

Early Learning Council – Administrative Rule Summary

Title/OAR #: Medical Marijuana Rules for Licensed Child Care

Date: January 29, 2015

Registered Family OAR 414-205-0010 to 414-205-0100

Certified Family OAR 414-300-0005 to 414-300-0070

Certified Center OAR 414-350-0010 to 414-350-0090

Staff/Office: Cindy Hunt, Deputy Supt. Office

New Rule Amend Existing Rule Repeal Rule

Hearing Dates: October 21, 2014, October 23, 2014 and November 25, 2014 (joint with DHS) Hearings Officer
Report Attached

Prompted by: State law changes Federal law changes Other

Action Requested:

Approve for Filing First Reading and Review

PROPOSED/AMENDED RULE SUMMARY:

The proposed final rules will strengthen health and safety standards for child care facilities related to illegal controlled substances, and address marijuana, alcohol and tobacco products. The proposed rules will amend three sets of child care facility rules: Registered Family Child Care, Certified Family Child Care, and Certified Child Care Center.

Proposed final rule revisions to address use, growth, storage and distribution of marijuana in licensed child care facilities. by child child care providers.

Rules retain the provision that a certificate of licensure shall not be issued to an applicant who holds a medical marijuana card or who grows, uses or distributes marijuana. Note: The provision referring to growing or distributing marijuana is no longer limited to 'medical' marijuana. In addition, new amendments were added requiring medical marijuana and related paraphernalia be kept or stored in its original container if purchased at a dispensary and under lock at any licensed child care facility. Amendments were added stating that no adult under the influence of medical marijuana shall have contact with child care children.

BACKGROUND:

The Early Learning Division was established through the passage of HB 3234 and came into existence July 1, 2013. The Early Learning Division of the Oregon Department of Education is directed under Oregon statute to establish minimum standards for child care facilities under the guidance of the Early Learning Council, which has responsibility for adopting rules and broadly overseeing the development of early learning system 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 body 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.

Governor Kitzhaber 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.”

As a result, the Early Learning Council approved temporary rules implementing the Governor’s directive August 6, 2014 and they became effective August 7, 2014. These rules revise the temporary rules. Since then, the Early Learning Division convened an Advisory Group to provide the division additional information and comment on the temporary rules and are convened three public hearings on the rules.

Attendees at the Advisory Group included:

- | | |
|---------------------------|--|
| 1. Shelly Campbell | Provider Resource Organization Board Co- Chair – Salem |
| 2. Jeremy Chedester | Child Abuse Unit - Drug Unit– Washington County Sherriff |
| 3. Karen Collette | Child Care Policy Analyst - Employment Related Day Care |
| 4. Aaron Cossel | Program Analyst and Custodian of Records - Oregon Medical Marijuana Program |
| 5. Blake Dye | Project Manager – Government & Legal Affairs - ODE |
| 6. Becky Goodman | Provider Resource Organization Board Chair - Portland |
| 7. Cindy Hunt | Manager, Government & Legal Affairs - ODE |
| 8. Tonia Hunt | Executive Director Children First for Oregon |
| 9. Kathleen Hynes | Legal and Compliance Manager - Early Learning Division |
| 10. Megan Irwin | Interim Director of the Early Learning Division |
| 11. Tim Kiurski | Detective – Washington County Sheriff’s office |
| 12. Megan Lockwood | Office Manager – Oregon Medical Marijuana Program |
| 13. David Mandell | Policy Director – Early Learning Division |
| 14. Shannon O’Fallon | Senior Assistant Attorney General – Oregon Medical Marijuana Program (via phone) |
| 15. Henry Oliva | Regional Manager – Early Learning Division |
| 16. Rhonda Prodzinski | Child Care and Refugee Program Manager |
| 17. Eva Rippeteau | Early Learning Council & American Federation of State, County & Municipal Employees |
| 18. Norm Smith | Early Learning Council (via phone Conference Line 1-888-251-2909 Participant code 9089304) |
| 19. Anthony Taylor | Compassionate Oregon |
| 20. Penelope Jones Vaughn | American Federation of State, County & Municipal Employees |

On November 4, 2014 Oregon voters passed Ballot Measure 91, making use of marijuana legal in Oregon, effective July 1, 2015. As a result, the proposed rules anticipate this change and have incorporated its outcome in the rules.

Summary of Revisions of Licensed Child Care Facility Rules including Registered Family Child Care, Certified Family Child Care and Certified Child Care Centers:

- Prohibit provider from holding a medical marijuana card.
- Prohibit anyone from using marijuana, including medical marijuana, in a child care home during child care hours or when child care children are present.
- Prohibit anyone under the influence of marijuana from having contact with child care children.
- Prohibit anyone from growing or distributing marijuana on the child care premises.
- Permits children with medical marijuana card to use and to be medicated in child care facility.

TIMELINE OF KEY ACTIVITIES

- August 6, 2014, the Early Learning Council approved temporary rules.
- Early Learning Division convened an advisory group for two meetings on August 29, 2014 and September 8, 2014.
- Early Learning Division, Office of Child Care staff drafted and reviewed new rule amendment language to the temporary administrative rules for external review.
- The new rule amendment language was posted on line and sent to agency stakeholders on September 22, 2014.

- Public hearings were held in Portland on October 21, 2014 and Eugene on October 23, 2014, and Salem on November 25, 2014. Testimony was presented.
- Public comments about the proposed new rule amendment language were accepted until November 28, 2014 at 5:00 p.m.

BENEFITS

- Provides specific requirements to ensure the continued safety and well-being of child care children.
- Provides clarification on the regulations related to marijuana, including medical marijuana, and other substances.

ISSUES/CONCERNS THAT SURFACED DURING RULE WORK:

