



Early Learning Council Meeting

August 6, 2014

State Lands Board Room

Division of State Lands

775 Summer St NE, Salem, OR 97301



Early Learning Council

Wednesday, August 6, 2014

1:00-2:30pm*

Division of State Lands, State Lands Board Room

775 Summer St NE

Salem, OR 97301

SPECIAL MEETING NOTICE

Video Streaming [HERE](#)

Members of the public wanting to give public testimony must sign in.

There will only be one speaker from each group.

Each individual spokesperson will have 2 minutes.

Members of the public may provide testimony electronically to EarlyLearning.OEIB@state.or.us

PAM CURTIS
ELC Chair

HARRIET ADAIR

VIKKI BISHOP

JANET
DOUGHERTY- SMITH

DANA HARGUNANI

CHARLES McGEE

EVA RIPPETEAU

CHRISTA RUDE

LYNNE SAXTON

NORM SMITH

TERI THALHOFER

JIM TIERNEY

ROBERTA WEBER

KIM WILLIAMS

DICK WITHNELL

MARLENE YESQUEN

ROB SAXTON

JADA RUPLEY
Early Learning
System Director

AGENDA

- 1. Board Welcome and Roll Call**
- 2. Directives and Guidance from the Governor's Office**
- 3. Proposed Child Care Rules Review**
- 4. Public Testimony**
- 5. Proposed Child Care Rules Adoption**
Action Item
- 6. Future Statutory and Legislative Changes**
- 7. Adjournment**

****Times are approximate. Items may be taken out of order and breaks may be added as needed***

All meetings of the Early Learning Council are open to the public and will conform to Oregon public meetings laws. The upcoming meeting schedule and materials from past meetings are posted [online](#). A request for an interpreter for the hearing impaired or for accommodations for people with disabilities should be made to Alyssa Chatterjee at 503-373-0066 or by email at Alyssa.Chatterjee@state.or.us. Requests for accommodation should be made at least 48 hours in advance. Testimony may be submitted electronically to EarlyLearning.OEIB@state.or.us.

Child Care Rules Update

Including Central Background Registry,
Registered Family, Certified Family, and
Certified Center Rules

Early Learning Council – Administrative Rule Summary

Title/OAR #: Medical Marijuana and other Substances **Date:** August 6, 2014
Staff/Office: Cindy Hunt, Government and Legal Affairs Manager, Department of Education

☐ New Rule ☒ Amend Existing Rule ☐ Repeal Rule
Hearing Date: NA ☐ Hearings Officer Report Attached
Prompted by: ☐ State law changes ☐ Federal law changes ☒ Other

Action Requested:

☒ Adopt Temporary Rule

PROPOSED/AMENDED RULE SUMMARY:

The proposed temporary rules will strengthen health and safety standards for child care facilities relating to illegal controlled substances, including medical marijuana, alcohol and tobacco products. The proposed rules will amend the Central Background Registry rules, and three sets of child care facility rules: Registered Family Child Care, Certified Family Child Care, and Certified Child Care Center.

BACKGROUND:

The Early Learning Division was established through the passage of HB 3234 (the bill passed on a bi-partisan vote of 55-4 in the House and 24-6 in the Senate) in the 2013 legislative session and came into existence July 1, 2013. The Early Learning Division resulted from statutory and budgetary consolidation of multiple early learning programs and projects, notably moving responsibility for the regulation of child care from the Employment Department to the new Division within the Oregon Department of Education. The Early Learning Division of the Oregon Department of Education is directed under Oregon statute to establish minimum standards for childcare facilities, under the guidance of the Early Learning Council, which has responsibility for adopting rules and broadly overseeing the development of Early Learning systems and programs for children age 0-6. The Council's Child Care regulatory responsibility came with the creation of the Division effective July 1, 2013, and is the first time that this or any other public body has had jurisdiction over the state's child care regulatory and programmatic responsibilities.

When establishing minimum standards for health and safety, the division shall give consideration "to all basic requirements for the protection of the children to receive child care" including any factor affecting the care provided at the child care facility. Oregon law also directs providers of child care to protect the health, the safety and the physical, moral and mental well-being of the children cared for in the facility.

Oregon has 4,340 licensed child care providers. An initial review by the Oregon Early Learning Division's Office of Child Care showed that fewer than 10 facilities licensed by the state hold a family child care license with a non-disclosable restrictive condition where the provider or another family member in the child care home holds a medical marijuana card. However, there has continued to be concerns about the efficacy of relying on restrictive conditions as a means of protecting the health and safety of children cared for in the facilities.

Although under Oregon law the use of medical marijuana may not be illegal when used in accordance with the Oregon Medical Marijuana Act, federal law treats marijuana as a controlled substance. The federal Controlled Substances Act prohibits the possession, manufacturing, dispensing and distribution of controlled substances

including marijuana. The Act finds that marijuana has a high potential for abuse, no currently accepted medical use in treatment and there is a lack of accepted safety for use of the drug under medical supervision.

