nurseries by the Commission were treated as grant funds. Since 2012, the ELC has been charged with oversight of early learning programs and the Early Learning Division (Division) administers various early learning programs, including administration of contracts with Relief Nurseries.

The Oregon Association of Relief Nurseries (OARN) is a nonprofit “that works collaboratively and equitably to support and sustain Relief Nurseries statewide.”¹ OARN’s Board of Directors is comprised of Relief Nursery directors. OARN staff certifies Relief Nurseries, provides oversight and conducts annual Relief Nursery evaluations.

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Themes that emerged from the September discussion were:

- Implications of the statutorily required 25% cash match.
- Defining roles of both the Division and the Oregon Association of Relief Nurseries.
- Health, safety and quality standards.
- Relationship between relief nursery service outcomes and Early Learning Hub metrics.
- Governance and funding formula development.
- Possible statutory limitations on the use of state funds

¹ OARN testimony to Early Learning Council, September 2016.

- What constitutes “financial support” to meet the match requirement

Council Engagement:

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- Development of a funding formula.
- The relationship between a Relief Nursery and the regional Hub.

The Council’s discussion centered on the following points or questions:

- How does one become a Relief Nursery?
- Where are they located?
- Who is being served?
- How much of the priority populations are connected to Relief Nurseries across various cultural groups?
- What is the role of the ELC in setting those priority decisions?
- Are there enough Relief Nurseries?
- What is the barrier to expansion?
- What is their place in the system?
- Relief Nurseries are important to the early childhood system as they serve a high need population.
- Necessity to locate Relief Nurseries in specific areas to ensure priority populations are served.
- Ensure funding is targeted so that Relief Nursery services are integrated into the early learning system, not just targeted to an individual Relief Nursery.
- Council wants all programs funded through the state treated consistently and equally both in process and policies.
- Oregon has changed in demographics, funding, the array and ecosystem of what early learning and childhood development is and is comprised of.
- Relief Nurseries now have a “system” to relate to.
- Challenge is to upgrade our thinking, approach and policies to reflect the changing nature of the early learning system and the children and families served, and those unserved.

The Oregon Association of Relief Nurseries presented testimony to Council in September. Their testimony focused on the relationship of Relief Nursery programs to the state’s early childhood system. The testimony referenced Relief Nursery directors’ participation in various statewide committees and workgroups as well as working directly with the regional Early Learning Hubs to “help build this new early childhood system”. Their testimony expressed concern about the ability of the “robust and highly effective Relief Nursery system to thrive within Oregon’s Early Learning Division.” OARN also expressed its expectation that in order for the Relief Nursery system to continue to be successful, the integrity of the Relief Nursery model must be maintained.

OARN articulated the following expectations:

- OARN and the ELD will create a funding formula that is fair and equitable for all certified Relief Nurseries
- OARN will certify Relief Nursery programs to ensure quality of services and fidelity to our therapeutic model.
- Relief Nursery certification is required for programs to receive state Relief Nursery funding.
- The ELD will continue to contract directly with Relief Nurseries and invest in the success of our public/private partnership.

Following the September 2016 CCEC and ELC meetings, a workgroup comprised of representatives of the Early Learning Council, Early Learning Division and Relief Nursery representatives met over the course of five months with the objective of gaining a clearer and shared understanding of the needs of Relief Nurseries, as well as the expectations, the responsibilities and obligations of the Council and the Early Learning Division. The workgroup met between November 2016 and March 2017. The following areas were covered:

- Funding formula: What drives funding decisions? cost per child, per service provided?; how funds are distributed among Relief Nurseries.
- Focus Populations: How to reach under-served children and families.
- Governance and Accountability: The role of ELC, ELD and OARN; Need collaborative relationship.
- The relationship between Relief Nurseries and regional Hubs.
- Certification of Relief Nurseries: Need legal framework when state funds are linked to certification. No expectation or intention to limit what Relief Nurseries are doing under the Relief Nursery model, rather attempting to provide legal framework for the role and relevance of certification.
- Certification and Funding appeals: Need to establish fair and open procedures to manage challenges to the certification process or decisions and fund distribution decisions.

Following the deliberations of the workgroup, the CCEC resumed consideration of Relief Nursery rules on March 9, 2017. CCEC members discussed the following issues:

- Implications of having an external entity responsible for determining certification for state provided funds.
- Establishing certification process and requirements in rule: Creating bifurcated accountability where certification and fidelity to the Relief Nursery model resides with the OARN and accountability for compliance with statute, administrative rule and contract terms resides with the Division.
- The certification process to be outlined in rule to connect accountability to contract terms and funding.
- Establishing a certification appeals process: As certification by OARN is a prerequisite of state funding, an appeals process must be in place for an organization that was refused certification by OARN, and thus not eligible for state funding.

Equity Review: The Equity Implementation Committee (EIC) reviewed conceptual rule language in March 2017. The areas of interest raised by EIC are outlined below. The italicized text explains how the current proposed rule language addresses the areas when possible.

- Whether the certification process is equitable; whether all areas of the state have equal access to implementing a RN program; whether fees charged by OARN for an entity to undergo the certification process preclude some from participating. *(The draft rules attempt to respect and work in concert with the Relief Nursery model. To provide for equal access, the draft rules provide entities an opportunity to challenge OARN's certification decisions to the Division.);*
- Ensuring a strengthened partnership with Hub equity work, identifying and serving target populations and reduce disparities in communities *(see Coordination with the Statewide Early Learning System.);*
- Include a definition of “Culturally responsive supports” or at a minimum require the inclusion of “Principles and guidelines for culturally responsive supports appropriate to the unique needs of the child and family” *(definition added);*
- Whether and why adult child ratios are different from those in licensing standards *(The draft rules attempt to respect and work in concert with the Relief Nursery model. The adult child ratios are specific to and mirror the RN model.);*
- EIC commented that Trauma-informed care (TIC) should apply to all RN services in general not just the therapeutic classroom setting (TCS). *(The draft rules attempt to respect and work in concert with the Relief Nursery model. The model calls out therapeutic classrooms as an integral component, with TIC a required component of the TCS.)*

2017 Legislative Action and Statutory Revisions: SB 314

During the 2017 legislative session and concurrent with CCEC’s deliberations of administrative rule, OARN sought the introduction and passage of SB 314. OARN submitted a request to the Early Learning Division on April 18, 2017 to suspend rulemaking while SB 314 was under consideration by the legislature. The Council agreed to temporarily suspend rulemaking based on the importance of addressing the issues raised in the legislation.