- Should the rules address the use of medical marijuana differently than the growing or distributing of medical marijuana? Response: The rule amendments prohibit providers from holding a marijuana card or growing or distributing marijuana. Response: The rules are intended to assure that child care children are in a safe learning environment and that the health and safety of children is assured. Permitting the growing and distributing of marijuana (which is still illegal under federal law) in a child care facility is not compatible with these goals. Should the rules address different categories of card holders such as child care providers, children and other adults on the premises differently? Response: The rule amendments continue to prohibit a provider from holding a medical marijuana card and using medical marijuana. The amendments revised the restrictions on other household members and permit them to be under the influence of medical marijuana, but they may not have any contact with child care children. The amendments restrict use of marijuana by child care providers and other adults during child care hours or when child care children are present.
- Should the rule treat child care facilities differently based upon when child care children are present? The rules place specific restrictions on marijuana when child care children are present. Response: No marijuana may be used during child care hours or when child care children are present. However a household member who is not a provider may be under the influence of medical marijuana during child care hours or when child care children are present, but may not have any contact with child care children.
- If marijuana is on the premises of a child care provider, how should it be stored? There was also a concern regarding restricting access to child friendly products that contain marijuana. Response: The rules require marijuana to be under a child safety lock and, if purchased from a dispensary, in its original packaging.
- Do these rules violate the confidentiality of medical marijuana cardholders? Response: The rules do not require disclosure by an individual, the Oregon Medical Marijuana program, or a medical provider, of an individual's medical marijuana card holder status and the Early Learning Division does not have access to these records.
- Do these rules discriminate against one group of people? Response: Medical Marijuana continues to be illegal under federal law. It also does not have the same level of regulation and oversight by the FDA or other safety and regulatory bodies, as prescription medications. Consequently there are no standards that regulate the quality of the medication, and safe dosages.
- What is the definition of premises and how much access should Office of Child Care staff have to areas that are not used for child care? Response: Rules allow access to the premises, with a higher level of inspection for child care areas. Examples were given relating to dangerous items being found in areas not used for child care that could impact health or safety of child care children.
- Do these rules cover the storage of all marijuana or just medical marijuana? The proposed rules cover all forms of legal marijuana by adding language that "marijuana must be kept in the original container if purchased from a dispensary" and "regardless of the source of the marijuana, all marijuana must be stored under a child safety lock."
- Do these rules prevent parents who use medical marijuana from picking up their children? Response: The rules do not regulate or apply to parents who are picking up their children.

FISCAL IMPACT:

- Potential loss of livelihood for providers not able to operate a licensed child care facility while holding a medical marijuana card or growing, distributing or using marijuana.

STAFF RECOMMENDATION:

- Approve final rule for filing
- Adopt administrative rule in January
- No recommendation at this time

Comments:

DRAFT

November 7, 2014

**OREGON DEPARTMENT OF EDUCATION
EARLY LEARNING DIVISION**

DIVISION 205

REGISTERED FAMILY CHILD CARE HOMES

414-205-0010

Definitions

(1) "Caregiver" means any person, including the provider, who cares for the children in the registered family child care home and works directly with the children, providing care, supervision and guidance.

(2) "Central Background Registry" means OCC's Registry of individuals who have been approved to work in a child care facility in Oregon pursuant to ORS 657A.030 and OAR 414-061-0000 through 414-061-0120.

(3) "Child Care" means the care, supervision and guidance on a regular basis of a child, unaccompanied by a parent, guardian or custodian, during a part of the 24 hours of the day, with or without compensation.

(4) "Child Care Child" means any child under 13 years of age, or a child with special needs under the age of 18 who requires a level of care over and above the norm for his/her age, who does not reside in the home and for whom the provider has supervisory responsibility in the temporary absence of the parent.

(5) "Child with Special Needs" means a child under the age of 18 who requires a level of care over and above the norm for his/her age due to a physical, developmental, behavioral, mental or medical disability.

(6) "OCC" means the Office of Child Care of the Department of Education, or the Administrator or staff of OCC.

(7) "Civil Penalty" means a fine imposed by OCC on a provider for violation on these rules.

(8) "Family" means persons related by blood, marriage, or adoption, or whose functional relationship (e.g., parent(s), custodian(s), guardian(s)) in exercising physical care and custody of the child(ren) is similar to those found in such associations.

(9) "Full-Time Child Care" means care provided to children not yet eligible for the first grade or above. One or more children may fill a full-time space in the home as long as the children are not in care at the same time.

(10) "Infant" means a child who is not yet walking.

(11) "New Application" means a registration application that has been filed by an applicant who has never had an active registration.

(12) "Night Care" means care given to a child who sleeps at the family child care home for all or part of the night.

(13) "Nonserious violation" means OCC has made a valid finding when assessing a complaint alleging a violation not listed in OAR 414-205-0010(25).

(14) "Occasional" means infrequently or intermittently, including but not limited to care that is provided during summer or other holiday breaks when children are not attending school, but not to exceed 70 calendar days in a year.

(15) "Oregon Registry" means the voluntary registry at the Oregon Center for Career Development in Childhood Care and Education at Portland State University that documents the training, education and experience of individuals who work in childhood care and education.

(16) "Part-Time Child Care" means care provided to a child who meets the definition of a school-age child and is in care on days and hours school is not in session.

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

(18) "Preschool-Age Child" means a child 24 months of age to eligible to be enrolled in the first grade and, during the months of summer vacation from school, eligible to be enrolled in the first grade in the next school year.

(19) "Provider" means a resident of the registered family child care home who is responsible for the children in care; is the children's primary caregiver; and the person whose name is on the certificate of registration.

(20) "Registered Family Child Care Home" means the residence of the provider, who has a current Family Child Care Registration at that address and who provides care in the family living quarters.

(21) "Registration" means the document a family child care provider is issued by the Office of Child Care to operate a family child care home where care is provided in the family living quarters of the provider's home pursuant to ORS 657A.330 and OAR 414-205-0000 through 414-205-0170. Registration is limited to one provider at one address.

(22) "Renewal Application" means a registration application that has been filed by a currently registered family child care provider who wishes to continue registration.

(23) "Reopen Application" means a registration application that has been filed by an applicant whose registration is expired or closed, including those closures resulting from an address change.

(24) "School-Age Child" means a child eligible to be enrolled in the first grade or above and, during the months of summer vacation from school, a child eligible to be enrolled in the first grade or above in the next school year, up to age 13.

(25) "Serious Complaint" means a complaint filed against:

(a) A registered family child care provider by a person who has alleged that:

(A) Children are in imminent danger;

(B) There are more children in care than allowed by law;

(C) Corporal punishment is being used;

(D) Children are not being supervised;

(E) Multiple or serious fire, health or safety hazards are present in the home;

(F) Extreme unsanitary conditions are present in the home; or

(G) Adults are in the home who are not enrolled in the Office of Child Care's Central Background Registry;
or

(b) An individual providing child care, as defined by ORS 657A.250(4), who is not a registered family child care provider by a person who has alleged that there are more children in care than allowed by law.

(26) "Serious Violation" means OCC has made a valid finding when assessing a serious complaint that alleges:

(a) Children are in imminent danger;

(b) There are more children in care than allowed by law;

(c) Corporal punishment is being used;

(d) Children are not being supervised;

(e) Multiple or serious fire, health or safety hazards are present in the home;

(f) Extreme unsanitary conditions are present in the home; or

(g) Adults are in the home who are not enrolled in the Office of Child Care's Central Background Registry; or

(h) An individual is providing child care as defined by ORS 657A.250(4) without registering with the Office of Child Care of the Department of Education.

(27) "Substitute Caregiver" means a person who acts as the children's primary caregiver in the registered family child care home in the temporary absence of the provider.

