

In this packet you will find six sets of rules for your consideration at our November 18<sup>th</sup> Early Learning Council Meeting. Please note that the Early Learning Council has requested that its Child Care Work Group, made up of constituents from across Oregon, act as its rule advisory committee. A description of the work group's role vis-à-vis rule making is included as part of this packet.

The Child Care Work Group operationalized its role in rule-making in October 2014 beginning with the Central Background Registry and Registered Family rules before the Council for consideration. There are several other sets of rules presented in this packet where the Work Group did not serve in this advisory role because a rule advisory process had already been completed. This is the only batch of rules we will present to the Council where this is the case.

**For each set of rules you will find:**

- A brief summary of the proposed rule.
- A summary of public comment received.
- A copy of the proposed rule itself.

**There are two sets of decisions presented to the Council in this packet:**

- Rules being presented for final adoption.
- Rules being presented for review and approval for filing.

All rules being presented for final adoption have previously been before the Council for consideration and were adopted as temporary rules. Rules being presented for review and approval and filing are being presented for discussion and questions, with a request for final adoption to come at the Council's next meeting.

**Rule sets in front of the Council:**

- Final adoption:
  - Healthy Families Oregon
  - Migrant Seasonal Farm Worker child care subsidy program
  - Child Care Tax Credit
- Review and approve for filing
  - Medical Marijuana Use in Child Care Settings
  - Central Background Registry Rules
  - Registered Family Child Care

As you read and review these rules please feel free to reach out to me directly with questions, comments or concerns. I look forward to your discussion at the Council meeting.

# **Rules for Final Adoption**

Healthy Families Oregon, Migrant and Seasonal  
Farm Workers, Child Care Contribution Tax  
Credit

# Early Learning Council – Administrative Rule Summary

**Title/OAR #:** Healthy Families Oregon OAR 423-045-0005 to 0015

**Date:** November 6, 2014

**Staff/Office:** Erin Deahn, Healthy Families Oregon Statewide Coordinator

☐ New Rule ☒ Amend Existing Rule ☐ Repeal Rule

**Hearing Date:** June 24, 2014 ☒ Hearings Officer Report Attached

**Prompted by:** ☒ State law changes ☐ Federal law changes ☐ Other

**Action Requested:**

☒ Adoption of Final Rule

## PROPOSED/AMENDED RULE SUMMARY:

As a program of the Oregon Department of Education, Early Learning Division, the Healthy Families Oregon (HFO) home visiting multi-site system provides home visiting services including screening, general information, and intensive home visiting to eligible at risk families throughout the state to increase school readiness and prevent child abuse and neglect. HB 2013 amended existing program language in Oregon Revised Statute 417.795, necessitating a revision to the Oregon Administrative Rules for HFO.

## BACKGROUND:

Healthy Families Oregon (previously known as Healthy Start) was created in 1993 with a mandate from the Oregon Legislature to provide universal, voluntary services to all first-time parents in the state of Oregon (ORS-417.795). The mission of Healthy Families Oregon is to “promote and support positive parenting and healthy growth and development for all Oregon parents and their first-born children.” The goals of the program are to:

1. Prevent child abuse and neglect
2. Improve early indicators of school readiness

Voluntary, evidence-based home visitation is provided to high risk families in 35 Oregon counties. The program is accredited by the Healthy Families America national home visiting model, which was rated in 2010 as meeting the U.S. Department of Health and Human Services’ (DHHS) criteria for evidence-based home visiting models (see <http://homvee.acf.hhs.gov/Default.aspx>). In the last program volume year, 2011-2012, HFO provided risk screening and basic information to 9,052 first time mothers across the state – over half of all first births. Families who are identified through this screening process as being at high risk for child maltreatment and other negative outcomes are offered intensive, evidence-based home visitation services. 3,181 families received home visiting in 2011-12, making HFO the state’s largest child abuse prevention program.

Services begin prenatally or at birth, and continue until children are three years of age. The program aims to reduce risk factors associated with increased incidence of child abuse and neglect and to promote the role of parents as their child’s first teacher. According to the 2010-2011 Child Maltreatment Evaluation Report for Healthy Families Oregon, based on the most recent statewide data available, “Children in Healthy Families Oregon are 2 ½ times less likely to be maltreated than children not served by the program.” Additionally, according to the HFO Statewide Evaluation Results for 2011-2012, 92 percent of families receiving HFO home visiting services report reading to their children three times per week or more by age one.

## TIMELINE OF KEY ACTIVITIES:

- Convened Healthy Families Oregon (HFO) Statewide Advisory Committee to review Oregon Revised Statute created by HB 2013 and previous Healthy Start (now Healthy Families Oregon) Oregon Administrative Rules and provide revision recommendations.
- ELD staff drafted revisions to existing Oregon Administrative Rules based on new Oregon Revised Statute from HB 2013 and recommendations from HFO Statewide Advisory Committee.
- Convened HFO Statewide Advisory Committee to review draft revisions to HFO Oregon Administrative Rules.
- HFO Statewide Advisory Committee approved revisions to HFO Oregon Administrative Rules.
- Draft HFO Oregon Administrative Rules revisions went before ELC in May 2014 for adoption.
- Public Hearing was conducted on June 24, 2014 and the report is attached. Public testimony regarding revised Oregon Administrative Rules for HFO supported all changes in the rules.

## BENEFITS:

Healthy Families Oregon home visiting results show:

- **Increased Positive Parenting:** After one year of home visiting, 96 percent of parents consistently engaged in positive, nurturing interactions with their children.
- **Improved Parenting Skills:** 75 percent of parents reported that they improved parenting skills during the first six months of service
- **Decreased Parenting Stress:** 61 percent of parents reported a decrease in parenting-related stress from the time of the child's birth to the six month birthday, a time when parents generally experience elevated levels of parenting-related stress.
- **Positive, Developmentally Supportive Learning Environments:** After 12 months of service, 88 percent of parents were creating learning environments for their young children that were rated as "good" or higher by their home visitor, as indicated by the standardized Home Observation for Measurement of the Environment Inventory (HOME), a widely used assessment tool (Caldwell & Bradley, 1994). This percentage is higher than results found in other, comparable population results.
- **Frequent Reading to Young Children:** By age one, 92 percent of HFO parents reported reading to their children three times per week or more.
- **Families Linked to Primary Health Care:** 99 percent of HFO children had a primary health care provider and 76 percent of caregivers had a primary health care provider.
- **Children Receiving Well-Child Care:** 93 percent of HFO children were receiving regular well-child check-ups, compared to only 76 percent of all children ages 0-5 in Oregon (NSCH, 2007) and 84 percent of young children nationally (Child Trends, 2007).
- **Full Immunizations:** 90 percent of HFO's two year olds were fully immunized, compared to only 76 percent of Oregon two year olds (Oregon ALERT Immunization Registry, 2010).
- **Healthy Growth and Development:** Almost all (88%) of HFO children received at least one developmental screening (using the Ages and Stages Questionnaire, or ASQ) during 2011-2012. Most of these children showed normal growth and development on their overall assessments and 96 percent were on track for social-emotional development.
- **Appropriate Linkages to Early Intervention:** Of those parents whose children's assessments indicated a possible developmental delay, 95 percent received referrals and/or other services to support their child's development in the area of delay. Only 7 percent declined to be referred for early intervention services.

## ISSUES/CONCERNS THAT SURFACED DURING RULE WORK:

None

## FISCAL IMPACT:

None

**STAFF RECOMMENDATION:**

- ☐ Adopt draft administrative rule as prepared this month
- ☒ Adopt Final administrative rule
- ☐ No recommendation at this time

Comments: None



ROB S. SAXTON  
Deputy Superintendent of Public Instruction

BEFORE THE OREGON DEPARTMENT OF EDUCATION

RULE HEARING: OAR 414-525-0005 to 0015, Healthy Families Oregon

HEARING OFFICER'S REPORT

The Department held a public hearing on **June 24, 2014**, to receive public comment on the **proposed rule amendments**. Notice of hearing was published in a timely manner in the Secretary of State's bulletin and was sent to interested parties and persons who requested notice pursuant to ORS 183.335 (7). The hearing was held at the Department's offices in Salem, Oregon before Emily Nazarov, Hearing Officer.

**Testimony:**

**Martha Brooks, State Director, Fight Crime: Invest in Kids and Chair of the State Healthy Families Oregon Advisory Committee.**

- Testified in support of the proposed rules.
- Revisions are the result of HB 2013.
- Explained the value of home visiting through programs like Healthy Families Oregon –These successful early care programs have long term results and children are better prepared for success in the years following.
- Healthy Families Oregon serves approximately 9000 families with risk screening and customized resource and referral, and 3000 families per year with intensive home visits.
- Advisory Committee supports the proposed revisions and asks ELD to adopt the proposed OARs.

Respectfully submitted this **24<sup>th</sup> day of June, 2014**

Emily Nazarov  
Hearing Officer

## **DIVISION 45**

### **SYSTEMS AND PROGRAM OPERATIONS**

#### **Healthy Families Oregon**

**423-045-0005**

##### **Authority**

These rules are promulgated pursuant to ORS 417.705 through 417.797.

Stat. Auth.: ORS 417.705 - 417.797

Stats. Implemented:

Hist.: OCCF 1-2002, f. & cert. ef. 1-14-02; OCCF 2-2007, f. & cert. ef. 2-16-07 thru 8-15-07

**423-045-0005**

##### **Purpose**

“The purpose of these rules is to assist counties in the implementation and operation of Healthy Families Oregon program services. The Healthy Families Oregon program seeks to ensure healthy, thriving children and strong, nurturing families by offering a range of voluntary and non-stigmatizing services ranging from universal basic short-term services to long-term intensive home visiting for high risk families. Healthy Families Oregon initiates these services prenatally and at the time of birth, targeting high risk families. Healthy Families Oregon services are offered until the child’s third birthday and as needed during a transition period following the birthday to assure connection to other school readiness services for the family. Services follow evidence-based practices designed to achieve appropriate early childhood benchmarks, following the Healthy Families America model. These rules are the minimum standards for the establishment, operations, evaluation, and funding of Healthy Families Oregon program services under ORS 417.795.”

Stat. Auth.: ORS 417.705 - 417.797

Stats. Implemented: ORS 417.705 - 417.797

Hist.: OCCF 1-2002, f. & cert. ef. 1-14-02; OCCF 1-2004, f. & cert. ef. 9-15-04; OCCF 2-2007, f. & cert. ef. 2-16-07 thru 8-15-07

**423-045-0015**

##### **Program Restrictions**

(1) Systems Requirements:

(a) Healthy Families Oregon services will be offered in a manner consistent with the local early childhood system planning.

(b) Healthy Families Oregon programs will collaborate with local home visiting partners within the context of the statewide home visiting system as a part of the voluntary local early childhood system, to identify and build upon existing services for families and to prioritize additional services if needed,( e.g. mental health, drug and alcohol, and early intervention). If collaboration does not effectively occur, the Department of Human Services and the Agency will provide technical assistance to promote improved collaboration.

(c) Healthy Families Oregon programs actively participate in local community efforts to implement the early childhood system of supports and services towards the achievement of desired outcomes, working to maximize the effective use of available resources and avoid duplication of services.

(d) Local contracted agencies are not required to engage in a competitive bidding process, unless required by local policy, to select program providers for Healthy Families Oregon services each biennium. Local contracting agencies may conduct a competitive or collaborative funding process when significant deficits in program operations and services are found or when changes in the stability of service delivery systems present new options for these services.

(2) Age: Children ages prenatal through three and their families.

(3) Services: Funded service include: voluntary family support services, including but not limited to screening and follow-up services such as resource referral, further assessment, and intensive home visiting provided by highly trained home visitors organized in teams and supervised by a program manager and supervisor following the Healthy Families America model.

(4) Program Requirements:

(a) New Healthy Families Oregon Programs will make progress toward full compliance with ORS 417.795 as operationalized by the Healthy Families Oregon Implementation Manual: Statewide Program Policies and Procedures. All Healthy Families Oregon programs are required to be in full compliance within one year of program start up.

**NOTE:** Copies of the Healthy Families America model best practice standards and of the Healthy Families Oregon Program Policy and Procedure Manual are available from the Agency.

(b) Programs will develop site specific procedure manuals to further specify local program operations. Local procedure manuals will be submitted to the Agency at intervals specified by the Agency.

(c) Participation in services provided by the Healthy Families Oregon program is voluntary. Service providers will obtain express written consent before any services are offered.

(d) Local Healthy Families Oregon programs will ensure that parents have given express written consent prior to any release of information.

(e) Healthy Families Oregon program services will not be a part of a mandated plan for families. Mandated plans include plans developed by the Department of Human Services Self Sufficiency and Child Welfare services.

(f) Local Healthy Families Oregon Programs will:

(A) Participate in the independent statewide program evaluation;

(B) Participate in statewide training for program managers, supervisors home visitors and screening staff;

(C) Participate in annual meetings and trainings for program managers ;

(D) Meet statewide and local early childhood system quality assurance standards;

(E) Participate in the Healthy Families America site self-assessment, as part of ongoing quality assurance;



(F) Ensure that voluntary home visiting services through Healthy Families Oregon are coordinated with home visiting services offered by the voluntary local early childhood system.

(5) Program Budget Requirements:

(a) All programs are required to participate in federal Medicaid (Title XIX) Administrative Claiming, following program procedures provided by the Agency.

(A) Medicaid earnings, except as described in 423-010-0023(3), must be used to maintain or expand Healthy Families Oregon program core services, as defined in the Healthy Families Oregon Program Policy and Procedure Manual.

(B) Programs will report on the use of their Medicaid (Title XIX) funds to the Agency at intervals specified by the Agency.

(C) All program staff will attend training provided by the Agency prior to participation in Medicaid (Title XIX) Administrative Claiming and annually thereafter.

(b) Local programs will demonstrate a 25 percent local match with at least 5% being cash or cash equivalent as part of the base operating budget of their programs. Match will be reported to the Agency at the intervals specified by the Agency. This leverage may be in any combination of cash, cash equivalent, in-kind or volunteer hours.

(c) The local contracting agency will monitor the local Healthy Families Oregon programs to ensure fiscal and programmatic integrity.

(d) If, for any reason, a current provider stops providing contracted services prior to the end of the contract, the local contracting agency will notify the Agency 45 days prior to signing a new provider contract so that the Agency can provide program specific training and technical assistance. The local contracting agency and the Agency may mutually agree to a notice period of less than 45 days if necessitated by specific local circumstances.

(e) The Agency will manage the Title XIX Medicaid Administrative Claiming program in accordance with all state and federal rules and regulations.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 417.705 - 417.797

Stats. Implemented: ORS 417.705 - 417.797

Hist.: OCCF 1-2002, f. & cert. ef. 1-14-02; OCCF 1-2004, f. & cert. ef. 9-15-04; OCCF 2-2007(Temp), f. & cert. ef. 2-16-07 thru 8-15-07; Administrative correction 7-9-08

# Early Learning Council – Administrative Rule Summary

Title/OAR #: Migrant and Seasonal Farm Worker child care subsidies 414-400-0000

Date: November 5, 2014

Staff/Office: Office of Child Care

☐ New Rule ☒ Amend Existing Rule ☐ Repeal Rule

Hearing Date: October 28, 2014 ☒ Hearings Officer Report Attached

Prompted by: ☐ State law changes ☐ Federal law changes ☒ Other

Action Requested:

☒ Adoption of Final Rule

## PROPOSED/AMENDED RULE SUMMARY:

The Migrant and Seasonal Farm Worker (MSFW) child care subsidy program is one of three subsidy programs administered by the Office of Child Care. The administrative rules for this program are outdated, contain language that references entities that no longer exist, and needs to reflect changes to the MSFW workforce statewide. Additionally, over the 25 years the MSFW program has been in place, there have been program changes that are reflected in policy but should be operationalized in administrative rule.

## BACKGROUND:

The Special Populations Subsidy Program, which is administered by the Office of Child Care, serves child care needs for four different high-risk, high-need populations. The four populations are:

- Teen parents attending school and completing coursework that leads to a high school diploma or GED;
- Migrant and Seasonal Farm Workers employed in agricultural labor;
- Parents in alcohol and drug treatment programs; and
- Children with disabilities in need of a higher level of care.

Migrant and Seasonal Farm Workers must reside either temporarily or permanently in Oregon and be employed in agricultural labor as defined in administrative rule. Most, but not all, of the MSFW subsidies provide wrap-around care for MSFW Head Start programs (before- and after-program care).

Because of the transient nature of migrant and seasonal employment, outreach to these families is difficult. Many migrant families are not aware of the ELD MSFW child care program, which results in constant outreach through the Department of Human Services field offices, MSFW community-based organizations, and MSFW Head Start programs. Additionally, both migrant and seasonal families connected to the MSFW community-based and Head Start programs provide word-of-mouth information to new families coming into Oregon.

## TIMELINE OF KEY ACTIVITIES

- Office of Child Care staff reviewed and marked up the current administrative rules into a side-by-side draft for external review.
- Convened the MSFW Rules Advisory Committee (RAC), which met two times for a total of six hours in April 2014.
- The MSFW Rules Advisory Committee discussed and approved substantive changes to the administrative rules.
- Draft administrative rules went before the Early Learning Council for review and approval in June 2014.
- Additional comments were received via email and phone conversations with MSFW program staff over a period of three months.
- Public Hearing was conducted on October 28, 2014. Testimony from three MSFW program staff was given. Additional changes to the rule were made based on public testimony.