On June 1, 2017, a workgroup convened by Representative John Lively, Chair of the House Early Childhood and Family Supports Committee, met and agreed to a variety of amendments to the bill. Those amendments were adopted by the Legislature.

SB 314:

- Describes service requirements of Relief Nursery programs.
- Describes how public funding to support Relief Nursery programs may be used.
- Requires the Early Learning Council to adopt rules to administer the program including rules requiring that any public funds received by Relief Nursery programs be used to achieve improved child safety, reduction in foster care placements, progress in healthy child development and improvement in family functioning and support.

- Requires Relief Nursery programs to participate in a statewide independent evaluation conducted by the Oregon Association of Relief Nurseries, to evaluate specific outcomes.
- Excludes state asset forfeiture proceeds distributed to Relief Nursery programs from the calculation of amount required for matching community financial support.

ACTION PRECEDING BOARD ACTION:

The CCEC resumed consideration of administrative rules governing Relief Nurseries at its October 12, 2017 meeting. The CCEC reviewed proposed rule language that addresses issues raised at the March meeting and included language to conform to the requirements of SB 314.

Mary Ellen Glynn, Executive Director of OARN, commented on and presented proposed amendments to the draft rule language. Between the October and November CCEC meeting, staff received additional comments on the proposed rule language from OARN. Staff also worked with the Department of Justice to conduct a comprehensive legal review.

Based on feedback received, staff developed proposed rule language for CCEC's consideration in November. The CCEC met on November 9, 2017 and reviewed proposed rule language which included additional comments and proposed revisions submitted by OARN.

The CCEC was able to reach consensus on the majority of the proposed rule language, however was unable to reach consensus on the process for determining funding amounts for individual Relief Nurseries.

ISSUES REMAINING:

The Funding Process: A funding formula is the instrument used to determine the share of legislatively allocated funds for Relief Nurseries that go to a particular Relief Nursery. While the CCEC reached consensus that the Division, in consultation with OARN, will establish this funding formula, the issue of how a Relief Nursery seeks those identified funds remained unresolved.

To ensure appropriate processes are in place, the Division proposes in the draft rule, that a Relief Nursery would "apply" for the funds identified through the funding formula. Because the Division has a fiduciary duty to ensure transparent processes, the Division recommends having an explicit process for distributing state funds which would include a simple step of requesting or "applying" for the funds.

OARN has expressed concern that this represents a "two step" process and is unclear whether the Division would be able to distribute funds without following the formula. Staff asserts that the process for applying for funds is necessary to maintain accountability and transparency on how state funds are distributed. It is not proposed as a means to circumvent the funding formula.

Proposed rule language establishes that OARN is responsible for determining whether a Relief Nursery is eligible (through its certification process) to receive state funds. If a Relief Nursery, or any entity, is not certified by OARN, they are not eligible to receive state funds. Thus, the only entity that would receive state funds would be those entities certified as a Relief Nursery. This process

determines *who* gets funding. The funding formula determines *how much* is distributed to each individual Relief Nursery.

A second unresolved issue is whether OARN or a Relief Nursery has the ability to appeal the funding formula to the Early Learning Council. OARN proposes providing an appeal process. The Division does not believe this is necessary as a) the funding formula will be established by the Division in consultation with OARN which represents Relief Nurseries and for which the Board of Directors is comprised of Relief Nursery directors; b) it is not within the purview or authority of the Council to mediate funding for early learning programs.

Fiscal Analysis: Analysis of fiscal impact of any proposed rules must be assessed through the rule promulgation process. Analysis includes financial impacts of the rules to stakeholders, to small business (defined as a business that is independently owned and operated with 50 or fewer employees) or to local government. Through analysis and CCEC discussion, it was determined the proposed rule revisions will have no additional fiscal impact to Relief Nurseries or OARN given the rule requirements reflect current practice and do not impose additional requirements.

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1 **OREGON DEPARTMENT OF EDUCATION**
2 **EARLY LEARNING DIVISION**
3 **DIVISION 600**

4 **Relief Nurseries DRAFT PROPOSED V.3 11/10/17**

5 **414-600-0005**

6 **Purpose Statement**

7 These rules, OAR 414-600-0005 to 414-600-0120, prescribe the process for determining eligibility and
8 eligibility requirements for Relief Nurseries to receive state funds to provide services to children and
9 families in accordance with ORS 417.788.

10 Stat. Auth.: ORS 326.425(7)

11 Stats. Implemented: ORS 417.788, Chapter 546, 2017 Oregon Laws (SB 314)

12 **414-600-0015**

13 **Definitions**

14 For the purposes of OAR 414-600-0005 to OAR 414-600-0120 the following definitions apply:

15 (1) “Culturally Responsive” means the use of the cultural knowledge, prior experiences, frames of
16 reference, and performance styles of diverse children and families to make services and programs more
17 appropriate and effective for them.

18 (2) “Early Learning Council” means the Council established to oversee a unified system of early learning
19 services and the Early Learning System.

20 (3) “Early Learning Division” or “Division” means the division of the Department of Education that
21 administers programs and funding, collects, and analyzes data, and monitors program and contractor
22 performance and accountability for the Early Learning System.

23 (4) “Early Learning System” means the system created by ORS 417.727 and described in ORS 417.728

24 (5) “OARN” means the Oregon Association of Relief Nurseries.

25 (6) “Regional Early Learning Hub” or “Hub” means an entity designated under ORS 417.827 and
26 contracted by the Early Learning Division to coordinate early learning services in a specific region within
27 the state.

1 (7) “Relief Nursery” means a non-governmental, community-based organization that is tax exempt under
2 IRC section 501(c)(3) that OARN has determined to be eligible to receive state funding in accordance
3 with OAR 414-600-0005 to 414-600-0120.

4 (8) “Therapeutic Early Childhood Program” means a program that includes home visiting, therapeutic
5 classrooms, parent education, support and outreach that provide trauma informed services and interactions
6 to promote the healthy development of children and works to strengthen families who have multiple risk
7 factors and stresses linked to neglect and abuse.