(28) "Usable Exit" means an unobstructed door or window through which the provider and the children can evacuate the home in case of a fire or emergency. Doors must be able to be opened from the inside without a key, and window openings must be at least 20 inches wide and 22 inches in height, with a net clear opening of 5 square feet and a sill no more than 48 inches above the floor.

414-205-0035

General Requirements

(1) The home in which child care is provided must be the residence of the provider.

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

- (3) Registration is limited to one provider per household.
- (4) A registration applies to only the person and address on the certificate of registration and is not transferable to another location or individual.
- (5) The registration is valid for a maximum of two years. The registration period begins with the effective date shown on the certificate of registration. A provider may not care for more than three (3) children, other than the provider's own children, at any one time prior to receiving a certificate of registration from OCC.
- (6) OCC registration records are open to the public on request. However, information protected by state or federal law will not be disclosed.
- (7) The name, address, telephone number, and registration status of providers is public information. However, OCC may withhold from the public a provider's address and telephone number if the provider makes a written request documenting that disclosure of the address and/or telephone number would endanger him/her or a family member living in the home (OAR 137-004-0800). The request must be on a form supplied by OCC.
- (8) The Certificate of Registration must be posted in the family child care home in an area where it can be viewed by parents.
- (9) The provider shall have no other employment, either in or out of the home, during the hours children are in care.
- (10) **The provider shall allow an inspection of all areas of the facility that are accessible to child care children, and a health and safety review of other areas of the facility to ensure sanitation and the health and safety of child care children.**
- (11) The provider must allow custodial parents or legal guardians of child care children access to the home during the hours their child(ren) are in care.
- (12) The provider must comply with state and federal laws related to immunizations, child care restrictable diseases, child safety systems and seat belts in vehicles, bicycle safety, civil rights laws, and the Americans with Disabilities Act.
- (13) Any caregiver who has reason to believe that any child has suffered abuse (physical injury, mental injury, neglect that leads to physical harm, sexual abuse and/or exploitation, or threat of harm) must report the information to the Department of Human Services Child Welfare (DHS) or to a law enforcement agency. By statute, this requirement applies 24 hours per day.

(14) The provider must notify parents if there will be a substitute caregiver and the caregiver's name or if the children will be away from the home for any part of the day for visits, field trips, or any other activity off the premises. In the event of an emergency, a good faith effort will be made to notify parents that a substitute will be caring for the children.

(15) If an applicant or a provider provides or wishes to provide adult or child foster care, the foster care licensing agency must grant approval for the applicant to provide both child care and foster care services.

414-205-0040

The Provider and Other Persons in the Home

(1) The registered provider and any substitute caregiver shall: ~~be at least 18 years old and in such physical and mental health as will not adversely affect a child in care.~~

(a) Be at least 18 years old,

(b) Have competence, sound judgment and self-control when working with children, and

(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.

(a) The applicant and other residents of the home 18 years of age or older must be enrolled in OCC Central Background Registry prior to the issuance of a registration. Residents of the home who are under 18 years of age must be enrolled in the Registry by their 18th birthday.

(b) Prior to another adult moving into the home, residing on a temporary basis in the home, visiting the home on a regular basis, or substituting for or assisting the provider, the provider must receive documentation from OCC that the individual is enrolled in the Central Background Registry. This does not apply to parents of children in care unless they are residing in the home or substituting for or assisting the provider.

(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 ~~may be required by OCC~~.

(d) Any visitor to the home or other adult who is not enrolled in the Central Background Registry may not have unsupervised access to children.

(3) A caregiver substituting for the provider must:

(a) Be familiar with the requirements for registration and agree to comply with them;

(b) Be enrolled in the Central Background Registry prior to substituting for the provider; and

(c) Comply with all the requirements, except those in OAR 414-205-0055, placed on the provider in these rules.

414-205-0100

Health

(1) The home must be a healthy environment for children.

~~(a) No person shall smoke or use smokeless tobacco in the family child care home during the hours the child care business is conducted. No person shall smoke or use smokeless tobacco in motor vehicles while child care children are passengers.~~

(a) No person shall smoke or carry any lighted smoking instrument, including an e-cigarette and vaporizer in the family child care home or within ten feet of any entrance, exit, or 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, including an e-cigarette and or vaporizer or use smokeless tobacco in motor vehicles while child care children are passengers.

~~(b) No one shall consume alcohol or use non-prescription controlled substances in the presence of children. No one under the influence of~~

~~alcohol or non-prescription controlled substances shall be in the home when child care are present.~~

(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 grow **medical** or **distribute** marijuana on the premises of the registered family child care home. No adults shall use **medical** marijuana on the registered family child care home premises during child care hours or when child care children are present.

(e) No adult under the influence of **medical** marijuana shall have contact with child care children.

(f) Notwithstanding OAR 414-205-0000(5), marijuana plants shall not be grown or kept on the registered family child care home premises.

(g) All medical marijuana must be kept in its original container if purchased from a dispensary and stored under **child-safety** lock. All medical marijuana derivatives and associated paraphernalia must be stored under **child-safety** lock.

(h) Effective July 1, 2015, all marijuana, marijuana derivatives and associated paraphernalia must be stored under lock.

(~~f~~ i) There must be at least one flush toilet and one hand-washing sink available to children. Steps or blocks must be available to ensure children can use the toilet and sink without assistance.

(~~g~~ j) The room temperature must be at least 68°F during the hours the child care business is conducted.

(~~h~~ k) Rooms occupied by children must have a combination of natural and artificial lighting.

(~~i~~ l) Floors must be free of splinters, large unsealed cracks, sliding rugs and other hazards.

(2) The provider must have a basic first aid kit available for use. The kit must be kept out of the reach of children.

(3) Infants must be put to sleep on their backs.

(4) Except for mild cold symptoms that do not impair a child's function, children who are ill shall not be in care.

(5) If a child becomes ill in child care, the provider must separate the child from other children, to the extent possible, and contact the child's parent(s) to remove the child from care as soon as possible.

(6) Parents must be notified if their child is exposed to a communicable disease.

(7) Prescription and non-prescription medication may be given to a child only if the provider has written authorization from the parent, as required in OAR 414-205-0130(3).

(8) Prescription and non-prescription medications must be properly labeled and stored.

(a) Non-prescription medications or topical substances must be labeled with the child's name.

(b) Prescription medications must be in the original container and labeled with the child's name, the name of the drug, dosage, directions for administering, and the physician's name.

(c) Medication requiring refrigeration must be kept in a separate, covered container, marked "medication," in the refrigerator.

(9) Sunscreen is considered a non-prescription medication and may be used for child care children under the following conditions:

(a) Providers must obtain written parental authorization prior to using sunscreen.

(b) One container of sunscreen may be used for child care children unless a parent supplies an individual container for their child. The sunscreen shall be applied in a manner that prevents contaminating the container.

(A) Parents must be informed of the type of product and the sun protective factor (SPF).