## **BENEFITS**

Migrant and Seasonal child care services through the Early Learning Division:

- Use a child care delivery system connected to Head Start programs or to regulated family child care homes, which means increased health and safety for at-risk children;
- Provide financial supports for MSFW families that do not qualify for the Employment Related Day Care (ERDC) program administered by the Department of Human Services;
- Provide child care to all age groups (Infant to 12) served with Child Care and Development Funds that ensures children are not left in vehicles, near agricultural fields, at home alone, or in the care of other child care age siblings while their parents are working long hours in agricultural labor; and
- Helps MSFW families transition to more secure employment in non-agricultural occupations.

## **ISSUES/CONCERNS THAT SURFACED DURING RULE WORK:**

- Changes to program rules or policies that ensure Migrant families can receive child care financial assistance the day they report to work;
- Allowing Migrant families that transition to Seasonal status more time on the financial services program in order to make cultural adjustments to permanent residency;
- Changing some rule definitions to reflect policy changes over 20 years in both the ERDC and MSFW Special Populations child care services;
- Adjustments to the way income is calculated for program eligibility and determination of financial services co-payments;
- Subsidy co-payment relieve for Seasonal families that qualify for ERDC; and
- Clarification on Oregon residency, citizenship or legal immigrant status of child receiving services.

## **FISCAL IMPACT:**

None

## **STAFF RECOMMENDATION:**

- ☐ Adopt administrative rule as prepared this month  
☒ Adopt final administrative rule  
☐ No recommendation at this time

Comments:

The Public Hearing was conducted on October 28, 2014. Testimony was given by two MSFW program staff. The Public Hearing report is attached. One additional change to the administrative rule was made based upon testimony given.



ROB S. SAXTON  
Deputy Superintendent of Public Instruction

BEFORE THE OREGON DEPARTMENT OF EDUCATION

RULE HEARING: **OAR 414-400-0000 through 0095, Migrant and Seasonal Farmworker Child Care Program**

HEARING OFFICER'S REPORT

The Department held a public hearing on **October 24, 2014**, to receive public comment on the **proposed rule amendments**. Notice of hearing was published in a timely manner in the Secretary of State's bulletin and was sent to interested parties and persons who requested notice pursuant to ORS 183.335 (7). The hearing was held at the Department's offices in Salem, Oregon before Emily Nazarov, Hearing Officer.

**Testimony:**

Jose Juan Escobar

Oregon Child Development Coalition

- Regarding 414-400-0010 (7) – definition of “Migrant Family”: The requirement that a family move a cumulative total of at least 150 miles no longer makes sense. Migrant families move from camp to camp within one state or community and may never reach that 150 mileage limit.
- Regarding 414-400-0030 – requirement that wage earners make their living in agricultural work in Oregon: More relief is needed. There are Oregonians who live and work in Oregon in agriculture at the time they need services they are working across the border in Washington, Idaho, or California. Same applies for families who live in neighboring states but work entirely in Oregon. The only child care program in the area may be on the Oregon side but they do not qualify for services because they work in Oregon but reside out of state.
- Regarding 414-400-0030 – requirement that entire family make the migratory move together: This does not align with what is actually happening in the migrant community. There are times when a family must split up and move at different times.
- This program is designed to bring services and relief to families that have traditionally been excluded or left out of high quality child care program access. Program creates hurdles that parents must overcome to qualify for the program. For example, parents in seasonal families must apply for other services through DHS before being served. This is contradictory to the spirit of making services more accessible.
- Oregon Child Development Coalition



ROB S. SAXTON  
Deputy Superintendent of Public Instruction

- Oregon Child Development Coalition asked for ten things in the rule amendments and eight of those ten things are included in the proposed rules. OCDC is very happy with changes. Comments today are aimed at the last few things that would make this program very successful.

Bertha Camacno  
CCR&R

- Likes that families may be eligible for co-pay. Has heard concerns from the community that the criteria for eligibility for DHS is different from the eligibility requirements Migrant and Seasonal Farmworker Child Care Program.

Respectfully submitted this 24<sup>th</sup> day of October, 2014

Emily Nazarov  
Hearing Officer

## **Oregon Administrative Rule**

### **Migrant and Seasonal Farmworker**

#### **414-400-0000**

##### **Purpose**

The purpose of these rules is to define key terms, describe eligibility criteria, payment rate determination, and rate payment policies related to the Early Learning Division (ELD) Migrant and Seasonal Farmworker Child Care Program. Expenditures by ELD under these rules are subject to availability of state and federal funds, as applicable, and are subject to immediate curtailment by ELD if the necessary state or federal authorizations or funding are curtailed.

#### **414-400-0010**

##### **Definitions**

(1) “Agricultural Labor” means:

(a) Any activity related to crop production, including soil preparation, planting, cultivating, crop protection or harvesting, preparing crops for market, irrigation work, operating farm machinery, or general farm work; or

(b) Any activity directly related to the processing of crops, including freezing, canning, and drying; or

(c) Any activity directly related to the cultivation of trees and shrubs or tree farming, including wreath making.

(d) Labor that does not fall under “Agricultural Labor” includes, but is not limited to: landscaping, fishing, reforestation, and animal husbandry.

(2) “Authorized Absence” means the temporary absence from the facility by a child who is expected to return to care.

(3) “Available to care for children” means not working, attending or enrolled in school, and being physically and emotionally capable of caring for children.

(4) “Contractor” means the non-profit or other type of organization that does outreach to and performs administrative functions for Migrant and Seasonal farmworker families seeking child care financial assistance.

(5) “Early Learning Division (ELD) Special Populations” means the child care subsidy program administered by the Oregon Department of Education, Early Learning Division.

(6) “Employment Related Day Care (ERDC)” means the child care subsidy program administered by the Oregon Department of Human Services.

(7) “Migrant Family” means:

(a) A family who is employed in farm labor as defined in ‘Agricultural Labor,’ and

(b) An entire family that moves their residence at least once in twelve months for the purpose of employment in agricultural labor, and the move or moves result in either:

(i) an absence of at least two months from the geographical service area OR

(ii) A cumulative total of at least 150 miles.

(8) “Seasonal Family” is a family:

(a) Whose wage earners make their living from agricultural labor on a seasonal basis in the same area as their residence; and

- (b) That at the time of application as a seasonal family, has fit the definition of a “migrant family” within the last 36 months; and
- (c) That has settled, or is in the process of settling, from migrant status; and
- (d) Was not employed in agricultural labor year round by the same employer.

#### **414-150-0080**

##### **Eligibility Criteria**

(1) Migrant family eligibility criteria include:

- (a) The migrant family wage earners make their living doing farm labor defined as Agricultural Labor; and
- (b) Are residing in Oregon; and
- (c) The parents are working in, or reporting for, farm work for which they expect to be available at the time of reporting; and
- (d) At least 50 percent of the family income for the preceding 12 months was earned from agricultural labor; and
- (e) The family earns 185 percent or less of the current Federal Poverty Level; and
- (f) The entire family moves their residence at least once in twelve months for the purpose of employment in agricultural labor; and
- (g) There is no capable family member in the household who is 18 years of age or older available to provide child care.

(2) Seasonal Family eligibility criteria include:

- (a) The seasonal wage earners make their living doing agricultural labor; and
- (b) Are residing in Oregon; and
- (c) At least one parent is currently working in agricultural labor; and
- (d) At least 50 percent of the family income for the preceding 12 months was earned from such work; and
- (e) The family earns 185 percent or less of the current Federal Poverty Level; and
- (f) At the time of application as a Seasonal Family, has fit the definition of a Migrant Family within the last 36 months; and
- (g) There is no capable family member in the household who is 18 years of age or older available to provide child care.

#### **414-400-0031**

##### **Eligibility Verification**

(1) To accommodate the immediate need for child care by **Migrant Families** and to be eligible for ELD subsidized child care benefits, Migrant Family clients must do all of the following:

- (a) Apply for the ELD Special Populations subsidy program using forms provided by the ELD and document:
  - (i) Applicant’s family size and membership, current and previous places of residence, employment history and family income for the past 12 months.
  - (ii) The income that determines family co-pay shall be for the 12 full months just prior to application, or for the most recent tax year, and shall be for all wage earners age 18 and above in the family membership.

(b) An ELD program application shall be completed or updated, and eligibility factors must be verified by the Contractor for all of the following:

(i) Contractor intake staff must ask for and review documents that verify income; employment, entire family movement. and current residence in Oregon.

(ii) Contractor files must contain copies of documents or a record verifying documents were viewed;

(c) The ELD may verify any factors affecting eligibility or benefit when they are considered questionable.

(d) If reported information or information on the application is questionable or if it is inconsistent, the following conditions may apply:

(i) The ELD may deny an application, or

(ii) Immediately end ongoing benefits to the Migrant Family when acceptable verification is not provided or if inconsistencies cannot be resolved; and

(iii) Require the Contractor to reimburse the ELD for a portion or all of benefits that have been paid for child care that has been paid in error.

(e) A Migrant Family will be notified by the Contractor in writing at least ten days prior to the end of the 12 month eligibility or if funds are no longer available.

(f) Verification provided for one program may be used as verification for all Early Learning Division programs in which the Migrant Family participates.

(2) To be eligible for ELD subsidized child care, **Seasonal Families** must do all of the following:

(a) Apply for the Department of Human Services ERDC program and follow all eligibility, determination, and copayment rules.

(b) If applicant does not qualify for or is put on the reservation list for the ERDC program, the Seasonal Family may apply for the ELD Special Populations subsidy program. On forms provided by the ELD, applicant will document:

(i) Applicant's family size and membership, current and previous places of residence, employment history and family income for the past 12 months; and

(ii) Verification of the family qualifying for Migrant Family status within the past 36 months at time of application.

(iii) The income that determines family co-pay shall be for the 12 full months just prior to application, or for the most recent tax year, and shall be for all wage earners age 18 and above in the family membership group.

(c) An application shall be completed or updated and eligibility factors must be verified by the Contractor for all of the following:

(i) Contractor intake staff must ask for and review documents that verify income, employment, and current residence in Oregon; and

(ii) Contractor files must contain copies of documents or a record verifying documents were viewed.

(d) The ELD may verify any factors affecting eligibility or benefit when they are considered questionable.

(e) If reported information or information on the application is questionable or if it is inconsistent, the following conditions may apply:

(i) The Early Learning Division may deny an application, or



- (ii) Immediately end ongoing benefits to the Seasonal Family when acceptable verification is not provided or if inconsistencies cannot be resolved, or
- (iii) Require the Contractor to reimburse the ELD for a portion or all of benefits that have been paid for child care that has been paid in error.
- (f) A Seasonal Family will be notified by the Contractor in writing at least ten days prior to the end of the 12 month eligibility, or if funds are no longer available.
- (g) Verification provided for one program may be used as verification for all Early Learning Division programs in which the client participates.

#### **414-400-0040**

##### **Payment Process**

Early Learning Division payment is subject to ELD established eligibility conditions described in these rules.

- (1) ELD will pay only for child care authorized by the ELD.
- (2) Payment is made only to providers who are registered or certified by the ELD and hold a valid Contract with the ELD.
- (3) If a child is in child care when the service plan is made, payment shall be made only from the date the service is authorized.
- (4) ELD will make payments for temporary absence if required by the provider, subject to the following requirements and limits:
  - (a) The provider must use the same policy for both ELD subsidy and non- subsidy families;
  - (b) The child must be expected to continue in child care with the same provider after the absence;
  - (c) ELD will make payment for actual absence(s) up to a total of five (5) working days in any calendar month, not to exceed 40 hours of authorized absences per month; and
  - (d) Absence days, or portions thereof, will include the time(s) for which care has been authorized by the ELD.

[ED. NOTE: The form(s) referred to or incorporated by reference in this rule are available from the agency.]

#### **414-400-0050**

##### **Billing Method**

- (1) ELD payments for child care are made by check to the provider or Contractor on behalf of the client after all care for the month has been given.
- (2) The invoice is to be submitted by the provider or Contractor on forms approved by the ELD.
- (3) Registered and Certified family child care and Certified Center providers must bill at an hourly rate not to exceed the total authorized.

#### **414-400-0060**

##### **Determining Child Care Rates for Payment**

- (1) The maximum rates the Early Learning Division pays for Migrant and Seasonal Child Care are determined by the most recent Department of Human Services (DHS) market price survey and will be furnished upon request.

- (2) ELD will pay the provider's rates within the DHS maximums as specified in the provider contract with the ELD. Rates charged to ELD for child care services may not exceed rates charged for comparable services to non-subsidy children.
- (3) The provider shall not ask the family for, or accept directly or indirectly, any additional payment for care provided to an ELD subsidy eligible Migrant or Seasonal Family other than those in section (2) of this rule.
- (4) Families are subject to copayments according to DHS Copayment Standard:
- (a) During the first month, or part thereof, of child care, all Migrant and Seasonal Families will be charged the minimum copayment.
  - (b) When all children in a family receive three or fewer hours a day of child care, the minimum copayment will apply.
  - (c) For the ELD subsidy program, the copayment for each Seasonal Family will be determined based on 50 percent of the DHS copayment Standard for the family size and monthly income. Monthly income shall be determined by dividing the annual family income by 12.
  - (d) The family shall be informed of their copayment when they apply and their copayment agreement shall be included in writing on the client application.
  - (e) The Contractor is responsible to collect the copayment.
  - (f) The Contractor may choose not to collect the copayment from the family, but the copayment shall be deducted from the amount charged ELD before ELD is billed.
- (5) **Copayment Subsidies.** For Seasonal families that have been determined eligible for the ERDC program, the ELD Special Populations program will reimburse the Contractor for 50 percent of the copayment required to be paid by the family for the ERDC subsidy.
- (a) Contractor will invoice the ELD monthly for the copayment reimbursement, and will provide documentation that shows the required copayment for the Seasonal family.
  - (b) The subsidized copayment amount will be disbursed by the ELD directly to the child care provider or to the Contractor for payment to the child care provider.
  - (c) ELD subsidized copayments are meant to ease the financial burden on Seasonal Families seeking child care subsidy. Neither the Contractor nor the child care provider shall charge an applicant family any fees or copayments that have already been paid on behalf of the family to the provider by ELD.
- (6) In-home Care. Minimum wage for care in a child's own home is governed by the state minimum wage law. It may not be negotiated to a lower rate. Overtime at one-and-one-half times the regular rate must be paid for all hours worked in excess of 40 hours in a work week (seven sequential days). Overtime shall not be paid to a provider who lives in the child's home.

#### **414-400-0033**

##### **Limits on Disclosure**

- (1) No employee or volunteer of the ELD, or other agency, may disclose information about clients except as stated in OAR 412-001-0100 through 412-001-0170, or at the direction of a court of competent jurisdiction, or upon advice of the Attorney General.
- (2) The ELD may disclose information in order to administer its programs and provide services when it is in the best interest of the applicant's family, unless specifically forbidden by statute, these rules or by court order. Reasons for disclosure include, but are not limited to, providing

information to: A social service agency, or service provider for the purpose of arranging appropriate child care services for the applicant's family.

#### **414-400-0080**

##### **Exception**

- (1) Specific exception to any section of these rules may be granted for good and just cause by the Early Learning Division.
- (2) The exception must be requested in writing to the Early Learning Division and show how the intent of the rule(s) will be met. All exceptions will remain on file.
- (3) No exception will be granted that may jeopardize the health, safety, and well-being of any child in care.
- (4) The granting of an exception shall not constitute a precedent for any other care provider or client family.

#### **NEW**

#### **414-400-00XX**

##### **Parent Complaints**

- (1) All Contractors for the Migrant and Seasonal Farmworker child care services program shall establish a process through which families may present a grievance or complaint regarding child care services.
- (2) Records of all complaints shall be maintained and the ELD must be notified in writing of all grievance and complaints within ten (10) working days of receipt.

#### **NEW**

#### **414-400-XXXX**

##### **Mandatory Reporter.**

As required by Oregon Revised Statutes (ORS) 419B.005 through 419B.050, Contractor must immediately inform either the local office of the Department of Human Services (DHS) or a law enforcement agency when they have reasonable cause to believe any child with whom the Contractor comes in contact has suffered abuse, or any person with whom the Contractor comes in contact has abused a child. Oregon Law recognizes child abuse to be physical injury; neglect or maltreatment; sexual abuse and sexual exploitation; threat of harm; mental injury; and child selling. Report must be made immediately upon awareness of the incident.

# Early Learning Council – Administrative Rule Summary

Title/OAR #: Child Care Contribution Tax Credit - 414-700-000 to 0090

Date: November 4, 2014

Staff/Office: Early Learning Division, Office of Child Care

☐ New Rule ☒ Amend Existing Rule ☐ Repeal Rule

Hearing Date: October 28, 2014 ☒ Hearings Officer Report Attached

Prompted by: ☐ State law changes ☐ Federal law changes ☒ Other

## Action Requested:

☒ Adoption of Final Administrative Rule

## PROPOSED/AMENDED RULE SUMMARY:

The Child Care Contribution Tax Credit (Tax Credit) rules have not been revised since 2004. Some of the rules are outdated and need to be modified to reflect changes to program administration. During the initial pilot program, some of the basic principles of the original statute were found to be unscalable on a statewide basis. Those changes will need to be made through the legislative process. The rules that can be modified have been reviewed by a Child Care Contribution Tax Credit Rule Advisory Committee with their recommendations going forward to the Early Learning Council.

## BACKGROUND:

The original Tax Credit concept was developed by a broad coalition of public and private entities with leadership and staff assistance provided by then Rep. Deborah Kafoury. The coalition proposed a tax credit pilot program to support the child care system through direct financial support for child care providers and low-income working families. As a pilot, stakeholders hoped to gain knowledge on the true cost of child care, how to improve compensation to the child care workforce, and improve the quality of care environments.

Legislation, which passed with 100 percent legislative support, went into effect in 2001 with a cap of \$500,000. Technical issues with implementation language were discovered by the Department of Justice and corrective legislation was proposed and passed in 2003. The first tax year contributions were received was 2004 and, with the exception of one year, the division has received the maximum amount of contributions available.