8 (9) “Trauma Informed Services” means services that are reflective of the consideration and evaluation of
9 the role that trauma plays in the lives of people, including recognition of the traumatic effect of
10 misdiagnosis and coercive treatment, are responsive to the vulnerabilities of trauma survivors, avoids re-
11 traumatization and facilitates direction of services.

12 Stat. Auth.: ORS 326.425(7)

13 Stats. Implemented: ORS 417.788, Chapter 546, 2017 Oregon Laws (SB 314)

14 **414-600-0021**

15 **Process to Determine Eligibility to Receive State Funding as a Relief Nursery**

16 (1) A non-governmental, community based organization that is tax exempt under IRC section 501(c)(3)
17 wanting to become a Relief Nursery or an existing Relief Nursery wanting to be determined eligible for
18 state funding must submit the following application materials to OARN by May 15 of each even-
19 numbered year:

- 20 (a) A letter of intent;
- 21 (b) A description of the entity’s governing structure or community group;
- 22 (c) Letters of support from partners;
- 23 (d) Documented evidence of community investment;
- 24 (e) Sample budget, including a plan for 25% cash match and sustainability plan; and
- 25 (f) A description of one or more age groups to be served.

26 (2) Upon receipt of the information and documentation required in OAR 414-600-0030(1), OARN shall
27 complete a comprehensive programmatic and financial assessment of the applicant.

1 (3) OARN shall determine whether an applicant to become a Relief Nursery or an existing Relief Nursery
2 is eligible to receive state funds. Such determination shall be made in accordance with OAR 414-600-
3 0005 to 414-600-0120.

4 (4) Not later than 15 days after a determination is made, OARN must notify the applicant or Relief
5 Nursery and the Division in writing of OARN's determination.

6 Stat. Auth.: ORS 326.425(7)

7 Stats. Implemented: ORS 417.788, Chapter 546, 2017 Oregon Laws (SB 314)

8 **414-600-0025**

9 **Eligibility of Relief Nurseries to Receive State Funding**

10 (1) Upon receiving determination of eligibility, the Division may contract with a Relief Nursery to receive
11 state funds in accordance with ORS 417.788 and OAR 414-600-0005 to 414-600-0120.

12 (2) To be eligible for state funds to carry out the provisions of ORS 417.788, a Relief Nursery must:

13 (a) Meet the definition of a Relief Nursery under OAR 414-600-0015;

14 (b) Comply with and maintain compliance with OAR 414-600-0005 to 414-600-0120 and with the terms
15 of the Relief Nursery's contract with the Division;

16 (c) Operate in accordance with ORS 417.788; and

17 (d) Provide matching community financial support equal to a minimum of 25 percent of funds allocated
18 by the Division for Relief Nursery services prescribed in ORS 417.788 and OAR 414-600-0005 to 414-
19 600-0120.

20 (3) Eligibility to receive state funding is contingent upon a Relief Nursery's compliance with OAR 414-
21 600-0005 to 414-600-0120 and the terms of the Relief Nursery's contract with the Division.

22 Stat. Auth.: ORS 326.425(7)

23 Stats. Implemented: ORS 417.788, Chapter 546, 2017 Oregon Laws (SB 314)

24 **414-600-0031**

25 **Minimum Requirements**

26 (1) A Relief Nursery must:

- 1 (a) Establish and maintain appropriate internal fiscal controls and fund accounting procedures to assure
2 the proper accounting and disbursement of all funds provided by the Division;
- 3 (b) Collect and report data, including but not limited to child and family data including risk factors,
4 demographics, assessments, and abuse and neglect reports in the manner established by the Division;
- 5 (c) Agree to contracted services monitoring reviews and evaluations by Division staff, as deemed
6 necessary by the Division;
- 7 (d) Attend state and local training or meetings as required;
- 8 (e) Collaborate with the Regional Early Learning Hub and the Division in early learning system
9 development and expansion;
- 10 (f) Have an infrastructure that provides oversight, responsibility and resources necessary to provide
11 services on an ongoing basis; and
- 12 (g) Be licensed by the Office of Child Care in accordance with ORS 329A.280.
- 13 (2) Relief Nursery staff who provide direct services to children and families must meet one of the
14 following minimum requirements:
- 15 (a) A Bachelor of Arts degree in Early Childhood;
- 16 (b) A degree in a related field with early childhood teaching experience;
- 17 (c) A combination of an associate's degree, an equivalent step on the Oregon Registry and appropriate
18 experience; or
- 19 (d) A degree in a field other than child development or early childhood education and six courses in child
20 development or early childhood education focusing on children from birth to age five.
- 21 (3) A Relief Nursery shall provide new hire and ongoing training for all staff and volunteers.
- 22 (4) A Relief Nursery shall maintain a ratio of one supervisor to eight direct service staff to provide
23 regular, ongoing supervision and support in child and family case management, personnel issues, and
24 professional development.

25 Stat. Auth.: ORS 326.425(7)

26 Stats. Implemented: ORS 417.788, Chapter 546, 2017 Oregon Laws (SB 314)

27 **414-600-0035**

1 **Core Services**

2 (1) Relief Nursery services must include therapeutic early childhood programs, home visiting, and parent
3 education and support.

4 (2) A therapeutic early childhood program must include the following:

5 (a) Therapeutic classrooms;

6 (b) Focused interventions for children with emotional, social and behavioral concerns or delays;

7 (c) Principles and guidelines for developmentally appropriate practices;

8 (d) Physical, cognitive, social, emotional, and language development supports;

9 (e) Principles and guidelines for culturally responsive supports appropriate to the unique needs of the
10 child and family; and

11 (f) Home visits by the child's classroom teacher conducted as follows:

12 (i) At least monthly for children attending class twice a week; and

13 (ii) Weekly for children attending class once per week, with a duration of 1 to 2 hours.

14 (3) Minimum Hours. A Relief Nursery must operate one or more therapeutic classrooms with the
15 following time periods:

16 (a) A minimum of three hours per week for infants up to 18 months of age; and

17 (b) A minimum of six hours per week for children aged 18 months and older.

18 (4) Class Size and Ratios. A Relief Nursery must provide a minimum of three adults, at least two of
19 whom must be meet the qualifications in accordance with 414-600-0030 (2) for each class of:

20 (a) Six children, not less than 6 weeks but less than to 24 months of age;

21 (b) Eight children, not less than 2 months but less than 36 months of age; and

22 (c) Eleven children, 36 months to 5 years of age.