(B) Parents must be given the opportunity to inspect the product and active ingredients.

(c) If sunscreen is supplied for an individual child care child, the sunscreen must be labeled with the child's first and last name and must be used for only that child.

(d) Providers must reapply sunscreen every two hours while the child care children are exposed to the sun.

(e) Providers shall use a sunscreen with an SPF of 15 or higher and must be labeled as "Broad Spectrum".

(f) Providers shall not use aerosol sunscreens on child care children.

(g) Sunscreen shall not be used on child care children younger than six months.

(h) Child care children over six years of age may apply sunscreen to themselves under the direct supervision of the provider or staff member.

(10) Parents must be informed daily of any medications given to their child or any injuries their child has had.

(11) The provider must provide or ensure the availability of meals and snacks appropriate for the ages and needs of the children served.

(a) Meals and snacks must be based on the guidelines of the USDA Child Care Food Program.

(b) Foods must be stored and maintained at the proper temperature.

(c) Foods must be prepared and served according to the minimum standards for food handler certification.

(d) Infants must either be held or be fed sitting up for bottle feeding. Propping bottles is prohibited.

(12) Any animal at the family child care home must be in good health and be a friendly companion for the children in care.

(a) Potentially aggressive animals must not be in the same physical space as the children.

(b) Dogs and cats must be vaccinated according to a licensed veterinarian's recommendations.

(13) Animal litter boxes shall not be located in areas accessible to children.

(14) Caregivers must be physically present when children are interacting with animals.

(15) Reptiles (e.g. lizards, turtles, snakes, iguanas) frogs, monkeys, hooked beaked birds, baby chicks and ferrets are prohibited unless they are housed in and remain in a tank or other container which precludes any direct contact by children. Educational programs that include prohibited animals and are run by zoos, museums and other professional animal handlers are permitted.

(16) Parents must be made aware of the presence of any animals in the child care home.

DRAFT

November 7, 2014

**OREGON DEPARTMENT OF EDUCATION
EARLY LEARNING DIVISION**

DIVISION 300

CERTIFIED CHILD CARE CENTERS

General Provisions

414-300-0005

Definitions

The following words and terms, when used in OAR 414-300-0000 through 414-300-0415, have the following meanings:

(1) "Activity Area" means the area of the center that is available, during all the hours of operation, for the children's activities. This area excludes kitchens, hallways, toilet rooms, multi-purpose areas used by all children, lockers, office, storage areas, isolation quarters, staff room, furnace room, and that part of rooms occupied by heating stoves, or stationary equipment not used by children. Additional exclusions may apply for specific age groups.

(2) "Attendance" means children actually present in the center at any given time.

(3) "Capacity" means the total number of children allowed in the center at any one time, based on the available indoor and outdoor square footage, the number of toilets in the center and the number of qualified staff.

(4) "Caregiver" means any person in the child care center who works directly with the children, providing care, supervision, and guidance.

(5) "Central Background Registry" means OCC's Registry of individuals who have been approved to work in a child care facility in Oregon pursuant to ORS 657A.030 and OAR 414-061-0000 through 414-061-0120.

(6) "Certificate" means the document that is issued by OCC to a child care center pursuant to ORS 657A.280.

(7) "Child Care" means the care, supervision, and guidance on a regular basis of a child, unaccompanied by a parent, guardian, or custodian, during a part of the 24 hours of the day, with or without compensation. Child care does not include the care provided:

(a) In the home of the child;

(b) By the child's parent or guardian, or person acting in loco parentis;

(c) By a person related to the child by blood or marriage within the fourth degree as determined by civil law;

(d) On an occasional basis by a person, sponsor, or organization not ordinarily engaged in providing child care; or

(e) By providers of medical services.

(8) "Child Care Area" means that indoor and outdoor area specifically certified for use by the center and includes all activity areas and other areas of the facility used to provide child care, such as kitchen, toilet rooms, offices, storage areas, and rooms used solely for napping or eating. This may be a specific portion or portions of the building and grounds of a larger facility or one or more buildings at the same location.

(9) "Child Care Child" means any child six weeks of age or older and under 13 years of age, or a child with special needs under the age of 18 who requires a level of care over and above the norm for his/her age, for whom the child care center has supervisory responsibility in the temporary absence of the parent.

(10) "Child Care Center" or "Center" means a child care facility that is certified to care for thirteen or more children, or a facility that is certified to care for twelve or fewer children and located in a building constructed as other than a single family dwelling.

(11) "Child with Special Needs" means a child under the age of 18 who requires a level of care over and above the norm for his/her age due to a physical, developmental, behavioral, mental or medical disability.

(12) "OCC" means the Office of Child Care of the Department of Education or the Administrator or staff of the Office of Child Care.

(13) "Child Care Facility" means any facility that provides child care to children, including a child care center, certified family child care home, and registered family child care home. It includes those known under a descriptive name, such as nursery school, preschool, kindergarten, child play school, before or after school care, or child development center, except those excluded under ORS

657A.250. This term applies to the total child care operation and includes the physical setting, administration, staff, equipment, program, and care of children.

(14) "Civil Penalty" means a fine imposed by OCC on a facility for violation of these rules.

(15) "Comparable group care program" means a program which has the following elements:

(a) Staff are supervised by knowledgeable professionals;

(b) Training of staff is provided or required annually;

(c) Group size is similar to a certified child care facility;

(d) Curriculum is age appropriate; and

(e) The program is not providing uncertified drop-in care.

(16) "Contracted services" means activities (e.g., tumbling, music) provided by an organization or program other than the center, where non-center staff come into the center or the children are transported to another location.

(17) "Director" means a person who is designated by the operator as director or administrator of the center and who meets the qualifications of director pursuant to OAR 414-300-0080.

(18) "Drop-in Care" means care provided on an unscheduled, irregular basis, any time of the day or night, exclusively for drop-in children in a child care center.

(19) "Enrollment" means all children registered to attend the center.

(20) "Group" means a specific number of children assigned to specific staff.

(21) "Guidance and discipline" means the on-going process of helping children develop self control and assume responsibility for their own acts.

(22) "Head Teacher" means the person(s) who is responsible for the development and implementation of the program of activities for each infant and toddler, preschool age, and school-age program in the center.

(23) "Infant" means a child who is a least six weeks of age but is not yet walking alone.

(24) "Infant and Toddler Age Program" means care and education provided in a center, or part of a center, to children between the ages of six weeks and thirty-six months.

(25) "Night Care" means care given to children who sleep at the child care center for all or part of the night.

(26) "Nonserious Violation" means OCC has made a valid finding when assessing a complaint alleging a violation not listed in OAR 414-300-0005(42)

(27) "Occasional" means infrequently or sporadically, including but not limited to care that is provided during summer or other holiday breaks when children are not attending school, but not to exceed 70 calendar days in a year.