The Tax Credit had a three-pronged approach to meet the original legislative intent and funded two pilot programs over a period of five years. The approaches were:

- 1) Increase provider compensation by providing direct financial assistance for additional education investments. Providers were given cash awards for their movement up the career ladder 'steps' on the Oregon Registry;<sup>1</sup>
- 2) Increase the quality of learning environments by providing financial supports to purchase play and educational equipment, educational materials, and upgrade health and safety improvements; and
- 3) Provide child care assistance funds to parents to help with the cost gap between 10 percent of their income and the care providers monthly rate.

Implementation of the original tax credit vision has transitioned from a small, regional pilot to a statewide program that supports both the professional development of the childhood care and education workforce and quality improvements

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<sup>1</sup> The Oregon Registry: Pathways for Professional Recognition in Childhood Care and Education is a statewide program that records and recognizes the professional development growth and achievement of people who work with and for children and family. Participation in the Oregon Registry is increasing seen as an important tool for a professional development in our state.

to learning environments. Because of the limited amount of revenue generated, the child care assistance approach is not scalable on a statewide basis.

#### **TIMELINE OF KEY ACTIVITIES**

- Early Learning Division, Office of Child Care staff reviewed and marked up the current administrative rules into a side-by-side draft for external review.
- Convened the Tax Credit Rule Advisory Committee, which met in February 2014.
- The Tax Credit Rule Advisory Committee discussed and approved changes to the administrative rules with the recognition that rules regarding child care assistance cannot be modified until statutory changes are made by the Legislature.
- Draft administrative rules went before the Early Learning Council for review in June 2014. Public hearing date on October 28, 2014. No testimony was given.

#### **BENEFITS**

- Current Tax Credit revenue provides statewide financial supports and incentives to childhood care and education (CCE) providers for professional development.
- The professional development and education levels of the CCE workforce supports improved quality of adult/child interactions with children in care.
- Tax Credit revenues also support quality improvements to CCE facilities and the environments in which children receive care.

#### **ISSUES/CONCERNS THAT SURFACED DURING RULE WORK:**

Language that provides funding for child care assistance for parents to meet the cost gap cannot be implemented on a statewide basis within current Tax Credit revenues. This language cannot be changed through an administrative rule revision process. This recommendation from the Tax Credit Rules Advisory Committee has been put into a Department of Education Policy Option Package for the 2015-17 biennium.

#### **FISCAL IMPACT:**

None

#### **STAFF RECOMMENDATION:**

- ☒ Adopt final administrative rule as prepared this month  
☐ Adopt administrative rule next month  
☐ No recommendation at this time

Comments:

The Public Hearing was conducted October 28, 2014. No testimony was given.



ROB S. SAXTON  
Deputy Superintendent of Public Instruction

BEFORE THE OREGON DEPARTMENT OF EDUCATION

RULE HEARING: **Child Care Contribution Tax Credit OAR 414-700-0000 through 414-700-0090**

HEARING OFFICER'S REPORT

The Department held a public hearing on **October 24, 2014**, to receive public comment on the **proposed rule amendments**. Notice of hearing was published in a timely manner in the Secretary of State's bulletin and was sent to interested parties and persons who requested notice pursuant to ORS 183.335 (7). The hearing was held at the Department's offices in Salem, Oregon before Emily Nazarov, Hearing Officer.

**Testimony:**

No testimony.

Respectfully submitted this **24<sup>th</sup> day of October, 2014**

Emily Nazarov  
Hearing Officer

## **CHILD CARE CONTRIBUTION TAX CREDIT**

### **414-700-0000**

#### **Purpose**

The purpose of these rules is provide guidance for administration of the child care contribution tax credit program as authorized in ORS 314.752, 315.202 and 318.031 and Section 10, chapter 682, Oregon Laws 1987, Section 87, chapter 625, Oregon Laws 1989 and ORS Chapter 329A.700 to 329A.718. The child care contribution tax credit was enacted by the 2003 legislature to:

- (1) Encourage taxpayers to make contributions to the Office of Child Care by providing a financial return on qualified contributions and by soliciting other contributions.
- (2) Achieve specific and measurable goals for targeted communities and populations.
- (3) Set standards for the child care industry concerning the cost of providing quality, affordable child care.
- (4) Strengthen the viability and continuity of child care providers while making child care more affordable for low and moderate income families.

Stat. Auth: ORS 329A.706

Statutes Implemented: ORS 329A.700-329A.718

Hist.: CCD 4-2003, f. 12-5-03 cert. ef. 12-7-03

### **414-700-010**

#### **Definitions**

- (1) "Child care provider" means a provider, for compensation, of care, supervision or guidance to a child on a regular basis in a center or in a home other than the child's home. Child care provider does not include a person who is the child's parent, guardian or custodian.
- (2) "Community" means a recognized unit of government, service delivery area or other commonly recognized area or region within the state of Oregon.
- (3) "Community agency" means a nonprofit agency that:
  - (a) Provides services related to child care, children and families, community development or similar services; and
  - (b) Is eligible to receive contributions that qualify as deductions under section 170 of the Internal Revenue Code.
- (4) "High quality child care" means child care that meets standards for high quality child care established or approved by the Early Learning Council.

(5) "Qualified contribution" means a contribution made by a taxpayer to the Office of Child Care for the purpose of promoting child care, and for which an application is submitted for a tax credit certificate.

(6) "Tax credit certificate" means a certificate issued by the Office of Child Care to a taxpayer to qualify the taxpayer for a tax credit.

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

| Stat. Auth: ORS 329A.706

Statutes Implemented: ORS 329A.700-329A.718

Hist.: CCD 4-2003, f. 12-5-03 cert. ef. 12-7-03

#### **414-700-0020**

##### **Advisory Committee**

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

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

Stat. Auth: ORS 329A.706

Statutes Implemented: ORS 6329A.700-329A.718

Hist.: CCD 4-2003, f. 12-5-03 cert. ef. 12-7-03

#### **414-700-0030**

##### **Community Agencies**

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

(2) Community agencies shall:

(a) Disburse moneys to child care providers in their community;

(b) Coordinate an application process by which persons may apply to be participating providers as described in 414-700-0060;

(c) Enter into agreements with participating providers under which the duties and responsibilities of providers and the community agency are stated;

(d) Provide or coordinate required training for participating providers;



Stat. Auth: ORS 329A.706

Statutes Implemented: ORS 329A.700-329A.718

Hist.: CCD 4-2003, f. 12-5-03 cert. ef. 12-7-03

#### **414-700-0040**

##### **Application and Renewal Process for Community Agencies**

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

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

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

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

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

(2) The Office of Child Care, in collaboration with the ~~a~~A Advisory ~~c~~C Committee established in OAR 414-700-0020, shall select a community agency to represent a community.

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

Stat. Auth: ORS 329A.706

Statutes Implemented: ORS 329A.700-329A.718

Hist.: CCD 4-2003, f. 12-5-03 cert. ef. 12-7-03

#### **414-700-0050**

##### **Distribution of Funds to Community Agencies**

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

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

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

Stat. Auth: ORS 329A.706

Statutes Implemented: ORS 329A.700-329A.718

Hist.: CCD 4-2003, f. 12-5-03 cert. ef. 12-7-03

#### **414-700-0060**

##### **Participating Provider Eligibility Requirements**

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

(a) Be regulated by the Office of Child Care;

(b) Accept children for whom child care is paid for through Department of Human Services subsidy;

(c) Provide high quality child care as defined by the Early Learning Council in collaboration with the advisory council established by the Office of Child Care;

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

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

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

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

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

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

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

(5) For care provided to children of families whose income does not exceed the level established by the community agency pursuant to ORS 329A.715(2)(g), the fee charged to the family by an eligible provider shall not exceed ten percent of the family's gross monthly income.

Stat. Auth.: ORS 329A.706

Stats. Implemented: ORS 329A.700 - 329A.718

Hist.: CCD 4-2003, f. 12-5-03 cert. ef. 12-7-03; CCD 2-2005(Temp), f. & cert. ef. 6-16-05 thru 12-13-05; CCD 4-2005(Temp), f. 12-2-05, cert. ef. 12-15-05 thru 6-11-06; CCD 2-2006, f. 4-21-06, cert. ef. 4-23-06

#### **414-700-0070**

##### **Distribution of Funds to Participating Providers**

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

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

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

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

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

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

Stat. Auth: ORS 329A.706

Statutes Implemented: ORS 329A.700-329A.718

Hist.: CCD 4-2003, f. 12-5-03 cert. ef. 12-7-03

#### **414-700-0080**

##### **Allocation of Certificates**

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

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

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

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

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

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

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

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

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

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

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

Stat. Auth: ORS 329A.706

Statutes Implemented: ORS 329A.700-329A.718

Hist.: CCD 4-2003, f. 12-5-03 cert. ef. 12-7-03

#### **414-700-0090**

##### **Taxpayer Requirements**

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

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

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

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

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

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

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

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

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

Stat. Auth: ORS 329A.706

Statutes Implemented: ORS 329A.700-329A.718

Hist.: CCD 4-2003, f. 12-5-03 cert. ef. 12-7-03

# **Rules for Review and Approval for Filing**

Medical Marijuana Rules for Licensed Child  
Care, Central Background Registry Rules,  
Registered Family Child Care Rules

# Early Learning Council – Administrative Rule Summary

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

Date: November 18, 2014

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 and October 23, 2014 ☒ Hearings Officer Report Attached

Prompted by: ☐ State law changes ☐ Federal law changes ☒ Other

Action Requested:

☐ Adoption of Final Administrative Rule ☒ 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 or 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 convening three public hearings on the rules.

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:**

- Prohibits 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 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. Testimony was presented.
- Public comments about the proposed new rule amendment language are currently being 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. The rule amendments prohibit providers from holding a marijuana card or growing or distributing marijuana.
- Should the rules address different categories of card holders such as child care providers, children and other adults on the premises differently? The rule amendments restrict use by child care providers and other adults during child care hours.
- Should the rule treat child care facilities differently based upon when child care children are present? The rules place specific restrictions on when child care children are present.



- If marijuana is at 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. The rules require it to be in original packaging if purchased from a dispensary, and locked.
- Confidentiality of medical marijuana cardholders. The rules do not require disclosure by the Oregon Medical Marijuana program or medical provider of medical marijuana card holder status.
- Rules appear to discriminate against one group of people.
- 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? Rules allow access 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.
- Ballot measure to legalize recreational marijuana. The medical marijuana rules could be amended now to 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 lock.”

**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:**

- ☐ Adopt final administrative rule as prepared this month
- ☒ Adopt administrative rule in January
- ☐ No recommendation at this time

Comments:

## **SUMMARY REPORT ON RULEMAKING HEARINGS OFFICE OF CHILD CARE RULES FOR MEDICAL MARIJUANA**

**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**

### **Dates and Locations of Hearings**

October 21, 2014    Portland State Office Building, Portland, OR  
October 23, 2014    Lane Community College, Eugene, OR

The Office of Child Care, Early Learning Division held public hearing to receive public comment on the proposed rules. Notice of hearing was published in a timely manner in the Secretary of State's bulletin and was sent to interested parties and persons who requested notice pursuant to ORS 183.335(7).

Presiding Officers were Blake Dye and Kathleen Hynes.

### **Summary of Comments**

Eight people signed up to present verbal testimony at the two hearings. One submission of written testimony was received via e-mail.

- Concern about the “discriminatory nature” of the rules. They single out a specific group of people.
- The rules were drafted due to an isolated instance and are not reflective of an ongoing problem.
- Having a medical marijuana card does not, by itself, reflect on the person's ability to care for children.
- Office of Child Care rules treat firearms less stringently than medical marijuana and firearms.
- “Under the influence” is too vague and subjective. Preferable wording would be “noticeably impaired”.
- The wording that requires medical marijuana to be stored in “original container” has no meaning as there is no standard, prescribed container in which medical marijuana is dispensed.
- “Paraphernalia” has a negative connotation in this culture. Preferable wording would be “associated medical equipment”.
- The rules have the potential for financial impact on providers and parents. Potentially 10% of the 3000 providers would have to stop doing licensed child care due to these rules. This could displace about 900 children. Parents would have to seek other avenues of child care.
- Under these rules, children are allowed to medicate with marijuana, whereas adults are not.

- The rules don't address recreational marijuana.
- Office of Child Care rules already sufficiently addressed individuals that shouldn't have contact with child care children.
- The rules violate two laws under the Oregon Medical Marijuana Act: a state agency cannot deny a license to someone because they have a medical marijuana card; and, records of medical marijuana cardholders are private and confidential.
- The rules seek to control a person's free time. No one should be able to dictate what a person does in their own home outside of business hours.
- The rules don't address other medications that have caused serious problems, such as Oxycontin.
- The continuity of care that is enjoyed by parents, children and their care provider could be disrupted if the care provider had a medical marijuana card and was forced to close their license.
- The definition for "premises" needs clarification.
- What about those types of medical marijuana that are not ingested, such as creams?
- The rules create a "don't ask, don't tell" situation. Creates a lack of trust between child care programs and the governing body.
- About a year and a half ago, several licensed programs that disclosed to the Office of Child Care that staff had medical marijuana cards, were told that it was okay and were given special, non-disclosable conditions. What new information or research turned up that caused the change in policy?
- The Office of Child Care is exceeding their rulemaking authority given by statute.
- There is a potential that when caregivers are prohibited from using medical marijuana they may use much more dangerous pharmaceuticals to alleviate their symptoms.
- The wording "e-cigarette and vaporizer" should be changed to "e-cigarette or a vaporizer". As currently written, a person would have to be in possession of both items to be out of compliance.

Respectfully submitted

Blake Dye  
Hearing Officer  
October 21, 2014

Kathleen Hynes  
Hearing Officer  
October 23, 2014

**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 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.**

**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 at 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.

# Early Learning Council – Administrative Rule Summary

Title/OAR #:

Date: November 6, 2014

Registered Family Child Care OAR 414-205-0000 to 414-205-0170

Staff/Office: Early Learning Division, Office of Child Care

☐ New Rule ☒ Amend Existing Rule ☐ Repeal Rule

Hearing Dates: October 28, 2014 and November 24, 2014 ☒ Hearings Officer Report Attached for 10-28-14

Prompted by: ☐ State law changes ☐ Federal law changes ☒ Other

Action Requested:

☐ Adoption of Final Administrative Rule ☒ Review and Approve for Filing

## PROPOSED/AMENDED RULE SUMMARY:

Current Central Background Registry rules have been amended in all sections of the rulebook, including, but not limited to: Subject Individuals, History to be Considered and Procedures for Conducting Oregon State Police Criminal Records Checks and Child Protective Services Record Checks.

## BACKGROUND:

The Central Background Registry rules have not had a comprehensive review for many years. The Office of Child Care had accumulated many suggestions and revision proposals from licensed providers, staff members, partner agencies and other stakeholders. There was also a need to align the rules more with the Department of Human Services Child Care Subsidy background check rules and to enable the division to respond to rising cost of conducting background checks and anticipated changes in federal requirements. Some changes were necessary as a result of a change in federal and state law. The revisions related to reviewing patterns of behavior to determine suitability for enrollment in the Central Background Registry were incorporated into the temporary rules adopted by the Early Learning Council August 6, 2014.

Proposed Revisions include:

- Addition of several crimes to the list of crimes the division reviews when determining suitability.
- Adjustment of timeframes for review of crimes to align more with the Department of Human Services.
- Review of patterns of behavior when determining suitability. In the past, there had to be a 'founded' case of child abuse or conviction as the base standard. That base standard is eliminated and the division will now look at the entire record when determining suitability.
- Enables division to respond to rising costs of conducting background checks.

## TIMELINE OF KEY ACTIVITIES

- Early Learning Division, Office of Child Care staff drafted and reviewed amendments to current rule language for external review.
- The revisions related to reviewing pattern of behavior were adopted as a temporary rule by the Early Learning Council on August 6, 2014.
- Child Care Education Workgroup Advisory Committee met and reviewed draft revisions in October 2014. Public hearing dates on October 28, 2014 and November 24, 2014. No testimony received at the October 28 hearing.

**BENEFITS**

- Aligns the rules more closely with Department of Human Services Background check rules.
- Ensures that rules are current in relation to statutory changes.
- Enhances the health and safety of child care children by considering all history when determining suitability for enrollment in the Central Background Registry.

**ISSUES/CONCERNS THAT SURFACED DURING RULE WORK:**

- Broadening the history that is looked at (pattern of behavior) may result in negative action towards individuals against whom non-legitimate allegations or complaints have been made.
- Importance of having a framework under which to make suitability decisions.
- Concern about availability and cost of fingerprinting services when proposed new federal rules requiring everyone to be fingerprinted become effective in 2015.

**FISCAL IMPACT:**

- Providers and potential providers may be impacted if they or members of their staff or household are denied enrollment in the Central Background Registry.
- Increases in cost of background checks will impact providers.

**STAFF RECOMMENDATION:**

- ☐ Adopt final administrative rule as prepared this month  
☒ Adopt administrative rule in January  
☐ No recommendation at this time

Comments:

A Public Hearing was conducted October 28, 2014. No verbal or written testimony was received. Another public hearing will be held on November 24, 2014.

**SUMMARY REPORT ON RULEMAKING HEARINGS  
OFFICE OF CHILD CARE RULES FOR REGISTERED FAMILY AND  
CENTRAL BACKGROUND REGISTRY**

**Registered Family, OAR 414-205-0000 to 414-205-0170  
Central Background Registry, OAR 414-061-0000 to 414-061-0120**

**Dates and Locations of Hearings**

October 28, 2014    The Job Council, Medford, OR

The Office of Child Care, Early Learning Division held public hearing to receive public comment on the proposed rules. Notice of hearing was published in a timely manner in the Secretary of State's bulletin and was sent to interested parties and persons who requested notice pursuant to ORS 183.335(7).

