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Date: December 14, 2017

To: Child Care and Education Committee

From: Lisa Pinheiro, Early Learning Policy Analyst; Alyssa Chatterjee, Early Learning Council Administrator

RE: Relief Nursery rulemaking: Early Learning Council 1st Reading feedback & re-referral to CCEC

On Thursday, November 16, 2017, the Early Learning Council held a first reading of the proposed administrative rules for Relief Nurseries (V.3, dated 11/10/17).

During the Council meeting, the Oregon Association of Relief Nurseries (OARN) provided public comments (see attached). In their testimony, OARN sought additional revisions to the rules. This memo summarizes OARN's proposed revisions. The Early Learning Council refers three of these issues back to the CCEC for consideration and the remaining three will be considered by the Council. Rule language will be created based on CCEC's considerations.

1) Exceptions to Staff Qualifications: OAR 414-600-0031

OARN seeks an allowable exception to this rule, to be granted by Relief Nursery directors, in special circumstances and under the condition a two-year Professional Development and Training Plan is written and implemented and more intense training and supervision during the two-year training period.

OARN cites a discrepancy in access to education among minority populations and rural communities.

Considerations:

Data supports OARN's statement. The Council and Division's equity principles also support efforts to acknowledge and address these challenges while not hindering a community's efforts to meet the needs of children and families by experienced and qualified staff.

It is unclear as to whether allowing Relief Nursery Directors authority to grant exceptions would be an allowable delegation of authority.

Typically, when an administrative rule exception is allowed, the Division would be responsible for establishing conditions under which an exception would be allowed to its rules.

If an exception is granted, the Division would be responsible for monitoring whether the two-year Professional Development and Training Plan is written and implemented, the plan should be submitted to and approved by the Division.



Additionally, by APA standards, “more intense training” is not sufficiently descriptive to provide consistency among Relief Nurseries subject to the rules to ensure the rule is applied equitably and transparently across Relief Nurseries. The rule should be defined in more precise terms.

Staff Recommendation: Allow for an exception to be granted by the Division in circumstances and conditions established in rule. Allow the Relief Nursery director to establish and submit to the Division for approval the two-year professional development and training plan, which would include a description of “more intense” or additional training to be achieved. CCEC direct staff to align with Preschool Promise waiver conditions or work with OARN to review their current hiring requirements. These exceptions will be written into rule and presented to the ELC in January.

2) Classroom Age Discrepancy: 414-600-0035

OARN identifies a discrepancy in the current rule language between how a classroom is defined for the purposes of the minimum hours a classroom must operate and the class size and ratios requirement.

Staff Recommendation: Make the suggested change in the proposed rule language.

3) Annual Reviews vs. 4-Year “Recertification”: 414-600-0041

In section (3) OARN proposes a four year programmatic and financial eligibility review and monitoring rather than annual. Current rule language requires an annual review which consists of site visits, observations of the facility and classrooms, interviews and review of documents.

OARN states their process is similar though site visits are not conducted annually for each Nursery due to limited staff capacity within OARN.

Related to OARN’s proposed revision of section (3), section (4) requires OARN to provide annual eligibility review and monitoring reports to the Division. OARN proposes revising the language to eliminate the requirement to submit *documented site visit reports* in this annual report.

Considerations:

- Alignment with Relief Nursery contract terms and duration
- What schedule is appropriate to ensure lawful and effective use of state funds allocated to early learning programs
- Consistency with other programmatic, financial monitoring requirements for all early learning programs.
- Relief Nurseries would also have annual licensing visits and ELD visits by contract administrators.

Staff Recommendation: Maintain the annual reviews but reduce the number of required site visits from annual to every four years, in alignment with OARN’s current recertification practices.



Additional Considerations for the Early Learning Council – Informational Purposes for CCEC

4. Funding Distribution Process: 414-600-0051

While the Council is not requesting CCEC take up an additional issue brought forth by OARN during public testimony, OARN reiterated their request to amend language regarding the Funding Distribution Process (414-600-0051). OARN raised this issue and it was discussed during the CCEC's November meeting. The CCEC did not reach consensus at that time. It will be taken up by the Council in January. Some proposed language may include: A Relief Nursery's request for the release of allocated funds decided by the allocation formula must be submitted to the Division on forms prescribed by the Division. The Division shall make all final decisions on a Relief Nursery's request for state funding.

5. Appealing Funding Distribution Process: 414-600-0051

OARN brought forth another issue during public testimony that the Council is not requesting CCEC to take up, which is the Early Learning Council's role in the appeals process. OARN requested they may appeal the Division's funding allocation formula and decision regarding the amount each Relief Nursery receives to the Council.

6. Focus Populations: 414-600-0061

The Early Learning Council requested additional information when considering the definition of "focus populations" in this rule set. Council members were concerned that it was inconsistent with the definition of "at-risk" and "focus populations" for other early learning programs administered by the Division. The CCEC previously discussed this definition and reached consensus on the proposed language in the draft rules. The Early Learning Council may choose to revisit this discussion at their January meeting.