(28) "Operator" means the person, group, corporation, partnership, governing body, association, or other public or private organization legally responsible for the overall operation of the center and who has the authority to perform the duties necessary to meet certification requirements. If the operator is other than the owner, an individual must be appointed as the operator by the owner.

(29) "Oregon Registry" means the voluntary registry at the Oregon Center for Career Development in Childhood Care and Education at Portland State University that documents the training, education and experience of individuals who work in childhood care and education.

(30) "Outbreak of a communicable disease" means two cases from separate households associated with a suspected common source.

(31) "Owner" means the person, group, corporation, partnership, governing body, association, or other public or private organization which holds the child care center as property and has a major financial stake in the operation of the center. The owner may or may not be active in the operation of the center; the owner may also be the operator.

(32) "Parent" means parent(s), custodian(s), or guardian(s), exercising physical care and legal custody of the child.

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

(a) Care is provided by parents on a rotating basis;

(b) Membership in the cooperative includes parents;

(c) There are written policies and procedures; and

(d) A board of directors that includes parents of the children cared for by the cooperative controls the policies and procedures of the program.

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

(35) "Preschool-Age Child" means a child who is 36 months of age to eligible to be enrolled in the first grade and, during the months of summer vacation from school, eligible to be enrolled in the first grade in the next school year. For purposes of these rules, children attending kindergarten may be considered school-age children.

(36) "Preschool-Age Program" means care and education provided in a center, or part of a center, to children 36 months of age to attending kindergarten.

(37) "Program" means all activities and care provided for the children during their hours of attendance at the center.

(38) "Qualifying Teaching Experience" means:

(a) For infant/toddler and preschool age groups, 1,500 hours, gained with a group of the same age children in at least three-hour blocks, within a 36-month period;

(b) For school-age groups, 600 hours, gained with a group of the same age children in at least three-hour blocks, within a 36-month period. Qualifying teaching experience must be documented. Time spent in a college practicum or practice teaching is considered qualifying teaching experience. The following does not constitute qualifying teaching experience: leader of a scout troop; Sunday school teacher; and coaching.

(38) "Sanitizing" means using a bactericidal treatment that provides enough heat or concentration of chemicals for enough time to reduce the bacterial count, including disease-producing organisms, to a safe level on utensils, equipment, and toys.

(40) "School-Age Child" means a child eligible to be enrolled in the first grade or above and, during the months of summer vacation from school, a child eligible to be enrolled in the first grade or above in the next school year, up to age 13. For purposes of these rules, children attending kindergarten may be considered school-age children.

(41) "School-Age Program" means care and education provided in a center, part of a center, school or other facility to children attending kindergarten or eligible to be enrolled in the first grade or above and, during the months of summer

vacation from school, eligible to be enrolled in the first grade or above in the next school year.

(42) "Serious complaint" means a complaint filed against:

(a) A certified child care center by a person who has alleged that:

(A) Children are in imminent danger;

(B) There are more children in care than allowed by certified capacity;

(C) Corporal punishment is being used;

(D) Children are not being supervised;

(E) Multiple or serious fire, health or safety hazards are present in the center;

(F) Extreme unsanitary conditions are present in the center; or

(G) Adults are in the center who are not enrolled in the Central Background Registry; or

(b) A facility providing child care, as defined ORS 657A.250(3), which is not a certified child care center by a person who has alleged that there are more children in care than allowed by law.

(43) "Serious Violation" means OCC has made a valid finding when assessing a complaint that alleges:

(a) Children are in imminent danger;

(b) There are more children in care than allowed by law;

(c) Corporal punishment is being used;

(d) Children are not being supervised;

(e) Multiple or serious fire, health or safety hazards are present in the home;

(f) Extreme unsanitary conditions are present in the center;

(g) Adults are in the center who are not enrolled in the Central Background Registry; or

(h) A facility is providing child care as defined in ORS 657A.250(4) which is not a certified child care center, by a person who has alleged that there are more children in care than allowed by law.

(44) "Site Director/Supervisor" means the person in charge of the facility at a site which is part of a larger multi-site program.

(45) "Site Coordinator" means the person responsible for coordinating over-all management and operation of a number of sites in a multi-site program.

(46) "Staff" means an individual who is the director, an employee, or a volunteer who is in the center for more than a single activity.

(47) "Substitute Director" means the person in charge of the center during the hours of operation when the director is not on site.

(48) "Supervision" means the act of caring for a child or group of children. This includes awareness of and responsibility for the ongoing activity of each child. It requires physical presence, knowledge of program requirements and children's needs, and accountability for their care and well-being. Supervision also requires that staff be near and have ready access to children in order to intervene when needed.

(49) "Teacher" means a caregiver who plans and implements daily activities for a designated group of children and who meets the qualifications of teacher pursuant to OAR 414-300-0100.

(50) "Teacher Aide" means a caregiver who works under the direct supervision of a teacher and who meets the qualifications of Aide I or Aide II pursuant to OAR 414-300-0110.

(51) "Toddler" means a child who is able to walk alone but is under 36 months of age. "Younger toddler" means a child who is able to walk alone but is under 24 months of age; "older toddler" means a child who is 24 months of age but under 36 months of age.

(52) "Usable Exit" means an unobstructed door or window through which caregivers and children can evacuate the center in case of a fire or emergency. Doors must be able to be opened from the inside without a key, and window openings must be at least 20 inches wide and 22 inches in height, with a net clear opening of 5 square feet and a sill no more than 48 inches above the floor.

Certificate

414-300-0015

Issuance of a Child Care Certificate

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

(2 3) A certificate shall be issued by OCC when it has been determined the center is in compliance with OAR 414-300-0000 through 414-300-0415. There are two types of certifications. These are:

(a) A regular certificate, which, except as provided in OAR 414-300-0010(4)(b)(A), is valid for no more than one year; and

(b) A temporary certificate. A child care center may not operate under a temporary certification for more than 180 days in any 12-month period. A temporary certificate is issued when:

(A) The center is in compliance with most requirements;

(B) There are no deficiencies identified by OCC that are hazardous to children; and

(C) The operator demonstrates an effort to be in full compliance.

(2 4) A certificate is not transferable to any other location or to another organization or individual.

(3 5) Any changes in the conditions of certificate shall be requested in writing to OCC and approved by OCC before the condition(s) of the current certificate may be changed. Changes include, but are not limited to, facility capacity, age range of children, or hours of operation.

Personnel

414-300-0070

General Requirements

(1) The operator shall establish a system of job descriptions, staff selection, and staff evaluation. ~~that ensures that staff:~~ All caregivers shall:

(a) Have competence, sound judgment, and self-control in working with children;

(b) **Are Be** mentally, physically, and emotionally capable of performing **assigned** duties related to child care; and

(c) Have the required training and/or experience for the position for which they are hired.