Presiding Officer was Henry Oliva.

**Summary of Comments**

No one signed up to present verbal testimony. A partner agency submitted written testimony via e-mail.

- References to the required food handler certification should specify that the training must be based on Oregon standards.
- Add the wording "Each training session must be a minimum of one hour in length. The training documentation must be submitted and verified in the Oregon Registry" to OAR 414-205-0055(2)(c).
- Change the word "duplicate" to "repeated" in OAR 414-205-0055(2)(c)(A).
- Add the wording "Training may include community based workshops, college courses, conferences, correspondence courses and distance education. All training will meet the Oregon Registry Training and Education criteria. Training and education documentation must meet the Oregon Registry's Training and Education criteria."

Respectfully submitted

Hearing Officer

**OREGON DEPARTMENT OF EDUCATION  
EARLY LEARNING DIVISION**

**DRAFT**

**[10-9-14]**

**DIVISION 61**

**~~CHILD CARE DIVISION~~ OFFICE OF CHILD CARE**

**Central Background Registry**

**414-061-0000**

**Purpose**

(1) The ~~Child Care Division~~ Office of Child Care (OCC) will conduct criminal records checks and child protective services records checks on subject individuals, as defined in OAR 414-061-0030, for enrollment of subject individuals in the Central Background Registry.

(2) These rules provide guidelines on how ~~CCD~~ OCC obtains criminal records and child protective services records on subject individuals, applies such information to its determination about the suitability of the subject individual, and enrolls approved subject individuals in the Central Background Registry.

Stat. Auth.: ORS ~~657~~ 329A.030(7)

Stats. Implemented: ORS ~~657~~ 329A.030

Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03; CCD 1-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 1-2010, f. 6-29-10, cert. ef. 7-1-10

**414-061-0010**

**Scope of Rules**

(1) Consistent with the purposes of these rules, ~~CCD~~ OCC will issue decisions about persons defined as subject individuals as to their suitability to be enrolled in the Central Background Registry and employed in programs defined as "Requesting Agencies" in OAR 414-061-0020 ~~(16)~~ (17).

(2) These rules (OAR 414-061-0000 through 414-061-0120) shall be construed and implemented consistent with the regulations governing:

(a) Child care licensing in OAR 414-205-0000 through 414-205-0170, 414-300-0000 through ~~414-300-0410~~ 414-300-0415, and 414-350-0000 through ~~414-350-0400~~ 414-350-0405;

(b) Pre-kindergarten programs in OAR 581-019-0005 through 581-019-0035;

(c) Parent-as-teacher programs in OAR 581-019-0050 through 581-019-0080; and

(d) Early childhood special education and early intervention programs in OAR ~~581-015-0900~~ 581-015-2700 through ~~581-015-4060~~ 581-015-2910.



Stat. Auth.: ORS ~~657~~ 329A.030(7)  
Stats. Implemented: ORS ~~657~~ 329A.030  
Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03; CCD 1-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 1-2010, f. 6-29-10, cert. ef. 7-1-10

**414-061-0020**

## **Definitions**

(1) "Agency Agreement" means the written agreement between the Oregon State Police and the Oregon ~~Child Care Division~~ Office of Child Care.

~~(2) "CCD" means the Child Care Division of the Employment Department.~~

~~(3)~~ (2) "Child Protective Services Records" means information on child abuse and neglect cases ~~from the Department of Human Services.~~

~~(4)~~ (3) "Computerized Criminal History (CCH) System" means the on-line computer files of significant criminal offender information maintained by the Oregon State Police (OSP).

~~(5)~~ (4) "Conditional Enrollment" means temporary approval to be enrolled in the Central Background Registry following an OSP criminal records check and child protective services records check but prior to receipt by ~~the Division~~ OCC of the results of a required FBI criminal records check.

~~(6)~~ (5) "Criminal Records" means information, including fingerprints and photographs, received, compiled, and disseminated by the Oregon State Police for purposes of identifying criminal offenders and alleged offenders and maintained as to such persons' records of arrest, the nature and disposition of criminal charges, sentencing, confinement, and release and includes the OSP Computerized Criminal History System.

~~(7)~~ (6) "Early Childhood Care and Education Program" means a regulated child care facility, federally-funded Head Start program, Oregon Department of Education funded pre-kindergarten program, parent-as-teacher program, or early childhood special education/early intervention program.

~~(8)~~ (7) "Employee" means any individual caring for, overseeing, or who has or may have access to children, who holds a paid position in a requesting agency.

~~(9)~~ (8) "Employee of the ~~Child Care Division~~ Early Learning Division" means any individual employed by the ~~Child Care Division~~ Office of Child Care ~~who works in the child care licensing unit.~~

~~(10)~~ (9) "Enrollment" means approval for a two-year period to be enrolled in the Central Background Registry following an OSP criminal records check, child protective services records check and, if required, an FBI records check.

~~(11)~~ (10) "Fee" means the charges assessed ~~by~~ the subject individual for processing each criminal records check and/or fingerprint-based criminal records check.

~~(12)~~ (11) "FBI" means the Federal Bureau of Investigation.

~~(13)~~ (12) "Fingerprint-Based Criminal Records" means criminal offender information compiled and maintained by the Federal Bureau of Investigation.

~~(14)~~ (13) "Incident" means the commission of a Category I or Category II crime or a ~~founded~~ child protective services case.

(14) "OCC" means the Office of Child Care of the Early Learning Division of the Department of Education.

(15) "OSP" means the Oregon State Police.

(16) "Reciprocal Agreement Program" includes:

(a) A metropolitan service district organized under ORS chapter 268; and

(b) A private agency or organization facilitating the provision of respite services, as defined in ~~OS~~ ORS 418.205, for parents pursuant to a properly executed power of attorney under ORS 109.056.

~~(16)~~ (17) "Requesting Agency" means a childhood care and education program or individual providing care to children that is:

(a) Regulated by ~~CCD OCC~~ under ORS ~~657 329~~A.280 or ~~657 329~~A.330; or

(b) An early childhood care and education program.

~~(17)~~ (18) "Unsupervised Contact with Children" means contact with children that provides the person opportunity for personal communication or touch when not under the direct supervision of a child care provider or ~~employee~~ staff with supervisory authority.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS ~~657 329~~A.030(7)

Stats. Implemented: ORS ~~657 329~~A.030

Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03; CCD 1-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 1-2010, f. 6-29-10, cert. ef. 7-1-10

#### **414-061-0030**

##### **Subject Individuals**

(1) For purposes of criminal records checks, including fingerprint-based criminal records checks, and child protective services records checks, "Subject Individual" means a person who ~~wishes to seek employment as is or applies to be:~~

(a) The owner, operator or an employee or volunteer of a certified, registered or otherwise regulated facility caring for children that is subject to the jurisdiction of ~~the Child Care Division of the Employment Department OCC;~~

(b) The operator or an employee of an Oregon pre-kindergarten program or parent-as-teacher program under ORS 329.170 to 329.200;

(c) The operator or an employee of a federal Head Start Program regulated by the United States Department of Health and Human Services;

~~(d) An employee of the Child Care Division of the Employment Department~~ A designated employee, a contractor, or with the Early Learning Division;

(e) A contractor or an employee of the contractor who provides early childhood special education or early intervention services pursuant to ORS 343.455 to 343.534; or

(f) A child care provider who is required to be enrolled in the Central Background Registry by any state agency.

(g) A designated contractor, employee or volunteer of a Metro Service District.

(h) A provider of respite services as defined in ORS 418.205 for parents pursuant to a properly executed power of attorney under ORS 109.056.

(2) An individual in any of the above facilities or programs who may have unsupervised contact with children is also a subject individual. **This includes but is not limited to permanent or temporary residents in the home or facility or persons visiting on a regular basis.**

Stat. Auth.: ORS ~~657~~ 329A.030(7)

Stats. Implemented: ORS ~~657~~ 329A.030

Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03; CCD 1-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 1-2010, f. 6-29-10, cert. ef. 7-1-10

#### **414-061-0040**

##### **Limitations of Inquiries**

(1) Only ~~CCB~~ **OCC** employees who have been fingerprinted and cleared by the Oregon State Police shall access or have access to criminal records information pursuant to a valid agency agreement, as defined in OAR 414-061-0020(1). All such information shall be handled in compliance with the agency agreement and rules and procedures of the Oregon State Police relating to the criminal records information (OAR 257-015-0000 to 257-015-0100). It is the responsibility of ~~CCB~~ **OCC** to assure strict compliance with federal and state laws, rules, and procedures regarding, access, dissemination, maintenance, and destruction of criminal records information.

(2) Criminal records information obtained from OSP and/or the FBI will not be used for any purpose other than that for which it was obtained nor given to unauthorized persons or agencies.

(3) Criminal records information, including fingerprint-based criminal records information, and child protective services information shall be obtained by ~~CCB~~ **OCC** to determine whether a subject individual has ~~been convicted of a crime~~ **criminal information** or has ~~a founded~~ **child protective services record history** which is related to enrollment in the Central Background Registry.

(4) If a subject individual has been convicted of a crime which is related to enrollment in the Central Background Registry, the subject individual will be notified by ~~CCB~~ **OCC** that he or she:

(a) Has a right to inspect and challenge the accuracy of his/her Oregon criminal records by contacting the Oregon State Police;

(b) May challenge the accuracy or completeness of any entry on the subject individual's criminal records provided by the FBI by filing a challenge with the ~~Assistant Director of the FBI Identification Division, Washington, D.C. 20537-9700~~ **FBI's CJIS Division**; and

(c) May inspect his/her own OSP record, but not his/her FBI record, by requesting the opportunity from ~~CCB~~ **OCC** in writing.

Stat. Auth.: ORS ~~657~~ 329A.030(7)

Stats. Implemented: ORS ~~657~~ 329A.030

Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03; CCD 1-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 1-2010, f. 6-29-10, cert. ef. 7-1-10; CCD 1-2010, f. 6-29-10, cert. ef. 7-1-10

#### **414-061-0050**

##### **History to be Considered**

(1) ~~CCB~~ **OCC** has determined that serious felonies and misdemeanors involving violence or unauthorized sexual conduct, especially with children or otherwise vulnerable persons, is fundamentally inconsistent with

any responsibility for care of children. Conviction of crimes listed in Category I of this rule shall disqualify a subject individual from being enrolled in the Central Background Registry, unless the subject individual provides sufficient evidence of suitability as described in section ~~(6)~~ (10) of this rule.

~~(a) The crimes in Category I include:~~

~~(A) 162.165 Escape I;~~

~~(B) 162.185 Supplying Contraband;~~

~~(C) 163.095 Aggravated Murder;~~

~~(D) 163.115 Murder;~~

~~(E) 163.118 Manslaughter I;~~

~~(F) 163.125 Manslaughter II;~~

~~(G) 163.145 Criminally Negligent Homicide;~~

~~(H) 163.165 Assault III;~~

~~(I) 163.175 Assault II;~~

~~(J) 163.185 Assault I;~~

~~(K) 163.200 Criminal Mistreatment II;~~

~~(L) 163.205 Criminal Mistreatment I;~~

~~(M) 163.225 Kidnapping II;~~

~~(N) 163.235 Kidnapping I;~~

~~(P) 163.275 Coercion;~~

~~(Q) 163.355 Rape III;~~

~~(R) 163.365 Rape II;~~

~~(S) 163.375 Rape I;~~

~~(T) 163.385 Sodomy III;~~

~~(U) 163.395 Sodomy II;~~

~~(V) 163.405 Sodomy I;~~

~~(W) 163.408 Unlawful Sexual Penetration II;~~

~~(X) 163.411 Unlawful Sexual Penetration I;~~

~~(Y) 163.415 Sexual Abuse III;~~

~~(Z) 163.425 Sexual Abuse II;~~

~~(AA) 163.427 Sexual Abuse I;~~

~~(BB) 163.435 Contributing to Sexual Delinquency of Minor;~~

~~(CC) 163.445 Sexual Misconduct;~~

~~(DD) 163.515 Bigamy;~~

~~(EE) 163.525 Incest;~~

~~(FF) 163.535 Abandonment of a Child;~~

~~(GG) 163.545 Child Neglect II;~~

~~(HH) 163.547 Child Neglect I;~~

~~(II) 163.555 Criminal Nonsupport;~~

~~(JJ) 163.575 Endangering the Welfare of a Minor;~~

~~(KK) 163.670 Using Child in Display of Sexually Explicit Conduct;~~

~~(LL) 163.684 Encouraging Child Sexual Abuse I;~~

~~(MM) 163.685 Encouraging Child Sexual Abuse II;~~

~~(NN) 163.686 Encouraging Child Sexual Abuse III;~~

~~(OO) 163.688 Possession of Materials Depicting Sexually Explicit Conduct of a Child I;~~

~~(PP) 163.689 Possession of Materials Depicting Sexually Explicit Conduct of a Child II;~~

~~(QQ) 163.693 Failure to Report Child Pornography;~~

~~(RR) 163.732 Stalking;~~

~~(SS) 164.075 Theft by Extortion;~~

~~(TT) 164.225 Burglary I;~~

~~(UU) 164.325 Arson I;~~

~~(VV) 164.395 Robbery III;~~

~~(WW) 164.405 Robbery II;~~

~~(XX) 164.415 Robbery I;~~

~~(YY) 166.085 Abuse of Corpse II;~~

~~(ZZ) 166.087 Abuse of Corpse I;~~

~~(AAA) 166.155 Intimidation II;~~

~~(BBB) 166.165 Intimidation I;~~

~~(CCC) 166.220 Unlawful Use of a Weapon;~~

~~(DDD) 166.270 Possession of Weapons by Certain Felons;~~

~~(EEE) 166.272 Unlawful Possession of Machine Guns, Certain Short Barreled Firearms and Firearms Silencers;~~

~~(FFF) 166.275 Possession of Weapons by Inmates of institutions;~~

~~(GGG) 166.382 Possession of Destructive Device;~~

~~(HHH) 166.384 Unlawful Manufacture of Destructive Device;~~

~~(III) 166.429 Firearms Used in Felony;~~

~~(JJJ) 166.660 Unlawful Paramilitary Activity;~~

~~(KKK) 166.720 Racketeering Activity;~~

~~(LLL) 167.012 Promoting Prostitution;~~

~~(MMM) 167.017 Compelling Prostitution;~~

~~(NNN) 167.062 Sadomasochistic Abuse or Sexual Conduct in Live Show;~~

~~(OOO) 167.065 Furnishing Obscene Materials to Minors;~~

~~(PPP) 167.070 Sending Obscene Materials to Minors;~~

~~(QQQ) 167.075 Exhibiting an Obscene Performance to a Minor;~~

~~(RRR) 167.080 Displaying Obscene Materials to Minors;~~

~~(SSS) 167.087 Disseminating Obscene Material;~~

~~(TTT) 167.090 Publicly Displaying Nudity or Sex for Advertising Purposes;~~

~~(UUU) 167.212 Tampering with Drug Records;~~

~~(VVV) 167.262 Adult Using Minor in Commission of Controlled Substance Offense; or~~

~~(WWW) 181.599 Failure to Report as Sex Offender.~~

~~(b) (a) CGD OCC will consider conviction of the following crimes if they were committed for 15 years or less prior to the date the subject individual signed the Consent for Criminal Records Check and Request Application for Enrollment in the OCC's Central Background Registry. The 15 years will run from the date of arrest, citation, charge, or conviction whichever is later. : Assault III; Bigamy; Burglary I; Coercion; Contributing to Sexual Delinquency of Minor; Criminal Mistreatment II; Criminal Nonsupport; Kidnapping II; Possession of Weapons by Certain Felons; Racketeering Activity; Rape III; Robbery II; Robbery III; Sexual Misconduct; Stalking; Supplying Contraband; and Unlawful Use of a Weapon.~~

- (A) 163.165 Assault III
- (B) 163.515 Bigamy
- (C) 164.225 Burglary I
- (D) 163.275 Coercion
- (E) 163.200 Criminal Mistreatment II
- (F) 163.555 Criminal Nonsupport
- (G) 163.225 Kidnapping II
- (H) 166.270 Possession of Weapons by Certain Felons
- (I) 166.720 Racketeering Activity
- (J) 164.405 Robbery II
- (K) 164.395 Robbery III
- (L) 163.445 Sexual Misconduct
- (M) 163.732 Stalking
- (N) 162.185 Supplying Contraband
- (O) 166.220 Unlawful Use of a Weapon
- (P) 163.257 Custodial Interference in the First Degree

~~(e) (b) GCD OCC will consider conviction of the following crimes if they were committed for 20 years or less prior to the date the subject individual signed the Consent for Criminal Records Check and Request Application for Enrollment in the OCC's Central Background Registry. The 20 years will run from the date of arrest, citation, charge, or conviction whichever is later. : Abuse of a Corpse I; Abuse of a Corpse II; Adult Using Minor in Commission of Controlled Substance Offence; Arson I; Assault I; Assault II; Compelling Prostitution; Criminal Mistreatment I; Criminally Negligent Homicide; Disseminating Obscene Material; Escape I; Failure to Report Child Pornography; Failure to Report as Sex Offender; Firearms Used in Felony; Incest; Intimidation I; Intimidation II; Kidnapping I; Manslaughter I; Manslaughter II; Possession of Destructive Device; Possession of Weapons by Inmates of Institutions; Promoting Prostitution; Publicly Displaying Nudity or Sex for Advertising Purposes; Robbery I; Sadomasochistic Abuse or Sexual Conduct in Live Show; Tampering with Drug Records; Theft by Extortion; Unlawful Manufacture of Destructive Device; Unlawful Paramilitary Activity; and Unlawful Possession of Machine Guns, Certain Short Barreled Firearms and Firearms Silencers.~~