23 (5) Home visiting must be offered in all Relief Nursery program services.

24 (6) Parent Education and Support. All parents served by a Relief Nursery must be offered parenting
25 education, through home visiting, classes or groups, using culturally appropriate and evidence-based
26 curriculum that is adapted to and appropriate to the needs of the family.

1 (7) Nutritious Meals and Snacks. During program hours, a Relief Nursery must provide nutritious snacks
2 and meals following United States Department of Agriculture standards for nutrition.

3 (8) Ongoing Child Screenings and Assessments. Relief Nurseries shall regularly screen and assess all
4 children for appropriate development using research-based, culturally and linguistically appropriate
5 developmental screening.

6 (9) Basic Needs Support and Services. Relief Nurseries shall provide resource referral, short- and long-
7 term problem solving, and emergency food and clothing to children and families served by the Relief
8 Nursery, as those supports and services become available.

9 Stat. Auth.: ORS 326.425(7)

10 Stats. Implemented: ORS 417.788

11 **414-600-0041**

12 **Monitoring Compliance; Eligibility Review**

13 (1) A Relief Nursery eligible to receive state funds shall be subject to annual eligibility reviews and
14 monitoring.

15 (2) OARN may conduct site visits at any time to assist Relief Nurseries in maintaining funding eligibility
16 and compliance with OAR 414-600-0005 to 414-600-0120.

17 (3) OARN shall conduct annual Relief Nursery programmatic and financial eligibility reviews and
18 monitoring consisting of site visits and observations of applicant's facility and classrooms and interviews
19 with directors, managers, direct service staff, board members, community partners, and parents associated
20 with the Relief Nursery's facility, as well as a review of documents.

21 (4) OARN shall provide annual review and monitoring reports to the Division to verify Relief Nursery
22 compliance with OAR 414-600-0005 to 414-600-0120 including programmatic and financial assessments
23 and documented site visit observations.

24 (5) Based on eligibility reviews and monitoring reports received by OARN, and when necessary, the
25 Division will work collaboratively with OARN to bring a Relief Nursery into compliance with these rules
26 and the terms of the Relief Nursery's contract with the Division.

1 (6) The Division shall notify OARN in writing if a Relief Nursery fails to comply with OAR 414-600-
2 0005 to 414-600-0120 or the terms of the Relief Nursery’s contract with the Division.

3 (7) Upon receiving notification that a Relief Nursery is out of compliance with OAR 414-600-0005 to
4 414-600-0120 or the terms of the Relief Nursery’s contract with the Division, OARN shall initiate a
5 review of the Relief Nursery’s eligibility determination and take corrective action to bring the Relief
6 Nursery into compliance.

7 (8) As part of the annual eligibility review and monitoring, OARN shall ensure through written
8 verification from the Division that the Relief Nursery is in compliance with OAR 414-600-0005 to 414-
9 600-0120 and the terms of the Relief Nursery’s contract with the Division.

10 (9) A Relief Nursery that does not receive verification of compliance from the Division may be deemed
11 by the Division to be ineligible for state funding.

12 Stat. Auth.: ORS 326.425(7)

13 Stats. Implemented: ORS 417.788, Chapter 546, 2017 Oregon Laws (SB 314)

14 **414-600-0043**

15 **Eligibility Appeals**

16 (1) An applicant or Relief Nursery that OARN determines is not eligible to receive state funding as a
17 Relief Nursery may appeal OARN’s eligibility determination in the manner provided in this rule.

18 (2) Initial Appeal to OARN.

19 (a) To initiate an appeal of an eligibility determination made by OARN, an applicant or Relief Nursery
20 must submit a written appeal request to OARN within 30 calendar days after the date that OARN issues
21 the eligibility determination letter. The appeal must identify the issues that are the subject of the appeal.

22 (b) An appeal of an eligibility determination is limited to whether OARN’s determination comported with
23 the requirements of OAR 414-600-0015 to 414-600-0120.

24 (c) Upon receipt of a written appeal request, OARN shall notify the Division of the request and create an
25 appeal file. OARN must maintain all records and documents relating to the appeal and provide copies of
26 all records and documents relating to the appeal to the Division upon request by the Division.

1 (d) OARN’s review shall be conducted by individuals who did not participate in the initial eligibility
2 determination at issue in the appeal.

3 (e) OARN shall notify the applicant or Relief Nursery and the Division of OARN’s decision in writing
4 within 30 calendar days of receipt of the appeal request.

5 (3) Request for Division Review.

6 (a) If an applicant or Relief Nursery determined not eligible by OARN to receive state funds is not
7 satisfied with the outcome of the applicant’s or Relief Nursery’s appeal to OARN, the applicant or Relief
8 Nursery may request a review of OARN’s determination by the Division.

9 (b) A request for Division review must be received in writing by the Division within 30 days of the date
10 that OARN’s written determination notification was issued.

11 (c) An applicant’s or Relief Nursery’s request for Division review must identify in writing the
12 determination made by OARN, describe the alleged error in OARN’s determination and provide
13 information to support the applicant’s or Relief Nursery’s disagreement with the determination.

14 (d) The Division makes all final decisions on eligibility determination appeals. The Division’s review and
15 decision are limited to whether OARN’s initial eligibility determination comported with the requirements
16 of OAR 414-600-0015 to 414-600-0120 and otherwise comports with applicable law.

17 Stat. Auth.: ORS 326.425(7)

18 Stats. Implemented: ORS 417.788, Chapter 546, 2017 Oregon Laws (SB 314)

19 **414-600-0045**

20 **Conditions and Process for Revocation of Eligibility; Revocation Appeals**

21 (1) OARN may revoke a Relief Nursery’s eligibility to receive state funding if OARN determines that the
22 Relief Nursery no longer meets eligibility requirements in accordance with OAR 414-600-0015 to 414-
23 600-0120.

24 (2) A Relief Nursery whose eligibility to receive state funding is revoked by OARN may appeal the
25 revocation in the manner provided in this rule.

26 (3) Initial Appeal to OARN.

1 (a) To initiate an appeal of a revocation of eligibility, a Relief Nursery must submit a written appeal
2 request to OARN within 30 calendar days of the date that OARN issues its proposed revocation of
3 eligibility decision letter.