(2) There shall be a person or persons on the staff who meet(s) the qualifications of director (OAR 414-300-0080) and head teacher (OAR 414-300-0090). A person assigned the duties of the position must meet the qualifications of the position.

(3) Notwithstanding OAR 414-300-0120(3), there shall be at least one person in the center at all times who has current certification in first aid and CPR.

(4) Any staff with evidence of a child care-restrictable disease, as defined in OAR 333-019-0010, symptom of physical illness, as defined in OAR 414-300-0220(1), or mental incapacity that poses a threat to the health or safety of children shall be relieved of his/her duties.

~~(5) If there is evidence which casts doubt on the physical or mental competence of a person to care for children or have access to children, OCC may require that the operator provide OCC with an evaluation, or other information, as specified by OCC.~~

(5) 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.

(6) No one shall have access to child care children or be in the center during child care hours who has demonstrated behavior that may have a detrimental effect on a child. This includes any individual in the center who has or may have unsupervised access, however brief, to child care children (i.e., the owner, the operator, all child care staff, maintenance staff who work on-site during hours of operation, volunteers who may be left alone with children, etc.). This does not apply to parents of children in care when they drop off and pick up their children:

(a) The operator, all child care staff and others as described in section (6) above 18 years of age or older shall be enrolled in OCC's Central Background Registry prior to the issuance of an initial or renewal certification;

(b) Prior to any new staff, including a director, or individual being on-site at the center during child care hours, the staff/individual shall be enrolled in the Central Background Registry and the center shall receive verification from OCC of the enrollment. This does not apply to parents of children in care unless they are

assisting in the provision of child care. Volunteers may be exempt from this rule, as specified in OAR 414-300-0070(7);

(c) When a center is notified by OCC that a staff member or other individual has been removed from the Central Background Registry, the center shall not permit the staff member or other individual to have access to child care children;

(d) If any person listed in section (6) and section (6)(a) of this rule has been charged with, arrested for, or a warrant is out for any of the crimes which OCC has determined indicate behavior which may have a detrimental effect on a child, with final disposition not yet reached, certification will be denied or suspended until the charge, arrest, or warrant has been resolved if the person continues to operate, be employed in, or have access to children in the center;

(e) If a criminal record check shows that a warrant has been issued for any person checked, OCC will inform the originating law enforcement agency of the person's name, address, and telephone number.

(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 grow or possess marijuana plants or distribute marijuana on the child care center premises. No one shall possess, use or store marijuana on the premises of the child care center unless medically necessary to treat a child care child. No adult shall use or be under the influence of marijuana on the child care center premises.

(10) ~~Medical~~ Marijuana, derivatives and associated paraphernalia shall not be kept on the child care center premises unless medically necessary to treat a child care child. All associated medical marijuana must be kept in original container if purchased at a dispensary, and together with derivatives and related paraphernalia must be kept under ~~child safety~~ lock.

(7 11) Volunteers must meet the following requirements:

(a) If volunteers are counted in determining the staff/child ratios, they must meet the qualifications of the position they are filling and be enrolled in the Central Background Registry;

(b) If volunteers may have unsupervised access to children, they must be enrolled in the Central Background Registry;

(c) If volunteers do not have unsupervised access to children at any time, including during emergencies, the center must have a written policy to this effect, the policy must be known to all center staff and volunteers, and the volunteers do not have to be enrolled in the Central Background Registry.

~~(8) No person shall smoke or use smokeless tobacco in the child care area during child care hours. No person shall smoke or use smokeless tobacco in motor vehicles while child care children are passengers.~~

~~(9) Alcohol and non-prescribed controlled substances shall not be consumed or stored in the child care area during child care hours. Staff or volunteers who appear to be under the influence of alcohol or non-prescribed controlled substances shall not be in the center during child care hours.~~

(12) No person shall smoke or carry any lighted smoking instrument, including an e-cigarette **and** or vaporizer in the certified center or within ten feet of any entrance, exit, or 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 certified center during child care hours or when child care children are present. No person shall smoke, carry any lighted smoking instrument, including an e-cigarette **and** or vaporizer or use smokeless tobacco in motor vehicles while child care children are passengers.

DRAFT

November 7, 2014

**OREGON DEPARTMENT OF EDUCATION
EARLY LEARNING DIVISION**

DIVISION 350

CERTIFIED FAMILY CHILD CARE HOMES

General Provisions

414-350-0010

Definitions

The following words and terms, when used in OAR 414-350-0000 through 414-350-0405, have the following meanings:

- (1) "Activity Area" means the area of the home that is available, during all the hours of operation, for the children's activities. This area excludes the food preparation area of the kitchen, bathrooms, storage areas, and those parts of rooms occupied by heating stoves, furniture and stationary equipment not used by children.
- (2) "Attendance" means children actually present in the home at any given time.
- (3) "Capacity" means the total number of children allowed in the certified family child care home at any one time, based on the available square footage, the ages of the children to be served and the total number of staff.
- (4) "Caregiver" means any person, including the provider, who cares for the children in the certified family child care home and works directly with the children, providing care, supervision and guidance.
- (5) "Central Background Registry" means OCC's Registry of individuals who have been approved to work in a child care facility in Oregon pursuant to ORS 657A.030 and OAR 414-061-0000 through 414-061-0120.
- (6) "Certificate" means the document that is issued by OCC to a certified family child care home pursuant to ORS 657A.280.
- (7) "Certified Family Child Care Home" or "Home" means: a child care facility located in a building constructed as a single family dwelling that has a certificate to care for a maximum of 16 children at any one time.

(8) "Child Care" means the care, supervision, and guidance on a regular basis of a child, unaccompanied by a parent, guardian, or custodian, during a part of the 24 hours of the day, with or without compensation. Child care does not include the care provided:

(a) In the home of the child;

(b) By the child's parent or guardian, or person acting in loco parentis;

(c) By a person related to the child by blood or marriage within the fourth degree as determined by civil law;

(d) On an occasional basis by a person, sponsor, or organization not ordinarily engaged in providing child care;

(e) By providers of medical services; or

(f) By a person who is a member of the child's extended family, as determined by the Office of Child Care on a case-by-case basis.

(9) "Child Care Child" means any child six weeks of age or older and under 13 years of age, or a child with special needs under the age of 18 who requires a level of care over and above the norm for his/her age, and for whom the provider has supervisory responsibility in the temporary absence of the parent.

(10) "Child with Special Needs" means a child under the age of 18 who requires a level of care over and above the norm for his/her age due to a physical, developmental, behavioral, mental or medical disability.

(11) "OCC" means the Office of Child Care of the Department of Education or the Administrator or staff of OCC.