- (A) 166.087 Abuse of Corpse I
- (B) 166.085 Abuse of Corpse II
- (C) 167.262 Adult using Minor in Commission of Controlled Substance Offense
- (D) 164.325 Arson I
- (E) 163.185 Assault I

(F) 163.175	Assault II
(G) 475.908	Causing another person to ingest a controlled substance
(H) 167.017	Compelling Prostitution
(I) 163.205	Criminal Mistreatment I
(J) 163.145	Criminally Negligent Homicide
(K) 167.087	Disseminating Obscene Material
(L) 162.165	Escape I
(M) 163.693	Failure to Report Child Pornography
(N) 181.599	Failure to Report as Sex Offender
(O) 166.429	Firearms Used in Felony
(P) 163.525	Incest
(Q) 166.165	Intimidation I
(R) 166.155	Intimidation II
(S) 163.235	Kidnapping I
(T) 163.118	Manslaughter I
(U) 163.125	Manslaughter II
(V) 166.382	Possession of Destructive Device
(W) 166.275	Possession of Weapons by Inmates of Institutions
(X) 167.012	Promoting Prostitution
(Y) 167.090	Publicly Displaying Nudity or Sex for Advertising Purposes
(Z) 163.355	Rape III
(AA) 164.415	Robbery I
(BB) 167.062	Sadomasochistic Abuse or Sexual Conduct in Live Show
(CC) 167.212	Tampering with Drug Records
(DD) 164.075	Theft by Extortion
(EE) 163.479	Unlawful contact with a child
(FF) 166.384	Unlawful Manufacture of Destructive Device



- (GG) 166.660 Unlawful Paramilitary Activity
- (HH) 166.272 Unlawful Possession of Machine Guns, Certain Short Barreled Firearms and Firearms Silencers
- (II) 163.212 Unlawful use of an electrical stun gun, tear gas, or mace II
- (JJ) 163.476 Unlawfully being in a location where children regularly congregate

~~(d) (c) GCD OCC will consider the following crimes regardless of the length of time since they were committed: the conviction. Abandonment of a Child; Aggravated Murder; Child Neglect I; Child Neglect II; Displaying Obscene Materials to Minors; Encouraging Child Sexual Abuse I; Encouraging Child Sexual Abuse II; Encouraging Child Sexual Abuse III; Endangering the Welfare of a Minor; Exhibiting an Obscene Performance to a Minor; Furnishing Obscene Materials to Minors; Murder; Possession of Materials Depicting Sexually Explicit Conduct of a Child I; Possession of Materials Depicting Sexually Explicit Conduct of a Child II; Rape I; Rape II; Sending Obscene Materials to Minors; Sexual Abuse I; Sexual Abuse II; Sexual Abuse III; Unlawful Sexual Penetration I; Unlawful Sexual Penetration II; Sodomy I; Sodomy II; Sodomy III; and Using Child in Display of Sexually Explicit Conduct.~~

- (A) 163.535 Abandonment of a Child
- (B) 163.095 Aggravated Murder
- (C) 163.149 Aggravated vehicular homicide
- (D) 163.537 Buying or selling person under 18
- (E) 163.547 Child Neglect I
- (F) 163.545 Child Neglect II
- (G) 167.820 Concealing the birth of an infant
- (H) 163.435 Contributing to Sexual Delinquency of Minor
- (I) 163.005 Criminal Homicide
- (J) 163.452 Custodial Sexual misconduct I
- (K) 163.454 Custodial Sexual misconduct II
- (L) 163.673 Dealing sexual condition of children
- (M) 167.080 Displaying Obscene Materials to Minors
- (N) 163.684 Encouraging Child Sexual Abuse I
- (O) 163.686 Encouraging Child Sexual Abuse II
- (P) 163.687 Encouraging Child Sexual Abuse III
- (Q) 163.575 Endangering the Welfare of a Minor
- (R) 167.075 Exhibiting an Obscene Performance to a Minor

(S)	163.207	Female genital mutilation
(T)	167.065	Furnishing Obscene Materials to Minors
(U)	167.054	Furnishing sexually explicit material to child
(V)	167.057	Luring a minor
(W)	163.115	Murder
(X)	163.433	Online sexual corruption of child I
(Y)	163.432	Online sexual corruption of child II
(Z)	163.680	Paying for sexual view of children
(AA)	166.370	Possession of firearm or dangerous weapon in public building or court facility exception; discharging a firearm in a school
(BB)	163.688	Possession of Materials Depicting Sexually Explicit Conduct of a Child I
(CC)	163.689	Possession of Materials Depicting Sexually Explicit Conduct of a Child II
(DD)	163.375	Rape I
(EE)	163.365	Rape II
(FF)	163.675	Sale sexual condition of children
(GG)	167.070	Sending Obscene Materials to Minors
(HH)	181.594	Sex crimes including transporting child pornography into the state
(II)	163.427	Sexual Abuse I
(JJ)	163.425	Sexual Abuse II
(KK)	163.415	Sexual Abuse III
(LL)	167.333	Sexual assault of animal
(MM)	163.405	Sodomy I
(NN)	163.395	Sodomy II
(OO)	163.385	Sodomy III
(PP)	433.010	Spreading disease (willfully) prohibited
(QQ)	163.187	Strangulation
(RR)	163.264	Subjecting another person to involuntary servitude in the first degree

(SS) 163.263 Subjecting another person to involuntary servitude in the second degree

(TT) 163.266 Trafficking in persons

(UU) 163.670 Using Child in Display of Sexually Explicit Conduct

(VV) 163.411 Unlawful Sexual Penetration I

(WW) 163.408 Unlawful Sexual Penetration II

(XX) 163.213 Unlawful use of an electrical stun gun, tear gas, or mace I

~~(e) These rules also apply to:~~

~~(A) A conviction of a crime in another jurisdiction which is the substantial equivalent of a crime listed in Category I;~~

~~(B) An adjudication by a juvenile court that a youth has committed an act that is the substantial equivalent of a crime listed in Category I; and~~

~~(C) Any attempts or solicitations to commit any Felony or Misdemeanor crime listed in Category I.~~

~~(f) Evaluations of crimes shall be based on Oregon laws in effect at the time of conviction, regardless of the jurisdiction in which the conviction occurred.~~

(2) ~~CCD~~ OCC has further determined that felonies and misdemeanors involving theft, fraud, or deception, crimes against the state and public justice, and major traffic violations 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 was convicted of a crime listed in Category II of this rule, ~~CCD~~ OCC will seek to obtain and review information on all intervening circumstances and other background information related to criminal activity, subject to section ~~(6)~~ (10) of this rule. ~~Based on this information, the Division will make a decision whether or not to enroll the subject individual in the Central Background Registry.~~ OCC will make a determination whether an individual is suitable for enrollment in the Central Background Registry based on all information available. The crimes in Category II include:

~~(a) The crimes in Category II include:~~

~~(A) 162.025 Bribe Receiving;~~

~~(B) 162.065 Perjury;~~

~~(C) 162.155 Escape II;~~

~~(D) 162.205 Failure to Appear I;~~

~~(E) 162.235 Obstructing Governmental or Judicial Administration;~~

~~(F) 162.265 Bribing a Witness;~~

~~(G) 162.275 Bribe Receiving by a Witness;~~

~~(H) 162.285 Tampering with a Witness;~~

~~(I) 162.305 Tampering with Public Records;~~

~~(J) 162.325 Hindering Prosecution;~~

~~(K) 162.405 Official Misconduct II;~~

~~(L) 162.415 Official Misconduct I;~~

~~(M) 163.160 Assault IV;~~

~~(N) 163.190 Menacing;~~

~~(O) 163.195 Recklessly Endangering Another Person;~~

~~(P) 163.208 Assault on a Public Safety Officer;~~

~~(Q) 163.465 Public Indecency;~~

~~(R) 163.700 Invasion of Personal Privacy;~~

~~(S) 164.055 Theft I;~~

~~(T) 164.057 Aggravated Theft I;~~

~~(U) 164.215 Burglary II;~~

~~(V) 164.315 Arson II;~~

~~(W) 164.365 Criminal Mischief I;~~

~~(X) 165.013 Forgery I;~~

~~(Y) 165.022 Criminal Possession of a Forged Instrument I;~~

~~(Z) 165.032 Criminal Possession of a Forgery Device;~~

~~(AA) 165.055 Fraudulent Use of a Credit Card (over \$750);~~

~~(BB) 165.070 Possessing Fraudulent Communications Device;~~

~~(CC) 165.074 Unlawful Factoring of Credit Card Transaction;~~

~~(DD) 165.085 Sports Bribery;~~

~~(EE) 165.090 Sports Bribe Receiving;~~

~~(FF) 166.015 Riot;~~

~~(GG) 166.065 Harassment;~~

~~(HH) 166.090 Telephone Harassment;~~

~~(II) 166.190 Pointing Firearm at Another;~~

~~(JJ) 166.240 Carrying of Concealed Weapons;~~

~~(KK) 166.250 Unlawful Possession of Firearms;~~

~~(LL) 167.007 Prostitution;~~

~~(MM) 167.222 Frequenting a Place Where Controlled Substances are Used;~~

~~(NN) 167.320 Animal Abuse I;~~

~~(OO) 167.322 Aggravated Animal Abuse I;~~

~~(PP) 167.330 Animal Neglect I;~~

~~(QQ) 411.630 Unlawfully Obtaining Public Assistance;~~

~~(RR) 411.675 Submitting Wrongful Claim or Payment Prohibited;~~

~~(SS) 411.840 Unlawfully Obtaining or Disposing of Food Stamp Benefits;~~

~~(TT) 471.410 Providing Liquor to Person under 21 or to Intoxicated Person;~~

~~(UU) 475.992 Prohibited Acts Generally; Penalties; Affirmative Defense for Certain Peyote Uses (controlled substance offenses);~~

~~(VV) 475.993 Prohibited Acts for Registrants; Penalties;~~

~~(WW) 475.994 Prohibited Acts Involving Records and Fraud; Penalties;~~

~~(XX) 475.995 Penalties for Distribution to Minors;~~

~~(YY) 475.996 Crime Category Classification for Violation of ORS 475.992; Proof of Commercial Drug Offense;~~

~~(ZZ) 475.999 Penalty for Manufacture or Delivery of Controlled Substance within 1,000 feet of School;~~

~~(AAA) 811.140 Reckless Driving;~~

~~(BBB) 811.182 Criminal Driving while Suspended or Revoked;~~

~~(CCC) 811.540 Fleeing or Attempting to Elude Police Officer;~~

~~(DDD) 811.700 Failure to Perform Duties of Driver When Property Damaged (hit and run, property);~~

~~(EEE) 811.705 Failure to Perform Duties of Driver to Injured Persons (hit and run, injury); or~~

~~(FFF) 813.010 Driving Under the Influence of Intoxicants.~~

(b) (a) CCD OCC will consider conviction of the following crimes if they were committed for 5 years or less prior to the date the subject individual signed the ~~Consent for Criminal Records Check and Request Application~~ for Enrollment in the OCC's Central Background Registry: . The 5 years will run from the date of arrest, citation, charge, or conviction whichever is later. ~~Bribe Receiving; Bribe Receiving by a Witness; Bribing a Witness; Criminal Driving while Suspended or Revoked; Criminal Possession of a Forged Instrument I; Criminal Possession of Forgery Device; Failure to Appear I; Forgery I; Fraudulent use of a Credit Card (over \$750); Hindering Prosecution; Failure to Perform Duties of Driver to Injured Persons (hit and run, injury); Failure to Perform Duties of Driver When Property Damaged (hit and run, property);~~

~~Obstructing Governmental or Judicial Administration; Criminal Driving while Suspended or Revoked; Official Misconduct I; Official Misconduct II; Perjury; Possessing Fraudulent Communications Device; Reckless Driving; Sports Bribe Receiving; Sports Bribery; Submitting Wrongful Claim or Payment Prohibited; Tampering with a Witness; Tampering with Public Records; Unlawful Factoring of Credit Card Transaction; Unlawfully Obtaining or Disposing of Food Stamp Benefits; Unlawfully Obtaining Public Assistance.~~

- (A) 162.015 Bribe Giving
- (B) 162.025 Bribe Receiving
- (C) 162.275 Bribe Receiving by a Witness
- (D) 162.265 Bribing a Witness
- (E) 162.335 Compounding
- (F) 033.045 Contempt of Court
- (G) 811.182 Criminal Driving while Suspended or Revoked
- (H) 164.354 Criminal Mischief II
- (I) 192.865 Criminal Penalty (prohibition on obtaining actual address or telephone number)
- (J) 165.022 Criminal Possession of a Forged Instrument I
- (K) 165.017 Criminal Possession of a Forged Instrument II
- (L) 165.032 Criminal Possession of Forgery Device
- (M) 164.245 Criminal Trespass II
- (N) 166.025 Disorderly Conduct II
- (O) 813.010 Driving Under the Influence of Intoxicants
- (P) 162.145 Escape III
- (Q) 162.205 Failure to Appear I
- (R) 162.195 Failure to Appear II
- (S) 811.705 Failure to Perform Duties of Driver to Injured Persons (hit and run, injury)
- (T) 811.700 Failure to Perform Duties of Driver When Property Damaged (hit and run, property)
- (U) 830.475 Failure to Perform the Duties of an Operator (boat)
- (V) 165.007 Forgery II
- (W) 165.570 Improper use of 9-1-1 emergency reporting system
- (X) 162.375 Initiating a false report

(Y)	165.572	Interference with making a report
(Z)	162.257	Interfering with a firefighter or emergency medical technician
(AA)	162.247	Interfering with a peace officer
(BB)	166.116	Interfering with public transportation
(CC)	418.327	Licensing of certain schools and organizations offering residential programs
(DD)	166.095	Misconduct with emergency phone calls
(EE)	162.425	Misuse of confidential information
(FF)	166.450	Obliteration or change of identification on firearms
(GG)	162.235	Obstructing Governmental or Judicial Administration
(HH)	162.415	Official Misconduct I
(II)	162.405	Official Misconduct II
(JJ)	418.630	Operate uncertified foster home
(KK)	830.325	Operating boat while under the influence of intoxicating liquor or controlled substance
(LL)	167.431	Participation in cockfighting
(MM)	167.370	Participation in dogfighting
(NN)	162.065	Perjury
(OO)	165.070	Possessing Fraudulent Communications Device
(PP)	164.235	Possession of Burglar's tools
(QQ)	164.335	Reckless burning
(RR)	811.140	Reckless Driving
(SS)	811.231	Reckless endangering of highway workers
(TT)	830.315	Reckless operation of a boat
(UU)	162.315	Resisting Arrest
(VV)	165.085	Sports Bribe Receiving
(WW)	165.090	Sports Bribery
(XX)	411.675	Submitting Wrongful Claim or Payment Prohibited
(YY)	162.295	Tampering with physical evidence

- (ZZ) 162.305 Tampering with Public Records
- (AAA) 164.045 Theft II
- (BBB) 166.649 Throwing an object off an overpass II
- (CCC) 162.175 Unauthorized departure
- (DDD) 165.074 Unlawful Factoring of Credit Card Transaction
- (EEE) 165.810 Unlawful Possession of a personal identification device
- (FFF) 165.813 Unlawfully Possession of fictitious identification
- (GGG) 411.840 Unlawfully Obtaining or Disposing of Food Stamp Benefits
- (HHH) 411.630 Unlawfully Obtaining Public Assistance
- (III) 811.060 Vehicular assault of bicyclist or pedestrian
- (JJJ) 163.750 Violating Court's stalking protection order

~~(e) (b) -GGD OCC will consider conviction of the following crimes if they were committed for 7 years or less prior to the date the subject individual signed the Consent for Criminal Records Check and Request Application for Enrollment in the OCC's Central Background Registry: . The 7 years will run from the date of arrest, citation, charge, or conviction whichever is later. Aggravated Animal Abuse I; Animal Abuse I; Animal Neglect I; Assault IV; Carrying of Concealed Weapons; Criminal Mischief I; Driving under the Influence of Intoxicants; Fleeing or Attempting to Elude Police Officer; Harassment; Menacing; Recklessly Endangering Another Person; Telephone Harassment; Theft I; and Unlawful Possession of Firearms.~~

- (A) 163.196 Aggravate driving while suspended or revoked
- (B) 167.340 Animal abandonment
- (C) 167.330 Animal Neglect I
- (D) 167.325 Animal Neglect II
- (E) 166.240 Carrying of Concealed Weapons
- (F) 164.365 Criminal Mischief I
- (G) 166.023 Disorderly conduct I
- (H) 813.010 Driving under the Influence of Intoxicants
- (I) 314.075 Evading requirements of law prohibited (tax evasion)
- (J) 475.918 Falsifying drug test results
- (K) 811.540 Fleeing or Attempting to Elude Police Officer
- (L) 166.065 Harassment



- (M) 609.098 Maintaining dangerous dog
- (N) 830.325 Operating boat while under influence of intoxicating liquor or controlled substance
- (O) 163.195 Recklessly endangering another person
- (P) 162.285 Tampering with a witness
- (Q) 166.090 Telephone Harassment
- (R) 166.651 Throwing an object off an overpass I
- (S) 164.135 Unauthorized Use of a Vehicle
- (T) 166.250 Unlawful Possession of Firearms
- (U) 167.805 Unlawful Possession of Inhalants
- (V) 133.310 Violation of restraining order

~~(d) (c) CCR OCC will consider conviction of the following crimes if they were committed for 10 years or less prior to the date the subject individual signed the Consent for Criminal Records Check and Request Application for Enrollment in the OCC's Central Background Registry: . The 10 years will run from the date of arrest, citation, charge, or conviction whichever is later. Aggravated Theft I; Arson II; Assault on a Public Safety Officer; Burglary II; Escape II; Invasion of Personal Privacy; Pointing Firearm at Another; Providing Liquor to Person Under 21 or to Intoxicated Person; Public Indecency; and Riot.~~