Governor Kitzhaber has directed the Early Learning Council to take the necessary regulatory action to ensure that medical marijuana consumption is not allowed in a child care environment. In a statement, Governor Kitzhaber said *"Marijuana consumption should not and cannot be tolerated within a child care environment licensed by the state. We entrust our providers to maintain safe learning environments where our children can thrive. There is a loophole that needs to be closed. I want that addressed immediately, and have directed the Early Learning Council to take the necessary regulatory action."*

These proposed temporary rules will implement the Governor's directive. The rules also address other areas of concern relating to the protection of the health and safety of children consistent with the Council's work to improve the quality and availability of childcare per Oregon statute. The rules will take effect immediately and apply to all applications to obtain new licenses, to renew existing licenses and to re-open past licenses. Additionally, the rules will apply restrictions to existing licensees.

SUMMARY OF REVISIONS TO CENTRAL BACKGROUND REGISTRY RULES:

- Revises rules governing background checks for individuals associated with child care facilities to enable the OCC to consider patterns of behavior in the absence of a conviction or founded child abuse case.

SUMMARY OF REVISIONS OF LICENSED CHILD CARE FACILITY RULES including REGISTERED FAMILY CHILD CARE, CERTIFIED FAMILY CHILD CARE AND CERTIFIED CHILD CARE CENTERS:

- Prohibit individuals who hold a medical marijuana card from being a licensed child care provider.
- Prohibit any individual from possessing, storing, or using medical marijuana on the premises of a licensed child care facility at any time.
- Prohibit any individual under the influence of medical marijuana from being on the licensed child care premises at any time.
- Clarifies the prohibition on possession and use of illegal controlled substances.
- Prohibit consumption of alcohol by any individual in the home during child care hours or when child care children are present.
- Clarifies limitations on use of tobacco products, including smokeless tobacco and e-cigarettes.

ISSUES/CONCERNS THAT SURFACED DURING RULE WORK:

Access by children to medical marijuana, derivatives and associated paraphernalia.

FISCAL IMPACT:

None to the Department of Education. The Early Learning Council can absorb the implementation of the rule amendments into existing workload.

COUNCIL ACTION NEEDED:

☒ Adopt amendments to temporary administrative rules

☐☐

Central Background Registry

414-061-0050

History to be Considered

(3) The OCC has determined that a negative history involving a vulnerable population may substantially jeopardize the safety of children and are inconsistent with any position of unsupervised contact with children or otherwise vulnerable persons. If any subject individual has a child protective services history or a negative history involving other populations, OCC will seek to obtain and review information related to the history, subject to section (6) of this rule. Based on this information, OCC will make a decision whether or not to enroll or remove the subject individual in or from the Central Background Registry.

(a) The OCC has determined that firearm prohibition orders or guilt by the exception of insanity, may substantially jeopardize the safety of children and are inconsistent with any position of unsupervised contact with children or otherwise vulnerable persons. If any subject individual has an active firearm prohibition order, the OCC will seek to obtain and review information related to the case, subject to section (6) of this rule. Based on this information, the OCC will make a decision whether or not to enroll or remove the subject individual in or from the Central Background Registry.

(b) If OCC determines a subject individual who has demonstrated behavior that may have a detrimental effect on a child or indicates behavior that may jeopardize the safety of a child, OCC will make a decision whether or not to enroll or remove the subject individual in or from the Central Background Registry.

(c) If OCC determines a subject individual is a registered sex offender in Oregon or any other jurisdiction, OCC will make a decision whether or not to enroll or remove the subject individual in or from the Central Background Registry.

(4) If OCC determines that additional information is needed to assess a person's suitability to be enrolled or remain enrolled in the Central Background Registry, the subject individual shall provide the requested information within the required timeframes. The additional information may include, but is not limited to, an evaluation or assessment by a physician, counselor or other qualified person, documents to determine positive identification of the subject individual, and court documents.

Central Background Registry

- (5) If a subject individual is in a diversion program or similar agreement for any Category I or Category II crime, the subject individual must provide written documentation of compliance with the terms of diversion or similar agreement. Based on all information obtained, OCC will make a decision whether or not to enroll the subject individual in or from the Central Background Registry.

Registered Family

414-205-0010

DEFINITIONS

- 17) "Premises" means the structure that is identified on the application, including indoors and outdoors and space not directly used for child care.

414-205-0035

GENERAL REQUIREMENTS

- 2) The provider may not hold a medical marijuana card, grow or use medical marijuana, or be a distributor of medical marijuana.

