

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.

Between June and September 2016, the Child Care and Education Committee (CCEC), serving as the Council's Rules Advisory Committee, discussed various policy concepts including the Division's responsibilities for administering Relief Nursery contracts and responsibilities of the Oregon Association of Relief Nurseries. Relief Nurseries were well represented on the CCEC. Tim Rusk, past OARN president and Executive Director of MountainStar Family Relief Nursery in Bend, serves as a regular member. CCEC Chair Bobbie Webber invited Kelly Sutherland, Executive Director of Relief Nursery Inc., Eugene, to serve ad hoc during this rule work. Donalda Dodson, ELC Council member and member of the Best Beginnings Committee as well as Christy Cox, also a member of the Best Beginnings Committee, served ad hoc.

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:

The Early Learning Council was briefed on Relief Nursery rulemaking at its September 2016 meeting. Issues brought to the Council included:

- 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 PRECEEDING 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.