- (A) 165.803 Aggravated identity theft
- (B) 167.315 Animal Abuse in Second Degree
- (C) 164.215 Burglary II
- (D) 165.581 Cellular Counterfeiting I
- (E) 167.428 Cockfighting
- (F) 164.377 Computer Crime
- (G) 162.365 Criminal Impersonation
- (H) 162.367 Criminal Impersonation of peace officer
- (I) 164.138 Criminal Possession of a Rented or Leased Motor Vehicle
- (J) 164.255 Criminal Trespass I
- (K) 164.265 Criminal Trespass while in Possession of Firearm
- (L) 163.245 Custodial Interference in the Second Degree
- (M) 167.365 Dogfighting
- (N) 165.013 Forgery I

- (O) 165.055      Fraudulent use of a Credit Card
- (P) 165.800      Identity theft
- (Q) 167.355      Involvement in animal fighting
- (R) 166.470      Limitations and conditions for sales of firearms
- (S) 164.162      Mail theft or receipt of stolen mail
- (T) 163.190      Menacing
- (U) 164.098      Organized retail theft
- (V) 166.190      Pointing a firearm at Another
- (W) 819.300      Possession of a Stolen Vehicle
- (X) 162.369      Possession of false law enforcement identification card
- (Y) 163.467      Private indecency
- (Z) 685.990      Prohibited acts (pertaining to naturopathic medicine)
- (AA) 677.080      Prohibited acts (regarding the practice of medicine)
- (BB) 471.410      Providing liquor to Person under 21 or to Intoxicated Person
- (CC) 689.527      Prohibited practices; rules (pertaining to pharmacy technicians and practitioners)
- (DD) 166.480      Sale or gift of explosives to children
- (EE) 164.085      Theft by deception
- (FF) 164.075      Theft by extortion
- (GG) 164.095      Theft by receiving
- (HH) 164.055      Theft I
- (II) 164.125      Theft of services
- (JJ) 164.272      Unlawful entry into motor vehicle

~~(e) (d) CCD OCC will consider conviction of the following crimes if they were committed for 15 years or less prior to the date the subject individual signed the Consent for Criminal Records Check and Request Application for Enrollment in the OCC's Central Background Registry: .The 15 years will run from the date of arrest, citation, charge, or conviction whichever is later. Crime Category Classification for Violation of ORS 475.992/Proof of Commercial Drug Offense; Frequenting a Place Where Controlled Substances are Used; Prohibited Acts for Registrants; penalties; [(C)] Prohibited Acts Generally; Penalties; Affirmative Defense for Certain Peyote Uses (controlled substance offenses); [(D)] Prohibited Acts involving Records and Frauds; Penalties; and [(E)] Prostitution.~~

- (A) 167.322      Aggravated Animal Abuse I

(B) 166.070	Aggravated Harassment
(C) 164.057	Aggravated Theft I
(D) 167.320	Animal Abuse I
(E) 164.315	Arson II
(F) 163.160	Assault IV
(G) 163.208	Assault on a Public Safety Officer
(H) 167.339	Assaulting law enforcement animal
(I) 475.900	Crime Category Classification; for proof of Commercial Drug Offense
(J) 475.962	Distribution of equipment, solvent, reagent, or precursor substance with intent to facilitate manufacture of controlled substance
(K) 164.172	Engaging in a financial transaction in property derived from unlawful activity
(L) 162.155	Escape II
(M) 165.107	Failing to maintain metal purchase record
(N) 475.955	Failure to report missing precursor substances
(O) 475.950	Failure to report precursor substance transaction
(P) 167.222	Frequenting a Place Where Controlled Substances are Used
(Q) 162.325	Hindering Prosecution
(R) 475.960	Illegally selling drug equipment
(S) 167.352	Interfering with assistance, search and rescue or therapy animal
(T) 167.352	Interfering with Law Enforcement Animal
(U) 163.700	Invasion of Personal Privacy
(V) 164.170	Laundering a monetary instrument
(W) 166.180	Negligently wounding another
(X) 475.967	Possession of precursor substance with intent to manufacture controlled substance
(Y) 475.977	Possession or disposing of methamphetamine manufacturing waste
(Z) 475.914	Prohibited acts for registrants; penalties
(AA) 475.752	Prohibited Acts Generally; Penalties: Affirmative Defense for Certain Peyote Uses: Causing death by Schedule IV substance

(BB) 475.916 Prohibited Acts Involving Records and Frauds; Penalties

(CC) 167.007 Prostitution

(DD) 475.965 Providing false information on precursor substance report or record

(EE) 163.465 Public indecency

(FF) 166.015 Riot

(GG) 475.525 Sale of Drug Paraphernalia prohibited

(HH) 166.005 Treason

(II) 475.870 Unlawful delivery of 3,4-methylenedioxymethamphetamine

(JJ) 475.880 Unlawful delivery of cocaine

(KK) 475.850 Unlawful delivery of heroin

(LL) 475.810 Unlawful delivery of hydrocodone

(MM) 475.912 Unlawful delivery of imitation controlled substance

(NN) 475.860 Unlawful delivery of marijuana

(OO) 475.820 Unlawful delivery of methadone

(PP) 475.890 Unlawful delivery of methamphetamine

(QQ) 475.830 Unlawful delivery of oxycodone

(RR) 475.866 Unlawful manufacture of 3,4-methylenedioxymethamphetamine

(SS) 475.876 Unlawful manufacture of cocaine

(TT) 475.846 Unlawful manufacture of heroin

(UU) 475.806 Unlawful manufacture of hydrocodone

(VV) 475.856 Unlawful manufacture of marijuana

(WW) 475.816 Unlawful manufacture of methadone

(XX) 475.886 Unlawful manufacture of methamphetamine

(YY) 475.826 Unlawful manufacture of oxycodone

(ZZ) 475.814 Unlawful possession of hydrocodone

(AAA) 475.824 Unlawful possession of methadone

(BBB) 475.834 Unlawful possession of oxycodone

- (CCC) 475.874 Unlawful possession of 3,4-methylenedioxymethamphetamine
- (DDD) 475.971 Unlawful possession of anhydrous ammonia
- (EEE) 475.884 Unlawful possession of cocaine
- (FFF) 475.854 Unlawful possession of heroin
- (GGG) 475.975 Unlawful possession of iodine in its elemental form; recording transfers; unlawful distribution of iodine in its elemental form
- (HHH) 475.976 Unlawful possession of iodine matrix; recording transfers; unlawful distribution of iodine matrix
- (III) 475.979 Unlawful possession of lithium metal or sodium metal
- (JJJ) 475.864 Unlawful possession of marijuana or marijuana product
- (KKK) 475.894 Unlawful possession of methamphetamine
- (LLL) 475.969 Unlawful possession of phosphorus

~~(f)~~ (e) ~~CDD OCC~~ will consider conviction of the following crimes ~~if they were committed~~ for 20 years or less prior to the date the subject individual signed the ~~Consent for Criminal Records Check and Request Application for Enrollment in the OCC's Central Background Registry~~. The 20 years will run from the date of arrest, citation, or conviction whichever is later. ~~Penalties for Distribution to Minors; and Penalty for Manufacture or Delivery of Controlled Substance within 1,000 feet of School.~~

- (A) 475.910 Application of controlled substance to the body of another person prohibited
- (B) 475.906 Penalties for Distribution to Minors
- (C) 475.805 Providing hypodermic device to minor prohibited
- (D) 163.263 Subjecting another person to involuntary servitude II
- (E) 475.872 Unlawful delivery of 3,4-methylenedioxymethamphetamine within 1000 feet of school
- (F) 475.882 Unlawful delivery of cocaine within 1000 feet of school
- (G) 475.852 Unlawful delivery of heroin within 1000 feet of school
- (H) 475.812 Unlawful delivery of hydrocodone within 1000 feet of school
- (I) 475.862 Unlawful delivery of marijuana within 1000 feet of school
- (J) 475.822 Unlawful delivery of methadone within 1000 feet of school
- (K) 475.892 Unlawful delivery of methamphetamine within 1000 feet of school
- (L) 475.832 Unlawful delivery of oxycodone within 1000 feet of school
- (M) 475.868 Unlawful manufacture of 3,4-methylenedioxymethamphetamine within 1000 feet of school

- (N) 475.878 Unlawful manufacture of cocaine within 1000 feet of school
- (O) 475.848 Unlawful manufacture of heroin within 1000 feet of school
- (P) 475.808 Unlawful manufacture of hydrocodone within 1000 feet of school
- (Q) 475.858 Unlawful manufacture of marijuana within 1000 feet of school
- (R) 475.818 Unlawful manufacture of methadone within 1000 feet of school
- (S) 475.888 Unlawful manufacture of methamphetamine within 1000 feet of school
- (T) 475.828 Unlawful manufacture of oxycodone within 1000 feet of school
- (U) 475.904 Unlawful manufacture or delivery of controlled substance within 1000 feet of school

~~(9)~~ (3) These rules also apply to:

~~(A)~~ (a) A conviction of a crime in another jurisdiction which is the substantial equivalent of a crime listed in Category I and II;

~~(B)~~ (b) An adjudication of guilt by reason of insanity, of an act that is the substantial equivalent of a crime listed in Category I and II;

(c) An adjudication by a juvenile court that a youth has committed an act that is the substantial equivalent of a crime listed in Category I and II; ~~and~~

~~(C)~~ (d) Any attempts, ~~conspiracies~~ or solicitations to commit any Felony or Misdemeanor crime listed in Category I and II;

(e) A new crime, adopted by the legislature following the most recent amendment of these rules, which is the substantial equivalent of any crimes listed in Category I and II;

(f) Any crime that is no longer codified in Oregon, but which is the substantial equivalent of any of the crimes listed in Category I and II;

(g) Any felony in Oregon Revised Statutes not listed in Category I and II that is serious and indicates behavior that poses a threat or jeopardizes the safety of vulnerable persons, as determined by OCC;

(h) Any misdemeanor in Oregon Revised Statutes not listed in Category I and II that is serious and indicates behavior that poses a threat or jeopardizes the safety of vulnerable persons, as determined by OCC; and

~~(H)~~ (i) Evaluations of crimes shall be based on Oregon laws in effect at the time of conviction, regardless of the jurisdiction in which the conviction occurred.

~~(3)~~ (4) ~~CDD~~ OCC has determined that ~~founded child protective services cases and firearm prohibition orders~~ a negative history involving a vulnerable population may substantially jeopardize the safety of children and ~~are~~ is inconsistent with any position of unsupervised contact with children or otherwise vulnerable persons. If any subject individual has a ~~founded~~ child protective services ~~case or active firearm prohibition order~~ history or a negative history involving other populations, ~~CDD~~ OCC will seek to obtain and review information related to the ~~case~~ history, subject to section ~~(6)~~ (10) of this rule. Based on this information, ~~the Division~~ OCC will make a decision whether or not to enroll, ~~suspend or remove~~ the subject individual in ~~or from~~ the Central Background Registry.

(5) 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 or guilty by the exception of insanity, OCC will seek to obtain and review information related to the case, subject to section (10) of this rule. Based on this information, OCC will make a decision whether or not to enroll, suspend, or remove the subject individual in or from the Central Background Registry.

(6) 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, suspend, or remove the subject individual in or from the Central Background Registry.

(7) 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, suspend, or remove the subject individual in or from the Central Background Registry.

~~(4) If CCD determines that additional information is needed to assess a person's suitability to be 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.~~

~~(5)~~ (8) 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 ~~this~~ all information obtained, ~~the Division~~ OCC will make a decision whether or not to enroll, ~~suspend or remove~~ the subject individual in ~~or from~~ the Central Background Registry.

~~(9) 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.~~

~~(6)~~ (10) Factors to be considered in determining suitability, based on information available to ~~CCD~~ OCC and information provided by the subject individual, include:

- (a) Types and number of incidences;
- (b) Passage of time since the incident occurred;
- (c) Circumstances surrounding the incident;
- (d) Intervening circumstances since the occurrence of the incident; and
- (e) Relationship of the facts under subsections (a) through (d) of this section to the individual's suitability to work with children.

~~(7)~~ (11) ~~CCD~~ OCC will not bar from enrollment in the Central Background Registry any subject individual because of the existence or contents of a juvenile record that has been expunged by the court.

[ED. NOTE: Table referenced are available from the agency.]

Stat. Auth.: ORS ~~657~~ 329A.030

Stats. Implemented: ORS ~~657~~ 329A.030

Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03; CCD 3-2004, f. 7-

30-04 cert. ef. 8-1-04; CCD 1-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 1-2010, f. 6-29-10, cert. ef. 7-1-10

#### **414-061-0060**

##### **Requirements of Requesting Agencies**

Requesting agencies, as defined in OAR 414-061-0020~~(46)~~ (17), must comply with the following requirements:

- (1) A requesting agency's application forms must contain a notice that employees and other persons who are subject individuals must be enrolled in the Central Background Registry and that employment is subject to fingerprinting and criminal records checks.
- (2) A requesting agency may hire a subject individual on a probationary basis if the subject individual is conditionally enrolled in the Central Background Registry. A requesting agency may hire a subject individual on a permanent basis if the subject individual is enrolled in the Central Background Registry.
- (3) A requesting agency shall not hire or continue to employ on a probationary or permanent basis an individual if the individual is not enrolled in the Central Background Registry or has been removed from the Central Background Registry and has not been re-enrolled.
- (4) A requesting agency may allow a subject individual who is not yet enrolled or conditionally enrolled in the Central Background Registry to participate in training, orientation and work activities if the training, orientation and work activities are at a location other than the child care facility or are conducted at the facility when children are not present and the subject individual is not in contact with any children.

Stat. Auth.: ORS ~~657~~ 329A.030(7)

Stats. Implemented: ORS ~~657~~ 329A.030

Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03; CCD 1-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 1-2010, f. 6-29-10, cert. ef. 7-1-10

#### **414-061-0065**

##### **Requirements for Reciprocal Agreement Programs**

A reciprocal agreement program must enter into a reciprocal agreement with ~~the Child Care Division OCC that~~ that provides for sharing information on enrollment status of the individuals described in OAR 414-061-0020 ~~(4)(g)~~ (16)(a) and ~~(4)~~ (b) respectively, and for the recovery of administrative, including direct and indirect costs incurred by ~~the division OCC~~ from the participation in the agreement.

Stat. Auth.: ORS ~~657~~ 329A.030(7)

Stats. Implemented: ORS ~~657~~ 329A.030

Hist. : CCD 1-2010, f. 6-29-10, cert. ef. 7-1-10

#### **414-061-0070**

##### **Procedures for Conducting Oregon State Police Criminal Records Checks and ~~Department of Human Services~~ Child Protective Services Record Checks**

- (1) Subject individuals shall consent to a criminal records check of the Oregon State Police Computerized Criminal History (CCH) System and a child protective services check at the time they request enrollment in the Central Background Registry.



(2) Central Background Registry enrollment forms shall contain notice that criminal records checks will be conducted as required by ORS ~~181.537~~ 181.534 and ~~657 329A.030~~. The form shall also contain notice that child protective services checks will be conducted.

(3) Subject individuals shall provide all information required for a criminal records check and a child protective services check. ~~Information includes ; including:~~

(a) A properly completed and signed ~~form CCD-199, Consent for Criminal Records Check and Request Application~~ for Enrollment in ~~the~~ OCC's Central Background Registry;

(b) For a subject individual who acknowledges a prior ~~conviction of a~~ criminal offense, as listed in OAR 414-061-0050, ~~or a child protective services record~~, an explanation of the relationship of the facts ~~which that~~ support the ~~conviction criminal offense or child protective services record~~ and ~~all~~ intervening circumstances. ~~On~~ Upon request of ~~CCD~~ OCC, the subject individual must authorize ~~CCD~~ OCC to verify information provided by the individual; and

(c) ~~On the application for enrollment in the Central Background Registry, CCD OCC may request subject individuals to consent~~ Consent to the use of their social security numbers for criminal and child protective services records checks, for identifying enrollees in the Central Background Registry, for sharing information with other agencies to verify child care licensing status for child care payments, and for compiling statistical information for program planning and evaluation.

(4) ~~CCD~~ OCC will review the criminal records information, child protective services information, and any additional information and will determine whether or not a subject individual may be enrolled in the Central Background Registry.

(5) Fees for each name checked through OSP CCH and child protective services systems are as follows:

(a) No charge for ~~CCD~~ designated Early Learning Division employees; and

(b) ~~All other requests for criminal record checks and child protective services checks and enrollment in the Central Background Registry will cost \$3 per person. OCC will charge the subject individual up to the amount equal to the cost incurred by OCC for criminal record checks and child protective services checks and enrollment in the Central Background Registry, to be paid at the time of the request.~~

[ED. NOTE: Forms referenced in this rule are available from the agency.]