(12) "Child Care Facility" means any facility that provides child care to children, including a child care center, certified family child care home, and registered family child care home. It includes those known under a descriptive name, such as nursery school, preschool, kindergarten, child play school, before and after school care, or child development center, except those excluded under ORS 657A.250. This term applies to the total child care operation. It includes the physical setting, equipment, staff, provider, program, and care of children.

(13) "Civil Penalty" means a fine imposed by OCC on a provider for violation of these rules.

(14) "Enrollment" means all children registered to attend the certified family child care home.

(15) "Guidance and Discipline" means the on-going process of helping children develop self control and assume responsibility for their own acts.

(16) "Infant" means a child who is at least 6 weeks of age but is not yet walking alone.

(17) "Night Care" means care given to children who sleep at the home for all or part of the night.

(18) "Nonserious violation" means OCC has made a valid finding when assessing a complaint alleging a violation not listed in OAR 414-350-0010(32).

(19) "Occasional" means infrequently or sporadically, including but not limited to care that is provided during summer or other holiday breaks when children are not attending school, but not to exceed 70 calendar days in a year.

(20) "Operator" means the person responsible for the overall operation of the home and who has the authority to perform the duties necessary to meet certification requirements. In a certified family child care home, the operator is the provider.

(21) "Oregon Registry" means Pathways for Professional Recognition in Childhood Care and Education is a voluntary, statewide program to document and recognize the professional achievements of people who work in the childhood care and education profession.

(22) "Owner" means the person who holds the certified family child care business as property and has a major financial stake in the operation of the home.

(23) "Parent" means parent(s), custodian(s), or guardian(s) exercising physical care and legal custody of the child.

(24) "Potentially hazardous food" means any food or beverage containing milk or milk products, eggs, meat, fish, shellfish, poultry, cooked rice, beans or pasta, and all other previously cooked foods, including leftovers.

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

(26) "Preschool Age Child" means a child 36 months of age up to the summer vacation months prior to being eligible to be enrolled in the first grade in public school.

(27) "Program" means all activities and care provided for the children during their hours of attendance at the certified family child care home.

(28) "Provider" means the person in the certified family child care home who is responsible for the children in care, is the children's primary caregiver, and in whose name the certificate is issued. In a certified family child care home, the provider is the operator.

(29) "Qualifying Teaching Experience" means 1,500 hours, gained in at least three-hour blocks, within a 36-month period, with a group of children in an on-going group setting. Such a setting includes a kindergarten, preschool, child care center, certified or registered family child care home, Head Start program, or equivalent. Qualifying teaching experience must be documented. Time spent in a college practicum or practice teaching is considered qualifying teaching experience. The following does not constitute qualifying teaching experience: leader of a scout troop; Sunday school teacher; and coaching.

(30) "Sanitizing" means using a bactericidal treatment that provides enough heat or concentration of chemicals for enough time to reduce the bacterial count, including disease-producing organisms, to a safe level on utensils, equipment, and toys.

(31) "School-Age Child" means a child eligible to be enrolled in the first grade or above in public school including the months of summer vacation prior to being eligible to be enrolled in the first grade, up to age 13.

(32) "Serious complaint" means a complaint filed against a certified child care home by a person who has alleged that:

- (a) Children are in imminent danger;
- (b) There are more children in care than allowed by certified capacity;
- (c) Corporal punishment is being used;
- (d) Children are not being supervised;
- (e) Multiple or serious fire, health or safety hazards are present in the home;
- (f) Extreme unsanitary conditions are present in the home; or
- (g) Adults are in the home who are not enrolled in the Central Background Registry.

(33) "Serious Violation" means OCC has made a valid finding when assessing a complaint that alleges:

- (a) Children are in imminent danger;

- (b) There are more children in care than allowed by law;
- (c) Corporal punishment is being used;
- (d) Children are not being supervised;
- (e) Multiple or serious fire, health or safety hazards are present in the home;
- (f) Extreme unsanitary conditions are present in the home; or
- (g) Adults are in the home who are not enrolled in the Office of Child Care's Central Background Registry

(34) "Substitute Caregiver" means a person who acts as the children's primary caregiver in the certified family child care home in the temporary absence of the provider.

(35) "Supervision" means the act of caring for a child or group of children. This includes awareness of and responsibility for the ongoing activity of each child. It requires a caregiver to be within sight and/or sound of the children, knowledge of children's needs, and accountability for children's care and well-being. Supervision also requires that staff be near and have ready access to children in order to intervene when needed.

(36) "Toddler" means a child who is able to walk alone but is under 36 months of age. "Younger toddler" means a child who is able to walk alone but is under 24 months of age; "older toddler" means a child who is at least 24 months of age but under 36 months of age.

(37) "Useable Exit" means an unobstructed door or window through which caregivers and children can evacuate the home in case of a fire or emergency. Doors must be able to be opened from the inside without a key, and window openings must be at least 20 inches wide and 22 inches in height, with a net clear opening of 5 square feet and a sill no more than 48 inches above the floor.

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. A certificate shall not be issued to an applicant who grows ~~or uses medical~~ marijuana or distributes ~~medical~~ marijuana.

(2) A certificate shall be issued by OCC when it has been determined the home is in compliance with OAR 414-350-0000 through 414-350-0405. There are two types of certification. These are:

(a) A regular certificate which, except as provided in OAR 414-350-0020(4)(b)(A), is valid for no more than one year; and

(b) A temporary certificate. A certified family child care home may not operate under a temporary certificate for more than 180 days in any 12-month period. A temporary certificate is issued when:

(A) The home is in compliance with most requirements;

(B) There are no deficiencies identified by OCC that are hazardous to children; and

(C) The provider demonstrates an effort to be in full compliance.

(3) A certificate is not transferable to any other location or to another organization or individual.

(4) A certificate is granted in the name of the operator/provider. An operator/provider is limited to one certificate at one address. (5) An owner can have multiple sites under the following conditions:

(a) If the owner is the provider/operator in one of the homes, the owner can have two certified family child care homes; or

(b) If the owner does not directly care for any children, the owner can have more than two certified family child care homes.

(c) If the owner is the provider/operator in a home certified for more than 12 children, the owner may be the provider for only that certified family child care home. The provider may be the owner of other facilities. See OAR 414-350-0100 (5).

(6) Any changes in the conditions of certificate shall be requested in writing to OCC and approved by OCC before the condition(s) of the current certificate may be changed. Changes include, but are not limited to, facility capacity, age range of children, or hours of operation.

Home

414-350-0050

General Requirements

(1) The following items shall be posted in the certified family child care home where they may be viewed by parents:

(a) The child care certificate;

(b) Notification of a communicable disease outbreak at the home;

(c) The evacuation plan; and

(d) A notice that the following items are available for parents to review:

(A) The guidance/discipline policy;

(B) The current week's menus, with substitutions recorded;

(C) The description of the general routine;

(D) Information on how to report a complaint to OCC regarding certification requirements; and

(E) The most recent OCC and sanitation inspection reports and, if applicable, fire life safety self evaluation (or fire marshal inspection report if completed).