414-205-0040

THE PROVIDER AND OTHER PERSONS IN THE HOME

- 1) The registered provider and any substitute caregiver shall:
 - (a) Be at least 18 years old,
 - (b) Have competence, sound judgment and self-control when working with children,
 - (c) Be mentally, physically and emotionally capable of performing duties related to child care.
- 2) No one shall have access to child care children who has demonstrated behavior that may have a detrimental effect on a child. Residents of the home are considered to have access to the child care children even if they are not generally at home during child care hours.
 - (c) If additional information is needed to assess a person's ability to care for children or to have access to children, OCC may require references, an evaluation by a physician, counselor, or other qualified person, or other information.

Registered Family

414-205-0100

HEALTH

- 1) The home must be a healthy environment for children.
 - (a) No person shall smoke or carry any lighted smoking instrument, including e-cigarettes in the family child care home or within ten feet of any entrance, exit, window that opens or any ventilation intake that serves an enclosed area, during child care hours or when child care children are present. No person shall use smokeless tobacco in the family child care home during child care hours or when child care children are present. No person shall smoke, carry any lighted smoking instrument, e-cigarettes or use smokeless tobacco in motor vehicles while child care children are passengers.
 - (b) No one shall consume alcohol on the family child care home premises during child care hours or when child care children are present. No one shall be under the influence of alcohol on the family child care home premises during child care hours or when child care children are present.
 - (c) Notwithstanding OAR 414-205-0000(5), no one shall possess, use or store illegal controlled substances on the family child care home premises. No one shall be under the influence of illegal controlled substances on the family child care home premises.
 - (d) Notwithstanding OAR 414-205-0000(5), no one shall possess, use or store medical marijuana on the premises of the family child care home. No one under the influence of medical marijuana shall be on the family child care home premises.
 - (e) Notwithstanding OAR 414-205-0000(5), marijuana plants, derivatives and associated paraphernalia shall not be kept on the family child care home premises.

Certified Family

414-350-0010

Definitions

- (25) "Premises" means the structure that is identified on the application, including indoors and outdoors and space not directly used for child care.

414-350-0030

Issuance of a Child Care Certificate

- (1) A certificate shall not be issued by OCC to an applicant who holds a medical marijuana card, grows or uses medical marijuana or distributes medical marijuana.

414-350-0090

General Requirements

- (1) All caregivers, including the provider, shall:
- (a) Have competence, sound judgment, and self-control in working with children;
 - (b) Be mentally, physically, and emotionally capable of performing duties related to child care; and
 - (c) Have the required training and/or experience for the positions they hold, as specified in OAR 414-350-0100 and 0110.
- (2) – (5) [No changes made.]
- (6) No person shall smoke or carry any lighted smoking instrument in the certified family child care home or within ten feet of any entrance, exit, window that opens or any ventilation intake that serves an enclosed area, during child care hours or when child care children are present. This includes e-cigarettes. No person shall use smokeless tobacco in the certified family child care home during child care hours or when child care children are present. No person shall smoke, carry any lighted smoking instrument or use smokeless tobacco in motor vehicles while child care children are passengers. This includes e-cigarettes.
- (7) No one shall consume alcohol on the certified family child care home premises during the hours the child care business is conducted or when child care children are present. No one shall be under the influence of alcohol on the family child care home premises during the hours the child care business is conducted or when child care children are present.

Certified Family

- (8) Notwithstanding OAR 414-350-0000(6), no one shall possess, use or store illegal controlled substances on the certified family child care home premises. No one shall be under the influence of illegal controlled substances on the certified family child care home premises.
- (9) Notwithstanding OAR 414-350-0000(6), no one shall possess, use or store medical marijuana on the premises of the certified family child care home. No one under the influence of medical marijuana shall be on the premises of the certified family child care home.
- (10) Notwithstanding OAR 414-350-0000(6), marijuana plants, derivatives and associated paraphernalia shall not be kept on the certified family child care home premises.

Certified Center

414-300-0005

Definitions

- (34) "Premises" means the structure that is identified on the application, including indoors and outdoors and space not directly used for child care.

414-300-0015

Issuance of a Child Care Certification

- (1) A certificate shall not be issued by OCC to an applicant who holds a medical marijuana card, grows or uses medical marijuana or distributes medical marijuana.

414-300-0070

General Requirements

- (1) The operator shall establish a system of job descriptions, staff selection, and staff evaluation. All caregivers shall:
- (a) Have competence, sound judgment, and self-control in working with children;
 - (b) Be mentally, physically, and emotionally capable of performing duties related to child care; and
 - (c) Have the required training and/or experience for the position for which they are hired.
- (7) Alcohol shall not be consumed or stored on the child care center premises during the hours the child care business is conducted or when child care children are present. No one shall be under the influence of alcohol on the child care center premises during the hours the child care business is conducted or when child care children are present.
- (8) No one shall possess, use or store illegal controlled substances on the child care center premises. No one shall be under the influence of illegal controlled substances on the child care center premises.
- (9) No one shall possess, use or store medical marijuana on the premises of the child care center. No one under the influence of medical marijuana shall be on the child care center premises.
- (10) Marijuana plants, derivatives and associated paraphernalia shall not be kept on the child care center premises.