4 (b) An appeal of a revocation decision is limited to whether OARN's decision to revoke was based on the
5 eligibility requirements in accordance with OAR 414-600-0015 to 414-600-0120.

6 (c) A Relief Nursery's appeal must identify how the Relief Nursery believes OARN misapplied the
7 eligibility requirements of OAR 414-600-0015 to 414-600-0120 and how that error led to OARN's
8 revocation of eligibility.

9 (d) Upon receipt of a written appeal request, OARN shall notify the Division of the request and create an
10 appeal file. OARN must maintain all records and documents relating to the appeal and provide copies of
11 all records and documents relating to the appeal to the Division upon request by the Division.

12 (e) OARN's review shall be conducted by individuals who did not participate in the revocation
13 determination at issue in the appeal.

14 (f) OARN shall notify the Relief Nursery and the Division of its decision in writing within 30 calendar
15 days of receipt of the appeal request.

16 (3) Request for Division Review.

17 (a) If a Relief Nursery is not satisfied with the outcome of its appeal to OARN, the Relief Nursery may
18 request a review of OARN's decision by the Division.

19 (b) The request for Division review must be received in writing by the Division within 30 days of the date
20 that OARN's written decision notification was issued.

21 (c) A Relief Nursery's request for Division review must identify in writing the decision made by OARN,
22 describe the alleged error in OARN's decision and provide information to support the Relief Nursery's
23 disagreement with the decision.

24 (d) The Division makes all final decisions on revocation determinations. The Division's review and final
25 decision are limited to whether OARN's revocation decision comported with the requirements of OAR
26 414-600-0015 to 414-600-0120, and otherwise comports with applicable law.

27 Stat. Auth.: ORS 326.425(7)

1 Stats. Implemented: ORS 417.788, Chapter 546, 2017 Oregon Laws (SB 314)

2 **414-600-0051**

3 **Funding**

4 (1) The Division, in consultation with OARN, shall establish a methodology and formula for allocation of
5 legislatively appropriated funds. The Division shall document the methodology and factors considered in
6 the development of the funding allocation formula. The Division shall make all final decisions on the
7 allocation formula.

8 (2) State funds allocated to a Relief Nursery in accordance with ORS 417.788 must be used to:

9 (a) Improve child safety;

10 (b) Reduce foster care placements;

11 (c) Improve healthy child development; and

12 (d) Improve family supports resulting in improved family functioning.

13 (3) A Relief Nursery's request for state funding must be submitted to the Division on forms prescribed
14 by the Division. The Division shall make all final decisions on a Relief Nursery's request for state
15 funding.

16 (4) A Relief Nursery's failure to comply with OAR 414-600-0015 to 414-600-0120 or the terms of the
17 Relief Nursery's contract with the Division may result in termination of the Relief Nursery's contract
18 with the Division and associated state funds at the Division's sole discretion.

19 Stat. Auth.: ORS 326.425(7)

20 Stats. Implemented: ORS 417.788, Chapter 546, 2017 Oregon Laws (SB 314)

21 **414-600-0055**

22 **Funding Appeals**

23 (1) A Relief Nursery may appeal a funding decision made by the Division in the manner provided in this
24 rule.

25 (2) A Relief Nursery must submit a written request for review to the Division within 30 calendar days of
26 the date that the Division issued the funding decision letter.

1 (3) A Relief Nursery’s appeal request must clearly identify in writing the reason the Relief Nursery
2 disagrees with the funding decision.

3 (4) The Early Learning System Director shall initiate a review of the funding decision and notify the
4 Relief Nursery of the decision within 30 days of receipt of the appeal request.

5 (5) The Early Learning System Director shall make all final decisions on funding appeals.

6 Stat. Auth.: ORS 326.425(7)

7 Stats. Implemented: ORS 417.788, Chapter 546, 2017 Oregon Laws (SB 314)

8 **414-600-0061**

9 **Coordination with the Early Learning System**

10 (1) To ensure Relief Nursery programs and services are consistent with the Early Learning System
11 created by and described in ORS 417.727 and 417.728, a Relief Nursery receiving state funds shall:

12 (a) Coordinate and work collaboratively with the Regional Early Learning Hub to ensure that the Relief
13 Nursery’s program and services are consistent and aligned with the goals of the Early Learning System;

14 (b) Collaborate with the Regional Early Learning Hub to align strategies to meet the needs of children and
15 families in focus populations identified by the Hub and Relief Nursery. The strategies must take into
16 account the Relief Nursery’s capacity, community priorities, initiatives and opportunities, and available
17 resources; and

18 (c) Coordinate with the Regional Early Learning Hub, health, human and other early learning programs to
19 plan, develop and implement an early childhood system of supports and services to achieve positive
20 outcomes for focus populations, maximize the effective use of available resources and avoid duplication
21 of services.

22 (2) For the purposes of this section “Focus Populations” means children or families with a child or
23 children who is at risk of entering foster care due to multiple factors, including but not limited to:

24 (a) Living in a household that is at or near poverty, as determined under federal poverty guidelines;

25 (b) Living in inadequate or unsafe housing;

26 (c) Having inadequate nutrition;

- 1 (d) Living in a household where there is significant or documented domestic conflict, disruption or
2 violence;
- 3 (e) Having a parent who suffers from mental illness, who engages in substance abuse or who experiences
4 a developmental disability or an intellectual disability;
- 5 (f) Living in circumstances under which there is neglectful or abusive care-giving;
- 6 (g) Having unmet health care and medical treatment needs; or
- 7 (h) Having a racial or ethnic minority status that is historically consistent with disproportionate over-
8 representation in academic achievement gaps or in the systems of child welfare, foster care or juvenile or
9 adult corrections.

10 (3) OARN shall notify the Division of any changes in leadership, budget or location of any Relief
11 Nursery.

12 Stat. Auth.: ORS 326.425(7)

13 Stats. Implemented: ORS 417.788, Chapter 546, 2017 Oregon Laws (SB 314)

14 **414-600-0105**

15 **Reporting**

16 (1) A Relief Nursery shall provide information and data demonstrating program compliance to the
17 Division upon request and in a manner provided by the Division.

18 (2) A Relief Nursery must develop and record individual child goals in the child's records.