(2) The provider shall ensure that a copy of these administrative rules is available in the certified family child care home to all parents and staff.

(3) Caregivers shall report suspected child abuse or neglect immediately, as required by the Child Abuse Reporting Law (ORS 419B.005 through 419B.050) to the Department of Human Services Child Welfare (DHS) or to a law enforcement agency. By statute, this requirement applies 24 hours per day.

(4) The certified family child care home shall comply with state and federal laws related to child safety systems and seat belts in vehicles, bicycle safety, civil rights laws, and the Americans With Disabilities Act (ADA).

(5) Representatives of all agencies involved in certification shall have immediate access to all parts of the home whenever the provider is conducting the child care business:

(a) OCC staff shall have the right to **inspect all areas of the facility that are accessible to child care children, and to conduct a health and safety review of other areas of the facility to ensure sanitation, and the health and safety of child care children.** ~~enter and inspect the home, including~~ This includes access to all caregivers, records of children enrolled in the home, and all records and reports related to the child care operation regarding compliance with these rules; and

(b) Representatives of the Department of Human Services Child Welfare (DHS) and the State Fire Marshal have the right to enter and inspect the home when an inspection has been requested by OCC.

(6) Custodial parents of all children enrolled shall have access to the home during the hours their child(ren) are in care.

(7) The provider shall develop the following information in writing and shall make it available to OCC, to staff, and to parent(s) at the time of enrollment:

(a) Guidance and discipline policy;

(b) Information on transportation, when provided by the provider or other caregiver; and

(c) The plan for handling emergencies and/or evacuations, including, but not limited to, fire, acute illness of a child or staff, natural disasters, power outages, and situations which do not allow reentry to the home after evacuation.

(8) The provider shall comply with the Department of Human Services' administrative rules relating to:

(a) Immunization of children (OAR 333-019-0021 through 333-019-0090);

(b) Reporting communicable diseases (OAR 333-019-0215 through 333-019-0415); and

(c) Child care restrictable diseases (OAR 333-019-0010).

(9) The provider shall report to OCC:

(a) An accident at the home resulting in the death of a child, within 48 hours after the occurrence; and

(b) Injuries to a child at the certified family child care home which require attention from a licensed health care professional, such as a physician, EMT or nurse, within 7 days after the occurrence.

(10) Documentation of meals and snacks provided by the certified family child care home shall be made available to OCC upon request, if the home does not participate in the USDA Child and Adult Care Food Program. Documentation is limited to the three weeks prior to the request.

(11) The provider is responsible for compliance with these requirements (OAR 414-350-0000 through 414-350-0405).

(12) Parental request or permission to waive any of the rules for certified family child care homes does not give the provider permission to do so.

Staff

414-350-0090

General Requirements

(1) As required by Oregon civil rights law, ORS Chapter 659, the provider shall not discriminate in employment on the basis of race, color, gender, marital status, religion, national origin, age, or because of a mental or physical handicap unrelated to specific job performance.

(2) 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.

~~(3) If there is evidence that casts doubt on the physical or mental competence of a person to care for children or have access to children, OCC may require that the provider provide OCC with an evaluation or other information, as specified by OCC.~~

(3) 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.

(4) 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 hours of operation. This does not apply to parents of children in care when they drop off and pick up their children.

(a) The owner, the provider, all caregivers and other residents of the home 18 years of age or older must be enrolled in OCC's Central Background Registry prior to the issuance of an initial or renewal certificate. Residents of the home who are under 18 years of age must be enrolled in the Registry by their 18th

birthday. Certification may be denied, suspended, or revoked if the provider or other resident of the home has been removed or suspended from the Central Background Registry.

(b) Prior to any new caregiver caring for children or prior to an individual residing in the home, visiting the home on a regular basis, or substituting for or assisting the provider, the caregiver/individual shall be enrolled in the Central Background Registry and the provider shall receive verification from OCC of the enrollment. This does not apply to parents of children in care unless they are residing in the home or assisting in the provision of child care.

(c) When a provider is notified by OCC that a caregiver or other individual has been removed from the Central Background Registry, the provider shall not permit the caregiver or other individual to be in the home during hours the child care business is conducted or to have access to child care children.

(d) If any person listed in section (4)(a) & (b) of this rule has been charged with, arrested for, or a warrant is out for any of the crimes which OCC has determined indicate behavior which may have a detrimental effect on a child, with final disposition not yet reached, certification may be denied or suspended until the charge, arrest, or warrant has been resolved if the person continues to operate, be employed in or reside in the home, or have access to children in the home.

(e) If a criminal record check shows that a warrant has been issued for any person checked, OCC will inform the originating law enforcement agency of the person's name, employment address and telephone number.

(f) Any visitor to the home or other adult who is not enrolled in the Central Background Registry shall not have unsupervised access to children.

(5) Volunteers must meet the following requirements:

(a) If volunteers are counted in determining the staff/child ratios, they must meet the qualifications of the position they are filling and be enrolled in the Central Background Registry.

(b) If volunteers may have unsupervised access to children, they must be enrolled in the Central Background Registry.

(c) If volunteers do not have unsupervised access to children at any time, including during emergencies, the provider must have a written policy to this effect, the policy must be known to all caregivers and volunteers, and the volunteers do not have to be enrolled in the Central Background Registry.

~~(6) No person shall smoke or use smokeless tobacco in the certified family child care home during the hours the child care business is conducted. No~~

~~person shall. No person shall smoke or use smokeless tobacco in motor vehicles while child care children are passengers.~~

(6) No person shall smoke or carry any lighted smoking instrument, including an e-cigarette **and** or vaporizer in the certified family child care home or within ten feet of any entrance, exit, or 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 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, including an e-cigarette **and** or vaporizer or use smokeless tobacco in motor vehicles while child care children are passengers.

~~(7) No one shall consume alcohol or use non-prescription controlled substances in the certified family child care home during the hours the child care business is conducted. No one under the influence of alcohol or non-prescription controlled substances shall be in the home during the hours the child care business is conducted.~~

(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.

(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 grow **medical** or distribute marijuana on the premises of the certified family child care home. No adult shall use **medical** marijuana on the certified family child care home premises during child care hours or when child care children are present

(10) No adult under the influence of **medical** marijuana shall have contact with child care children.

(11) Secure Storage:

(a) All medical marijuana obtained from a dispensary must be kept in its original container and stored under child safety lock. All medical marijuana derivatives and associated paraphernalia must be stored under **child safety** lock.

(b) Effective July 1, 2015 all marijuana, marijuana derivatives and associated paraphernalia must be stored under lock.

(12) Notwithstanding OAR 414-350-0000(6), marijuana plants shall not be grown or kept on the certified family child care home premises.