Stat. Auth.: ORS ~~657 329A.030~~(7)

Stats. Implemented: ORS ~~657 329A.030~~

Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03; CCD 1-2006(Temp), f. & cert. ef. 3-16-06 thru 9-12-06; CCD 4-2006, f. 7-13-06, cert. ef. 7-14-06; CCD 1-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 1-2010, f. 6-29-10, cert. ef. 7-1-10

#### **414-061-0080**

##### **Procedures for Conducting FBI Criminal History Checks**

(1) An FBI criminal records check will be done on a subject individual whose OSP CCH record shows multi-~~state source~~ offender status, who has lived in Oregon less than 18 months or when ~~CCD~~ OCC has information that the individual has committed a crime in another state, ~~or has committed a federal crime, or when OCC has reason to question the identity of the subject individual.~~

(2) The subject individual shall supply to ~~CCD~~ OCC the following information:

(a) One properly completed FBI fingerprint card, with printing in the "reason fingerprinted" block ~~which that~~ reads ~~"ORS 181.537/NCPA/CA Child Care"~~ "License/Certificate/Permit ORS 181.534"; and

~~(b) Properly completed form CCD-199, Consent for Criminal Records Check and Request for Enrollment in the Central Background Registry; and~~

~~(c) For a subject individual who acknowledges a prior conviction, as listed in OAR 414-061-0050, an explanation of the relationship of the facts which support the conviction and all intervening circumstances. On request of CCD, the subject individual must authorize CCD to verify information provided under this rule.~~

(b) A properly completed "Instructions to Authorized Fingerprinter" form; or

(c) Electronically submitted fingerprints through an OCC designated fingerprinter. The "reason fingerprinted" field must read "License/Certificate/Permit ORS 181.534"; and

(d) A properly completed " Verification form for Authorized Fingerprinter" form.

~~(3) As part of the consent to a criminal records check, CCD may request the subject individual to consent to the use of his/her social security number in conducting the check.~~

~~(4)~~ (3) ~~CCD~~ **OCC** will review the criminal records information and any additional information and will determine whether or not a subject individual may be enrolled, ~~suspended or removed in or from in~~ the Central Background Registry.

~~(5)~~ (4) ~~CCD~~ **OCC** will charge the subject individual ~~\$62 up to the amount equal to the cost incurred by OCC~~ for an FBI records check, to be paid at the time of the request.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS ~~657~~ 329A.030(7)

Stats. Implemented: ORS ~~657~~ 329A.030

Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98 ; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03; CCD 6-2004, f. & cert. ef 12-17-04; CCD 3-2005(Temp), f. & cert. ef. 8-16-05 thru 2-12-06; CCD 5-2005, f. 12-29-05, cert. ef. 1-1-06; CCD 1-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 1-2010, f. 6-29-10, cert. ef. 7-1-10

#### **414-061-0090**

#### **~~CCD~~ **OCC** Enrollment Procedures**

(1) A subject individual shall be enrolled in the Central Background Registry if ~~CCD~~ **OCC** has determined that the individual:

(a) Has provided all information and/or documents requested by ~~CCD~~ **OCC**;

(b) Has no ~~criminal or child protective services~~ history as described in 414-061-0050 or has dealt with the issues and provided adequate evidence of suitability;

(c) Has paid the applicable fee; and

(d) Has complied with the rules of ~~CCD~~ **OCC** adopted pursuant to the Central Background Registry (OAR 414-061-0000 through 414-061-0120).

(2) Enrollment in the Central Background Registry shall expire two years from the date of enrollment, unless ~~rescinded~~ ~~suspended or removed~~ sooner, and may be renewed upon application to ~~CCD~~ **OCC**, payment of the required fee and compliance with the rules adopted by ~~CCD~~ **OCC** pursuant to the Central Background Registry (OAR 414-061-0000 through 414-061-0120).

(3) A subject individual who has been enrolled in the Central Background Registry will be notified by ~~CCD~~ **OCC** of his or her enrollment and the enrollment dates. Such notification will not be sufficient evidence of enrollment for employment by a requesting agency.

(4) A subject individual may be conditionally enrolled in the Central Background Registry pending the results of an FBI criminal records check if the individual has been determined to be suitable based on ~~OCP~~ criminal records information and child protective services information.

(a) A conditionally enrolled subject individual who ~~has been~~ **is subsequently** determined to be suitable based on FBI criminal records information shall be enrolled in the Central Background Registry.

(b) The two-year enrollment period will include the time the subject individual was conditionally enrolled.

(c) A conditionally enrolled subject individual who has **subsequently** been determined not to be suitable based on FBI criminal records information shall be **suspended or** removed from the Central Background Registry, according to the provisions of OAR 414-061-0110.

(d) A conditional enrollment will expire if the subject individual has not been enrolled in the Registry within one year of the conditional enrollment.

**(5) If an application for renewal and payment of required fee is received by OCC at least 14 days prior to the expiration date of the current enrollment, unless the individual is removed, remains in effect until OCC has acted on the application for renewal and has given notice of the action taken.**

Stat. Auth.: ORS ~~657~~ 329A.030(7)

Stats. Implemented: ORS ~~657~~ 329A.030

Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03; CCD 1-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 1-2010, f. 6-29-10, cert. ef. 7-1-10

#### **414-061-0100**

##### **CCD Denial Procedures**

(1) A subject individual shall be denied enrollment in the Central Background Registry if the individual:

(a) Has been determined not suitable;

(b) Has **misrepresented information or** failed to submit requested information or documentation;

(c) Has been charged with, arrested for, or a warrant ~~is out~~ for a Category I or Category II crime with final disposition not yet reached;

(d) Has an open ~~child~~ protective services or law enforcement case with final disposition not yet reached; or

(e) Is in a diversion program or similar agreement and has failed to provide written documentation of compliance with the terms of diversion or the agreement.

(2) A subject individual may appeal ~~CCD's~~ **OCC's** determination not to enroll the subject individual in the Central Background Registry, pursuant to OAR 414-061-0120.

(3) A subject individual who has been denied enrollment in the Central Background Registry due to a determination of unsuitability shall not be eligible for enrollment in the Registry for 3 years from the date of denial.

Stat. Auth.: ORS ~~657~~ 329A.030(7)

Stats. Implemented: ORS ~~657~~ 329A.030

Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03; CCD 5-2004, f. & cert. ef. 11-16-04; CCD 1-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 1-2010, f. 6-29-10, cert. ef. 7-1-10

#### 414-061-0110

##### **OCC Removal and Suspension Procedures**

(1) An individual enrolled in the Central Background Registry shall be removed or suspended from the Registry by ~~CCD OCC~~ if, during the period of enrollment, the individual;

(a) Has been determined not suitable for enrollment in the Registry;

(b) Has ~~misrepresented information~~ or failed to submit requested information or documentation;

(c) Has been charged with, arrested for, or a warrant ~~is out~~ for a Category I or Category II crime with final disposition not yet reached;

(d) Has a founded ~~child~~ protective services case or an open ~~child~~ protective services or law enforcement case with final disposition not yet reached; or

(e) Is in a diversion program or similar agreement and has failed to provide written documentation of compliance with the terms of diversion or the agreement.

(2) ~~CCD OCC~~ may immediately, and without prior hearing, remove or suspend a subject individual from the Central Background Registry when, in the opinion of ~~CCD OCC~~, such action is necessary to protect children from physical or mental abuse or a substantial threat to health and safety. Such action may be taken before an investigation is completed.

(3) ~~CCD OCC~~ may reinstate a subject individual in the Central Background Registry if the condition(s) that resulted in the suspension is corrected.

(4) When a subject individual is removed or suspended from the Central Background Registry, ~~CCD OCC~~ will notify the subject individual and the requesting agencies which have inquired about the subject individual's enrollment of the removal or suspension.

(5) A subject individual who has been removed from the Central Background Registry and has not subsequently been re-enrolled shall not be eligible for enrollment in the Registry for 3 years from the date of removal.

Stat. Auth.: ORS ~~657~~ 329A.030(7)

Stats. Implemented: ORS ~~657~~ 329A.030

Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03; CCD 5-2004, f. & cert. ef. 11-16-04; CCD 1-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 1-2010, f. 6-29-10, cert. ef. 7-1-10

#### 414-061-0120

##### **Rights for Review and Contested Case Hearings**

(1) ~~CCD OCC shall conduct contested case hearings per ORS 183.413 to 183.470 and~~ afford subject individuals the right to appeal a decision made by ~~CCD OCC~~ that the subject individual ~~may not be enrolled in or has been removed~~ is denied, suspended, or removed from enrollment from the Central Background Registry ~~through a contested case hearing pursuant to ORS 183.413 through 183.470~~. Subject individuals

must ~~notify CCD of their~~ submit a request for a contested case hearing ~~not later than 14 calendar days from the date of service of the denial or removal notice.~~ in writing in a timely manner.

(2) ~~CCD OCC~~ has no jurisdiction in a contested case hearing over allegations that the criminal records information received from OSP or the FBI or child protective services information received from the Department of Human Services is inaccurate, incomplete or maintained in violation of any federal or state law. Therefore, a contested case hearing cannot be held by ~~CCD OCC~~ for that purpose. Challenges to the accuracy or completeness of the information provided by the Department of State Police, the FBI and agencies reporting information to ~~CCD OCC~~ must be made through those departments, bureaus or agencies and not through the contested case process.

(3) ~~CCD OCC~~ is entitled to rely on the criminal records information supplied by OSP or the FBI or child protective services information supplied by the Department of Human Services until OSP, the FBI, or the Department of Human Services notifies ~~CCD OCC~~ that information has been changed or corrected in a manner that would alter the ~~CCD OCC~~ decision. If a subject individual has requested a contested case hearing, ~~CCD OCC~~ will stay the hearing until the subject individual has been afforded a reasonable time to correct or complete the record or has declined to do so.

(4) To preserve the confidentiality of the records and the privacy of the subject individual, any contested case hearing will not be open to the public unless requested by the subject individual.

(5) A subject individual who is also an employee of the licensing unit of ~~the Child Care Division OCC~~ and who is determined unsuitable for enrollment in the Central Background Registry may appeal the determination through either the contested case process or applicable personnel rules, policies and collective bargaining provisions. A subject individual's decision to appeal a determination through personnel rules, policies and collective bargaining provisions shall constitute an election of remedies as to the rights of the subject individual with respect to the disqualification determination and shall constitute waiver of the contested case process.

Stat. Auth.: ORS ~~657~~ 329A.030(7)

Stats. Implemented: ORS ~~657~~ 329A.030

Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03; CCD 1-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 1-2010, f. 6-29-10, cert. ef. 7-1-10

# Early Learning Council – Administrative Rule Summary

Title/OAR #:

Date: November 6, 2014

Registered Family Child Care OAR 414-205-0000 to 414-205-0170

Staff/Office: Early Learning Division, Office of Child Care

☐ New Rule ☒ Amend Existing Rule ☐ Repeal Rule

Hearing Dates: October 28, 2014 and November 24, 2014 ☒ Hearings Officer Report Attached for 10-28-14

Prompted by: ☐ State law changes ☐ Federal law changes ☒ Other

Action Requested:

☐ Adoption of Final Administrative Rule ☒ Review and Approve for Filing

## PROPOSED/AMENDED RULE SUMMARY:

Current rules have been amended in the Registered Family Child Care rules in all sections of the rulebook, including, but not limited to: Definitions, The Provider and Other Persons in the Home, Training Requirements, Children in Care, Health, Safety and Sanitation.

## BACKGROUND:

The Registered Family Child Care rules have not had a comprehensive review for many years. The Office of Child Care had accumulated many suggestions and revision proposals from licensed providers, staff members, partner agencies and other stakeholders to ensure the health and safety of child care children. Many rules that incorporated or relied on the guiding principles and practices of other agencies or entities were in need of updating to ensure that they did not contradict other agency rules and regulations. There was also a desire to maximize consistency between all sets of rules related to licensed child care.

Proposed revisions include:

- Prohibiting use of 15 passenger vans after a certain date. This proposal is in response to National Highway Transportation Safety Administration studies and directives related to safety issues in these vehicles.
- Training requirements for provider increased from 8 to 10 hours during two year licensing period. Minimal safety training requirements established for substitute caregivers.
- Additional supervision requirements.
- Monitoring visits during the two year license period.
- Clarification on: guidance and discipline, first aid kit requirements, safety requirements, requirements for conducting foster care and child care.

## TIMELINE OF KEY ACTIVITIES

- Early Learning Division, Office of Child Care staff drafted and reviewed amendments to current rule language for external review.
- Convened the Advisory Committee to review the rule proposals for Registered Family Child Care in 2012.
- Posted rules on the agency website and sought online and written comments in 2013
- Convened stakeholder forums in Redmond and Portland to review draft rule revisions in 2014
- Child Care Education Workgroup Advisory Committee, met and reviewed draft revisions in September 2014.
- Public hearing dates on October 28, 2014 and November 24, 2014. No testimony received at the October 28 hearing.

**BENEFITS**

- Maximizes consistency throughout the rules for licensed child care.
- Ensures that rules are current in relation to other agency or entity regulations and guidelines.
- Provides specific requirements to ensure the continued safety and well-being of child care children.

**ISSUES/CONCERNS THAT SURFACED DURING RULE WORK:**

- There was considerable discussion concerning the proposal to define kindergarten age children as school age children for the purposes of determining allowed ratios in licensed child care facilities.
- The potential impact on licensed child care facilities that would be prohibited from using 15-passenger vans under the proposed rule.
- There was some concern about requiring basic safety set training for substitutes.

**FISCAL IMPACT:**

- Modifying definitions of age groups for child care children.
- Requiring minimum training for substitutes.
- Increasing the required training for providers from 8 hours per license period to 10 hours.
- Requiring Office of Child Care approved health and safety training.
- Prohibiting the use of 15-passenger vans for transporting child care children after January 1, 2018.

**STAFF RECOMMENDATION:**

- ☐ Adopt final administrative rule as prepared this month
- ☒ Adopt administrative rule in January
- ☐ No recommendation at this time

Comments:

A Public Hearing was conducted October 28, 2014. No verbal or written testimony was received. Another public hearing will be held on November 24, 2014.

OREGON DEPARTMENT OF EDUCATION  
EARLY LEARNING DIVISION

DRAFT

[10-10-14]

DIVISION 205

REGISTERED FAMILY CHILD CARE HOMES

414-205-0000

Purpose

(1) Oregon Administrative Rules (OAR) 414-205-0000 through 414-205-0170 are the Office of Child Care's **(OCC)** minimum requirements for registering family child care providers. The purpose of these rules is to protect the health, safety, and well-being of children when cared for outside their own homes.

(2) Registration is required for persons who provide child care:

(a) On other than an occasional basis; and

(b) To more than three children from more than one family at any one time, other than the person's ~~own~~ children subject to the limits in OAR 414-205-0065; or

(c) To three or fewer children, even if from the same family if that person's enrollment in the Central Background Registry **(CBR)** has been denied or the person has been removed for cause, or suspended; or their child care facility certification or registration has been denied or revoked for cause, or suspended, or the person has voluntarily withdrawn their application or closed their registration or certification while under investigation by OCC; or

(d) Provide care that is primarily educational for four hours or less per day and where no preschool age child is present at the facility for more than four hours per day if that person's enrollment in the ~~Central Background Registry~~ **CBR** has been denied or the person has been removed for cause, or suspended; or their child care facility certification or registration has been denied or revoked for cause, or suspended, or the person has voluntarily withdrawn their application or closed their registration or certification while under investigation by OCC; or

(e) On an occasional basis by a person not ordinarily engaged in providing child care if that person's enrollment in the ~~Central Background Registry~~ **CBR** has



been denied or the person has been removed for cause, or suspended; or their child care facility certification or registration has been denied or revoked for cause, or suspended, or the person has voluntarily withdrawn their application or closed their registration or certification while under investigation by OCC; or

(f) To children from only one family other than the person's own family if that person's enrollment in the ~~Central Background Registry~~ **CBR** has been denied or the person has been removed for cause, or suspended; or their child care facility certification or registration has been denied or revoked for cause, or suspended, or the person has voluntarily withdrawn their application or closed their registration or certification while under investigation by OCC.

(3) These rules do not apply to care provided:

(a) In the home of the child;

(b) To three or fewer children, not including the provider's ~~own~~ children subject to the limits in OAR 414-205-0065 except as provided in 414-205-0000(2)(c);

(c) To children from one family, not including the provider's ~~own~~ children except as provided in 414-205-0000(2)(f);

(d) On an occasional basis by a person not ordinarily engaged in providing child care except as provided in 414-205-0000(2)(e);

(e) By the child's parent, guardian, or person acting in place of a parent;

(f) By a person related to the child care children by blood, marriage, or adoption; or

(g) By a person who is a member of the child's extended family, as determined by ~~the Office~~ **OCC** on a case-by-case basis[.].or;

(h) By a person providing care for preschool children that is primarily educational for four hours or less per day and where no preschool age child is present at the facility for more than four hours per day, except as provided in 414-205-0000(2)(d).

(4) Any family child care provider exempt from registration may apply for registration.

(5) These rules apply only during the hours the provider is conducting the child care business.

Stat. Auth.: ORS ~~657 329~~ **A**

Stats. Implemented: ORS ~~657 329~~ **A.260 & 657 329 A.330**

Hist.: CCD 2-1994, f. 7-15-94, cert. ef. 8-15-94; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 2-1995(Temp), f. 12-28-95, cert. ef. 1-1-96; CCD 2-1996, f. 3-19-96, cert. ef. 4-1-96; CCD 1-2000, f. 3-31-00, cert. ef. 4-2-00; CCD 7-2003, f. 12-23-03, cert. ef. 12-28-03; CCD 2-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 2-2010, f. 6-29-10, cert. ef. 7-1-10

## **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~~ **be associated with** a child care facility in Oregon pursuant to ORS ~~657~~ **329**A.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.~~ **means a child at least six weeks of age and under 13 years of age, or a child under 18 years of age with special needs. The child does not reside in the home and the provider has supervisory responsibility for the child in the temporary absence of the parent.**
- (5) "Child with Special Needs" means a child under ~~the age of 18~~ **years of age** 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) (6)~~ **(6)** "Civil Penalty" means a fine imposed by OCC on a provider for violation on these rules.
- (7) "Communicable Disease" means an illness caused by an infectious agent or its toxins.**

**(8) “Disinfecting” means using a process for destroying or irreversibly inactivating harmful organisms, including bacteria, viruses, germs and fungi.**

~~(8) (9) "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.~~ **means a group of individuals related by blood, marriage or adoption, or individuals whose functional relationships are 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.~~ at least six weeks of age up to 12 months of age.**

**(11) “Kindergarten-Age Child” means a child eligible to attend kindergarten in a public school.**

~~(11) (12)~~ **(12) "New Application" means a registration application that has been filed by an applicant who has never had an active registration.**

~~(12) (13)~~ **(13) "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) “OCC” means the Office of Child Care of the Department of Education, or the Administrator or staff of the Office of Child Care.**

~~(14) (15)~~ **(15) "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) (16)~~ **(16) "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, and 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.~~ **means a child who is 36 months of age up to eligible to attend kindergarten in a public school.**

(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 OCC~~ to operate a family child care home where care is provided in the family living quarters of the provider's home pursuant to ORS ~~657~~ **329**A.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) "Restrictable Disease" means an illness or infection that would prohibit the child from attending child care.**

**(25) "Sanitizing" means using a 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.**

~~(24)~~ **(26) "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. means a child eligible to attend kindergarten or above in public school. This does not include the months prior to the start of the kindergarten school year.**

~~(25)~~ **(27)** "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~~  
**OCC's** Central Background Registry; or

(b) An individual providing child care, as defined by ORS ~~657 329~~**329**A.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)~~ **(28)** "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~~  
**OCC's** Central Background Registry; or

(h) An individual is providing child care as defined by ORS ~~657 329~~**329**A.250(4) without registering with the Office of Child Care of the Department of Education.