19 Stat. Auth.: ORS 326.425(7)

20 Stats. Implemented: ORS 417.788, Chapter 546, 2017 Oregon Laws (SB 314)

21 **414-600-0115**

22 **Mandatory Reporters**

23 A Relief Nursery, Relief Nursery staff and other providers having reasonable cause to believe that any
24 child with whom the provider or program staff comes into contact has suffered or is suffering from abuse

1 or neglect shall report or cause a report to be made in the manner described in ORS 419B.005 to
2 419B.015.

3 Stat. Auth.: ORS 326.425(7)

4 Stats. Implemented: ORS 417.788, Chapter 546, 2017 Oregon Laws (SB 314)

5 **414-600-0120**

6 **Confidentiality of Child and Family Data**

7 (1) All personal information maintained by a Relief Nursery relating to a child or family served by the
8 Relief Nursery in one or more locations and in various forms, reports or documents, or stored or
9 transmitted by electronic media shall be treated as confidential.

10 (2) A Relief Nursery must obtain a completed and signed authorization for release of information from
11 the parent or guardian of the child served by the Relief Nursery before obtaining or using protected
12 information about the child from a third party or disclosing protected information about the child to a
13 third party.

14 (3) Any use or disclosure must be consistent with the purposes for which the parent or guardian
15 authorized use or disclosure by the Relief Nursery.

16 (4) Anonymous aggregated data may be shared among the Division, Regional Early Learning Hubs and
17 Relief Nurseries to effectively serve children and families in the Early Learning Hub region.

18 Stat. Auth.: ORS 326.425(7)

19 Stats. Implemented: ORS 417.788; Chapter 546, 2017 Oregon Laws (SB 314)

Board Action Summary

AGENDA ITEM: Administrative Rules Child Care Contribution Tax Credit Program

Summary of Recommended Board Action

ACTION: First Reading

ISSUE: Administrative Rules for Child Care Contribution Tax Credit Program

Proposed administrative rule language is being presented to the Council for first reading.

BACKGROUND: In 2003, the state legislature enacted the Oregon Child Care Contribution Tax Credit to improve the quality of child care programs through education awards and quality improvement grants. The Early Learning Division is authorized to issue tax credit certificates up to \$500,000 in total certificates per year. By making a contribution to the program, taxpayers receive an Oregon state tax credit of 50 cents for each dollar contributed. The credit claimed cannot exceed the lesser of 50 percent of the amount contributed in the tax year or the tax liability of the taxpayer for the tax period in which the credit is claimed. The Child Care Contribution Tax Credit has a sunset date of January 1, 2022.

Past and present contributions have been disbursed to individuals through education awards and to licensed providers engaged in Spark. Supported activities include quality improvement dollars for center and family-based care facilities. Less than three percent of tax credit dollars have been spent on administration of the program.

Legislation passed in 2015 limited the amount that can be claimed against a taxpayer's liability to 50 percent. Prior to passage of HB 2171 in 2015, the amount was set by the Early Learning Council by rule.

During the 2017 legislative session, the Oregon Legislature amended the Child Care Contribution Tax Credit. HB 3066 provided technical fixes to the statutes governing administration of the tax credit. The bill removed erroneous statutory language and added language to support strategies identified following enactment of the tax credit program.

Rule revisions to be considered will align existing rule with these statutory changes.

ACTION PRECEDING BOARD ACTION:

The CCEC considered proposed rules at its November 9, 2017 meeting and forwards the rule set for Council's first reading.

FISCAL IMPACT:

Staff determined the proposed amendments to these administrative rules will have no fiscal impact on state agencies, units of local government or the public; will add no additional requirements to small businesses and industries; small businesses will not be subject to these rules; will add no additional record keeping or other administrative requirements, and no professional services, equipment, supplies, labor or increased administration is required for compliance.

BOARD MEMBER PRESENTING REPORT FOR ADOPTION: Bobbie Weber

CONTACT: Dawn Woods, Child Care Director, Sandy Gorsage, Program Development Specialist, Office of Child Care, Lisa Pinheiro, Early Learning Policy Analyst, ELD

1 OREGON DEPARTMENT OF EDUCATION

2 EARLY LEARNING DIVISION

3 Division 700

4 Child Care Contribution Tax Credit Program

5 PROPOSED DRAFT 11.09.17 V.1

6
7 **414-700-0000**

8 **Purpose**

9 (1) The purpose of these rules is provide guidance for administration of the child care
10 contribution tax credit program as authorized in ORS 314.752, 315.~~202-213~~ and 318.031 and
11 Section 10, chapter 682, Oregon Laws 1987, Section 87, chapter 625, Oregon Laws 1989 and
12 ORS Chapter 329A.700 to 329A.718. ~~The child care contribution tax credit was enacted by the~~
13 ~~2003 legislature to:~~

14 ~~(12)~~ The intent of the tax credit and use of the contributions are to:

15 (a) Encourage taxpayers to make contributions to the Office of Child Care by providing a
16 financial return on qualified contributions and by soliciting other contributions.

17 (2b) Achieve specific and measurable goals for targeted communities and populations.

18 ~~(3) Set standards for the child care industry concerning the cost of providing quality, affordable~~
19 ~~child care.~~

20 (4c) Strengthen the viability and improve the professional development of child care providers.
21 ~~continuity of child care providers while making child care more affordable for low and moderate~~
22 ~~income families.~~

23 (d) Encourage child care providers or programs to increase the quality of child care.

24 Statutory/Other Authority: ORS 329A.706

25 Statutes/Other Implemented: ORS 329A.700-329A.718

26

1 **414-700-0010**

2 **Definitions**

3 (1) "Child care provider" means a provider, for compensation, of care, supervision or guidance to
4 a child on a regular basis in a center or in a home other than the child's home. Child care provider
5 does not include a person who is the child's parent, guardian or custodian.

6 (2) "Division" or "ELD" means the Early Learning Division of the Oregon Department of
7 Education.

8 (3) "Office of Child Care" or "OCC" means the Office of Child Care of the Early Learning
9 Division.

10 (4) "Employment Related Day Care Program" or "ERDC Program" means a subsidy program
11 within the Oregon Department of Human Services which helps low-income families pay for
12 child care while they are working.

13 ~~"Community" means a recognized unit of government, service delivery area or other commonly~~
14 ~~recognized area or region within the state of Oregon.~~

15 (3) ~~"Community agency" means a nonprofit agency that:~~

16 (a) ~~Provides services related to child care, children and families, community development or~~
17 ~~similar services; and~~

18 (b) ~~Is eligible to receive contributions that qualify as deductions under section 170 of the Internal~~
19 ~~Revenue Code.~~

20 (45) "High quality child care" means child care that meets standards for high quality child care
21 established or approved by the Early Learning Council.

22 (56) "Qualified contribution" means a contribution made by a taxpayer to the Office of Child
23 Care ~~or a selected community agency~~ for the purpose of promoting high quality child care, and
24 for which an application is submitted for a tax credit certificate.

1 | (~~67~~) "Tax credit certificate" means a certificate issued by the Office of Child Care to a taxpayer
2 | to qualify the taxpayer for a tax credit.

3 | ~~(7) "Tax credit marketer" means an individual or entity selected by the Office of Child Care to~~
4 | ~~market tax credits to taxpayers.~~

5 | Statutory/Other Authority: ORS 329A.706
6 | Statutes/Other Implemented: ORS 329A.700-329A.718
7 |

8 | **414-700-0020**
9 | **Advisory Committee**

10 | ~~(1) The Early Learning Division shall guide and direct the implementation of this program in~~
11 | ~~collaboration with an advisory committee established by the Office of Child Care.~~

12 | ~~(2) The advisory committee shall be comprised of representatives of state agencies, local~~
13 | ~~organizations, advocates, and consumers with experience or interest in tax credit programs, high~~
14 | ~~quality child care, or community development.~~

15 | ~~Statutory/Other Authority: ORS 657A.706~~
16 | ~~Statutes/Other Implemented: ORS 657A.700-657A.718~~
17 |

18 | **414-700-0030**
19 | **~~Community Agencies~~ Distribution of Funds**

20 | ~~(1) Child Care providers may apply to receive funds using the application form available from~~
21 | ~~the Division.~~

22 | ~~(2) The Division or its designated entity shall disburse funds to support professional~~
23 | ~~development activities of eligible child care providers in the state.~~

24 | ~~(1) The Office of Child Care shall select one or more community agencies that, in the judgment~~
25 | ~~of the Office and based on the criteria set forth in OAR 414-700-0050(a) through (d), will best~~
26 | ~~serve the interests of their community.~~

27 | ~~(2) Community agencies shall:~~

- 1 ~~(a) Disburse moneys to child care providers in their community;~~
- 2 ~~(b) Coordinate an application process by which persons may apply to be participating providers~~
- 3 ~~as described in 414-700-0060;~~
- 4 ~~(c) Enter into agreements with participating providers under which the duties and responsibilities~~
- 5 ~~of providers and the community agency are stated;~~
- 6 ~~(d) Provide or coordinate required training for participating providers;~~

7 Statutory/Other Authority: ORS 329A.706
8 Statutes/Other Implemented: ORS 329A.700-329A.718
9

10 **414-700-0040**
11 **Application and Renewal Process for Community Agencies**

12 ~~(1) A community agency desiring to represent a community described in OAR 414-700-0030~~
13 ~~shall submit an application to the Office of Child Care, in a form prescribed and provided by the~~
14 ~~Office of Child Care. The application will demonstrate and describe the agency's experience and~~
15 ~~abilities in the following areas:~~

16 ~~(a) Financial soundness, net worth, cash flow, and accounting capacity to manage a tax credit~~
17 ~~program.~~

18 ~~(b) Demonstrated ability to serve low and moderate income families.~~

19 ~~(c) A governing board that is stable, has experience with financial matters, is representative of~~
20 ~~the community, and has a history of collaboration with other agencies in the community.~~

21 ~~(d) An executive officer and staff with skill and experience in child care business management~~
22 ~~and small business development.~~

23 ~~(2) The Office of Child Care, in collaboration with the advisory committee established in OAR~~
24 ~~414-700-0020, shall select a community agency to represent a community.~~

~~(3) A selected community agency shall enter into a written agreement with the Child Care Division that specifies the duties and performance expectations required of the agency.~~

~~Statutory/Other Authority: ORS 329A.706
Statutes/Other Implemented: ORS 329A.700-329A.718~~

414-700-0050
Distribution of Funds to Community Agencies

~~(1) The Office of Child Care shall determine the total value of moneys to be available to each selected community agency to distribute to providers based on goals established for the program by the Office of Child Care, in collaboration with the advisory committee established in OAR 414-700-0020 and transmit those determinations to the selected community agencies of each year.~~

~~(2) The Office of Child Care shall distribute moneys to the community agencies in a manner that will facilitate timely implementation of the program in that community.~~

~~(3) The total value of moneys available to all selected community agencies may not exceed the amount of contributions received from taxpayers during the tax year, minus any reasonable administrative costs incurred by the Office of Child Care and the selected community agencies.~~

~~(4) Distributions shall be made to selected community agencies in the proportion that the Office of Child Care determines best promotes the provision of child care in the state.~~

~~Statutory/Other Authority: ORS 657A.706
Statutes/Other Implemented: ORS 657A.700-657A.718~~

414-700-0060
Participating Provider Eligibility Requirements

(1) To be eligible for disbursements ~~under this program~~, child care providers shall:

(a) Be an individual or supervisor providing direct care to children under the age of 13 for at least 20 hours a week.

1 (b) Achieve a step 3 or higher on the Oregon Registry; and

2 (c) Be regulated by the Office of Child Care; or

3 (bd) Accept children for whom child care is paid for through Oregon Department of Human
4 Services' subsidyERDC program;

5 ~~(e) Provide high quality child care as defined by the Early Learning Council in collaboration~~
6 ~~with the advisory council;~~

7 ~~(d) Maintain adequate liability insurance, financial records and parent policies and contracts; and~~

8 ~~(e) Permit the community agency to conduct visits for monitoring purposes.~~

9 ~~(2) If the provider is a home-based business, the provider shall meet the following requirements~~
10 ~~in addition to those in subsection (1) of this section:~~

11 ~~(a) Enter into an agreement with the community agency to continue to provide child care~~
12 ~~services for at least two additional years; and~~

13 ~~(b) Provide care to children from at least two families that have incomes of 85 percent or less of~~
14 ~~the median income for the region.~~

15 ~~(3) If the provider is a child care center, at least 25 percent of the families served by the center~~
16 ~~must have incomes that are 85 percent or less of the median income for the region.~~

17 ~~(4) In selecting participating child care providers, selected community agencies must give~~
18 ~~preference to providers that provide child care to low and moderate income families.~~

19 ~~(5) For care provided to children of families whose income does not exceed the level established~~
20 ~~by the community agency pursuant to ORS 657A.715(2)(g), the fee charged to the family by an~~
21 ~~eligible provider shall not exceed ten percent of the family's gross monthly income.~~

22 ~~Statutory/Other Authority: ORS 657A.706~~

23 ~~Statutes/Other Implemented: ORS 657A.700–657A.718~~

24

1 **414-700-0070**

2 **Distribution of Funds to Participating Providers**

3 ~~(1) The selected community agency shall identify providers in the community that meet the~~
4 ~~requirements of OAR 414-700-0060 for the purpose of distribution of moneys. The selected~~
5 ~~community agency shall develop a process by which child care providers apply to receive~~
6 ~~distributions of moneys from contributions made by taxpayers.~~

7 ~~(2) By the end of each calendar year, the selected community agency must distribute to~~
8 ~~participating child care providers all moneys available to the community as a result of this~~
9 ~~program. Distributions shall be based on:~~

10 ~~(a) The actual costs of providing quality, affordable child care in the community for which~~
11 ~~distributions are being made, including training costs, operating expenses and wages.~~

12 ~~(b) The incomes of the families the provider serves and the child care fees the provider charges.~~

13 ~~(3) The selected community agency shall, through a process approved by the Child Care~~
14 ~~Division, determine the amount of moneys each eligible provider receives.~~

15 ~~(4) A substantial portion of the moneys shall be distributed to providers who operate home-based~~
16 ~~child care businesses.~~

17 ~~Statutory/Other Authority: ORS 657A.706~~

18 ~~Statutes/Other Implemented: ORS 657A.700—657A.718~~

20 **414-700-0080**

21 **Allocation of Certificates**

22 ~~(1) Tax credit certificates shall be available to taxpayers on a statewide basis. The Office of~~
23 ~~Child Care shall allocate tax credit certificates to taxpayers that make qualified contributions to~~
24 ~~the Child Care Fund.~~

25 ~~(2) If a taxpayer makes a contribution to the Office of Child Care for the purpose of receiving a~~
26 ~~tax credit under this program, the taxpayer shall submit an application for a tax credit certificate~~
27 ~~with the contribution. The applications shall:~~

1 ~~(a) Be available to taxpayers from the Office of Child Care; and~~

2 ~~(b) Be submitted by December 31 of each year.~~

3 ~~(3) Contributions made under this subsection shall be deposited in the Child Care Fund.~~

4 ~~(4) The Office of Child Care shall consider applications for tax credit certificates in the~~
5 ~~chronological order in which the applications are received by the Office of Child Care. The~~
6 ~~division shall issue tax credit certificates to applicants until the total credit value of all~~
7 ~~certificates issued by the division for the calendar year equals \$500,000. Each issued certificate~~
8 ~~shall state the value of the contribution being certified as eligible for the tax credit allowed under~~
9 ~~ORS 315.213.~~

10 ~~(5) The Office of Child Care may not issue a tax credit certificate to a taxpayer to the extent the~~
11 ~~claim for credit in the application, when added to the total credit value previously certified by the~~
12 ~~Office of Child Care exceeds the \$500,000 tax credit value available for the calendar year~~
13 ~~requested.~~

14 ~~(6) A taxpayer who receives a notice of denial of a tax credit certificate or that receives a tax~~
15 ~~credit certificate issued for an amount that is less than the amount contributed may request a~~
16 ~~refund for the amount contributed within 90 days of the Office of Child Care's denial or issuance~~
17 ~~of the certificate.~~

18 ~~(a) The Office of Child Care shall send notice of a denial or changed amount and refund the~~
19 ~~amount for which a tax credit will not be granted within 30 days after receiving the request.~~

20 ~~(b) The refund shall be made from the Child Care Fund.~~

21 ~~(7) The Office of Child Care shall send a copy of all tax credit certificates issued to the~~
22 ~~Department of Revenue.~~

23 ~~Statutory/Other Authority: ORS 657A.706~~

24 ~~Statutes/Other Implemented: ORS 657A.700–657A.718~~

25

1 **414-700-0090**

2 **Taxpayer Requirements**

3 ~~(1) A credit against the taxes otherwise due under ORS Chapter 316 or, if the taxpayer is a~~
4 ~~corporation, under ORS Chapter 317 or 318, is allowed to a taxpayer for certified contributions~~
5 ~~made to the Office of Child Care under OAR 414-700-0080.~~

6 ~~(a) The amount of a tax credit available to a taxpayer for a tax year shall equal the amount stated~~
7 ~~in the tax credit certificate.~~

8 ~~(b) The tax credit may not exceed the tax liability of the taxpayer for the tax year in which the~~
9 ~~credit is claimed.~~

10 ~~(2) Any tax credit not used by the taxpayer in a particular tax year may be carried forward and~~
11 ~~offset the taxpayer's tax liability in any of the four succeeding tax years. The credit cannot be~~
12 ~~carried forward for any tax year thereafter.~~

13 ~~(a) A taxpayer shall retain the tax credit certificate received under OAR 414-700-0080 with their~~
14 ~~copy of their tax return filed with the state Department of Revenue for the tax year in which the~~
15 ~~tax credit certificate applies.~~

16 ~~(b) A credit under this section may be claimed by a non-resident or part-year resident without~~
17 ~~proration.~~

18 ~~(3) The credit allowed under this section is in addition to, and not in lieu of, any credit or~~
19 ~~deduction allowable under ORS chapters 316, 317, or 318 for charitable contributions and~~
20 ~~contributions made in relation to child care.~~

21 ~~(4) If a taxpayer makes a contribution to the Office of Child Care but does not want to receive a~~
22 ~~tax credit, the taxpayer may receive only deductions and credits otherwise allowed for a~~
23 ~~charitable contribution.~~

24 ~~(5) Contributions made under this program shall be deposited in the Child Care Fund established~~
25 ~~under ORS 329A.010.~~

- 1 | ~~Statutory/Other Authority: ORS 657A.706~~
- 2 | ~~Statutes/Other Implemented: ORS 657A.700–657A.718~~