~~(27)~~ **(29)** "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.

**(30) "Toddler" means a child who is at least 12 months of age but is not preschool-age.**

**(a) "Younger Toddler" means a child who is at least 12 months of age but is under 24 months of age.**

**(b) "Older toddler" means a child who is at least 24 months of age but is not yet preschool-age.**

~~(28)~~ **(31)** "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.~~

**(a) For homes built before July 1, 2010, window openings must be at least 20 inches wide and at least 22 inches in height, with a net clear opening of five square feet (at least 720 square inches) and a sill no more than 48 inches above the floor.**

**(b) For homes built after July 1, 2010, window openings must be at least 20 inches wide and at least 24 inches in height, with a net clear opening of five square feet (at least 720 square inches) and a sill no more than 44 inches above the floor.**

Stat. Auth.: ORS 329A.260

Stats. Implemented: ORS 329A

Hist.: CCD 2-1994, f. 7-15-94, cert. ef. 8-15-94; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 3-1999(Temp), f. 10-21-99, cert. ef. 10-23-99 thru 1-1-00; CCD 7-1999, f. 12-29-99, cert. ef. 1-1-00; CCD 1-2000, f. 3-31-00, cert. ef. 4-2-00; CCD 5-2001, f. 11-2-01, cert. ef. 11-4-01; CCD 1-2007(Temp), f. & cert. ef. 3-20-07 thru 9-16-07; CCD 2-2007, f. & cert. ef. 7-13-07; CCD 2-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 2-2010, f. 6-29-10, cert. ef. 7-1-10; ELD 9-2014(Temp), f. & cert. ef. 8-7-14 thru 2-3-15

**414-205-0020**

### **Application for Registration**

(1) The applicant must apply for registration on the form(s) supplied by OCC. The original form(s) must be submitted to OCC for processing.

(2) Persons submitting new applications must attend a family child care overview session prior to submitting their application to OCC.

(3) Persons interested in submitted an application must meet the training requirements outlined in OAR 414-205-0055.

(4) An application for registration is required:

(a) For a new registration;

(b) For renewing a registration; and

(c) For reopening a registration.

(5) There is a non-refundable filing fee of \$30 for each application. If the provider submits documentation that the provider's family income is below 100% of the Federal Poverty Level, the fee may be reduced.

(6) All civil penalties must be paid in full.

(7) To determine if requirements are met, the applicant/provider may be required to supply additional information or permit OCC, a fire marshal, or a public health official to assess the home and/or review child care records.

(8) Providers must satisfactorily complete an on-site health and safety review conducted by OCC prior to issuance of a new, renewal or reopen registration. The review will ensure that the provider is in compliance with the rules related to health, safety and sanitation.

(9) If an application for renewal and payment of the required fee is received by OCC at least 30 days prior to the expiration date of the current registration, the current registration, unless officially revoked, remains in effect until OCC has acted on the application for renewal and has given notice of the action taken.

Stat. Auth. ORS ~~657~~ 329A

Stats. Implemented: ORS ~~657~~ 329A.260, ~~657~~ 329A.330 & ~~657~~ 329A.440

Hist.: CCD 2-1994, f. 7-15-94, cert. ef. 8-15-94; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 2-1995(Temp), f. 12-28-95, cert. ef. 1-1-96; CCD 2-1996, f. 3-19-96, cert. ef. 4-1-96; CCD 1-2000, f. 3-31-00, cert. ef. 4-2-00; CCD 5-2001, f. 11-2-01, cert. ef. 11-4-01; CCD 5-2001, f. 11-2-01, cert. ef. 11-4-01; CCD 1-2007(Temp), f. & cert. ef. 3-20-07 thru 9-16-07; CCD 2-2007, f. & cert. ef. 7-13-07; CCD 2-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 2-2010, f. 6-29-10, cert. ef. 7-1-10

**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) OCC staff may conduct an unannounced monitoring visit at least once during the license period.**
- (11) The provider or substitute must allow a representative from the Office of Child Care access to the home any time child care children are present.**
- (12) The provider shall allow an inspection of all areas of the home that are accessible to child care children, and a health and safety review of other areas of the home to ensure sanitation and the health and safety of child care children.**



~~(10)~~ **(13)** 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.

~~(11)~~ **(14)** The provider must comply with **local**, 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.

~~(12)~~ **(15)** 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.

~~(13)~~ **(16)** 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.

**(17) The provider must notify parents 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.**

~~(14)~~ **(18)** ~~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. If an applicant or a provider wishes to provide child foster care, the provider must receive approval from OCC and DHS, prior to placement of the foster child(ren).~~

**(19) Registered providers shall comply with all conditions placed on their license.**

Stat. Auth.: ORS 329A.260

Stats. Implemented: ORS 329A

Hist.: CCD 1-2000, f. 3-31-00, cert. ef. 4-2-00; CCD 1-2007(Temp), f. & cert. ef. 3-20-07 thru 9-16-07; CCD 2-2007, f. & cert. ef. 7-13-07; CCD 2-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; Administrative correction 7-27-10; ELD 9-2014(Temp), f. & cert. ef. 8-7-14 thru 2-3-15

**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, 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~~ **OCC's** 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. The provider must verify with OCC that the individual is enrolled in the CBR prior to that individual moving into the home, residing on a temporary basis in the home, visiting the home on a regular basis (including overnight visits) or substituting for or assisting the provider. This does not apply to parents of children in care unless they are residing in the home or substituting or assisting the provider. The provider must keep a copy of OCC's confirmation letter for all adults enrolled in the CBR.~~

(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.

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

**(e) The provider, substitutes and other individuals that are required to be enrolled in the CBR must maintain current enrollment in the CBR at all times while the child care license is active.**

(3) ~~A caregiver substituting for the provider must:~~ **Prior to substituting for the provider, a caregiver must:**

- (a) Be familiar with the requirements for registration and agree to comply with them;
- (b) Be enrolled in the ~~Central Background Registry~~ **CBR**; ~~prior to substituting for the provider; and~~
- (c) Comply with all the requirements **placed on the provider**, except those in OAR 414-205-0055; ~~placed on the provider in these rules.~~
- (d) Have a current certification in first aid and infant and child cardiopulmonary resuscitation. The certifications must be current while the caregiver is substituting for the provider. Training must have practical hands-on instruction. Courses that involve an on-line component with hands-on instruction may be accepted. Strictly on-line training is not acceptable; and**
- (e) Have a current food handler's certification, if preparing or serving food to children.**

Stat. Auth.: ORS 329A.260

Stats. Implemented: ORS 329A

Hist.: CCD 2-1994, f. 7-15-94, cert. ef. 8-15-94; CCD 1-1995, f. 10-30-95, cert. ef. 11-1-95; CCD 1-2000, f. 3-31-00, cert. ef. 4-2-00; CCD 2-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 2-2010, f. 6-29-10, cert. ef. 7-1-10; ELD 9-2014(Temp), f. & cert. ef. 8-7-14 thru 2-3-15

## **414-205-0055**

### **Training Requirements**

- (1) When a person submits a new application for registration as a family child care provider, ~~the Office of Child Care~~ **OCC** shall, prior to approving the registration, receive evidence from the person that the person has:
  - (a) Completed the Family Child Care Overview session;
  - (b) A current certification in first aid and infant and child cardiopulmonary resuscitation. Training must have practical hands-on instruction; ~~. therefore, online training is not acceptable.~~ **Courses that involve an on-line component with hands-on training may be accepted. Strictly on-line training is not acceptable.**
  - (c) A current food handler certification pursuant to ORS 624.570; ~~and~~
  - (d) Completed two hours of training on recognizing and reporting child abuse and neglect issues.

(A) Recognizing and reporting child abuse and neglect training must be based on Oregon law and practice so information is relevant to reporting in Oregon.

(B) Recognizing and reporting child abuse and neglect training must be two hours or more in duration to be accepted.

**(e) Completed OCC approved health and safety training.**

(2) When a registered family child care provider submits a renewal application, the OCC shall, prior to approving it, receive evidence from the provider that the provider has:

(a) A current certification in first aid and infant and child cardiopulmonary resuscitation. Training must have practical hands-on instruction; ~~. therefore, online training is not acceptable.~~ **Courses that involve an on-line component with hands-on instruction may be accepted. Strictly on-line training is not acceptable.**

(b) A current food handler certification pursuant to ORS 624.570; and

(c) Completed a minimum of ~~eight~~ **ten** hours of training during the two years preceding the renewal date. The training must be related to the core knowledge categories in the Oregon Registry. At least ~~four~~ **six** clock hours of the ~~eight~~ **ten** hours of training must be in child development or early childhood **education**. ~~Duplicate A training on recognizing and reporting child abuse and neglect issues can will be accepted again after five years; (and every five years thereafter) towards the eight clock hours of training required for licensing.~~ **as part of the ten clock hours of training required for licensing, but will not be accepted as part of the required child development training hours.**

(A) ~~The~~ OCC will accept duplicate training one additional time if it is a Set 2 (intermediate) or Set 3 (advanced) training or above as described by the Oregon Center for Career Development in Childhood Care and Education; and it is not taken within the same license period.

(B) The following core knowledge categories are accepted for the child development and early childhood education requirement: Diversity (D), Family and Community Systems (FCS), Human Growth and Development (HGD), Health Safety and Nutrition (HSN), Learning Environments and Curriculum (LEC), Observation and Assessment (OA), Special Needs (SN), and Understanding and Guiding Behavior (UGB).

~~(C) An approved planned reading program of professional materials may count for up to two hours of the eight clock hours of training and must include a written assessment of the reading materials completed.~~

(3) When a person submits a reopen application, the OCC shall, prior to approving it, receive evidence from the individual that the individual has:

(a) A current certification in first aid and infant and child cardiopulmonary resuscitation. Training must have practical hands-on instruction; ~~. therefore, online training is not acceptable.~~ **Courses that involve an on-line component with hands-on instruction may be accepted. Strictly on-line training is not acceptable.**

(b) A current food handler certification pursuant to ORS 624.570; and

(c) Documentation that individual has ~~eight~~ **ten** hours of training related to the Oregon Registry core knowledge categories ~~during the previous two-year license period.~~ **since the individual's last active child care license was issued.** If the individual was previously licensed for less than two years, the training requirements will be prorated as follows: ~~two~~ **2.5** hours of training for each six months of the previous license period. ~~Duplicate~~ **A** training on recognizing and reporting child abuse and neglect ~~issues can~~ **will** be accepted again after five years; ~~(and every five years thereafter)~~ **towards the eight clock hours of training required for licensing.** ~~as part of the ten clock hours of training required for licensing, but will not be accepted as part of the required child development training hours.~~

(A) ~~The~~ OCC will accept duplicate training one additional time if it is a Set 2 (intermediate) or Set 3 (advanced) training or above as described by the Oregon Center for Career Development in Childhood Care and Education; and it is not taken within the same license period.

~~(B) An approved planned reading program of professional materials may count for up to two hours of the eight clock hours of training and must include a written assessment of the reading materials completed.~~

**(4) While the registered family child care license is active, the provider must maintain current certifications in first aid, infant and child CPR and food handler training.**

Stat. Auth.: ORS ~~657~~ **329**A.260

Stats. Implemented: ORS ~~657~~ **329**A.260

Hist.: CCD 1-2000, f. 3-31-00, cert. ef. 4-2-00; CCD 5-2001, f. 11-2-01, cert. ef. 11-4-01; CCD 3-2004, f. 7-30-04 cert. ef 8-1-04; CCD 1-2007(Temp), f. & cert. ef. 3-20-07 thru 9-16-07; CCD 2-2007, f. & cert. ef. 7-13-07; CCD 2-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; Administrative correction 7-27-10; CCD 7-2010, f. 12-29-10, cert. ef. 1-1-11

## 414-205-0065

### Children in Care

(1) A family child care provider may care for a maximum of 10 children under 13 years of age, or under age 18 if a child with special needs, at any one time. This includes the provider's own children, the child care children, foster children, and any other children for whom the provider is responsible.

(2) Of the 10 children under 13 years of age or under age 18 ~~if a child~~ **years of age** with special needs, the provider may care for:

(a) A maximum of 6 children preschool age or younger, including the provider's ~~own~~ children, of which only 2 children may be under 24 months of age.

(b) ~~In addition, there may be 4 school-age children.~~ **Four school-age children, in addition to the six children preschool-age or younger.**

(c) **If More school-age children if** there are fewer than 6 children preschool age or younger, ~~there may be more school-age children,~~ as long as there are no more than 10 children in the home at any one time.

(3) Other children, including but not limited to **relatives**, neighborhood children or friends of the provider's children, are included in the maximum number of 10 children allowed in care if their parents or other adults responsible for supervising them are not present in the home or are not directly supervising their own child(ren).

(4) Visiting children and their parents or others directly supervising them can be in the family child care home only on an occasional basis.

(5) No child younger than 6 weeks of age can be in care in a family child care home. This does not include the provider's child(ren).

Stat. Auth.: ORS ~~657 329~~ A.260

Stats. Implemented: ORS ~~657 329~~ A.260

Hist.: CCD 1-2000, f. 3-31-00, cert. ef. 4-2-00; CCD 5-2001, f. 11-2-01, cert. ef. 11-4-01; CCD 2-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 2-2010, f. 6-29-10, cert. ef. 7-1-10

## 414-205-0075

### Supervision of Children

**(1)** The provider or a substitute caregiver is responsible for the children in care. ~~The~~ **At all times the** provider or substitute caregiver must:

~~(1) (a) Be within sight and/or sound of all children at all times;~~

~~(2) (b) Be aware of what each child is doing at all times; and~~

~~(3) Be physically present when preschool-age or younger children are playing outside unless the outside play area is fully fenced and hazard free. If the outside play area is fully fenced and hazard free, the provider must be within sight and/or sound of the children.~~

**(c) Be near enough to children to respond when needed;**

**(d) Be physically present when there are children 36 months of age or younger playing outside; and**

**(e) Be physically present when kindergarten-age or younger children are playing outside, unless the outside play area is fully fenced and hazard free.**

Stat. Auth.: ORS ~~657~~ **329**A.260

Stats. Implemented: ORS ~~657~~ **329**A.260

Hist.: CCD 1-2000, f. 3-31-00, cert. ef. 4-2-00; CCD 5-2001, f. 11-2-01, cert. ef. 11-4-01; CCD 2-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 2-2010, f. 6-29-10, cert. ef. 7-1-10

**414-205-0085**

### **Guidance and Discipline**

(1) The provider must have a written ~~discipline~~ policy **on guidance and discipline of child care children**. The policy must be simple and understandable to the child, the parent(s) and to substitute caregivers. ~~The written discipline policy must be given to all parents.~~

~~(2) The following behavior by caregivers is prohibited:~~

~~(a) Corporal punishment, including hitting, spanking, slapping, beating, shaking, pinching, and other measures that produce physical pain;~~

~~(b) Withdrawal or the threat of withdrawal of food, rest, or bathroom opportunities;~~

~~(c) Punishing a child for toileting accidents or for refusing food;~~

~~(d) Abusive or profane language;~~

~~(e) Any form of public or private humiliation, including threats of physical punishment; and~~

~~(f) Any form of emotional abuse, including, but not limited to, rejecting, terrorizing, neglecting, or corrupting a child.~~

~~(3) Parental request or permission to use any form of punishment listed in subsection (2) of this rule does not give the provider permission to use such punishment.~~

**(2) The written guidance and discipline policy must be given to all parents.**

**(3) The guidance and discipline policy shall:**

**(a) Provide for positive guidance, redirection and the setting of clear boundaries; and**

**(b) Be designed to help the child develop self-control, self-esteem and respect for others.**

**(4) Only providers and substitutes shall provide guidance or discipline to child care children.**

**(5) Guidance and discipline shall be fair, consistently applied, timely and appropriate to the behavior and age of the child. Positive statements or redirection of behaviors shall be used.**

**(6) The following behaviors by caregivers is prohibited:**

**(a) Using any form of corporal punishment, including, but not limited to: hitting, spanking, slapping, beating, shaking, pinching or other measures that produce physical pain, or threatening to use any form of corporal punishment;**

**(b) Using inappropriate forms of restraints, including, but no limited to, tying or binding;**

**(c) Using non-prescription chemicals for discipline or to control behavior;**

**(d) Yelling harshly or using profane or abusive language;**

**(e) Using mental or emotional punishment, including, but not limited to: name calling, ridicule or threats;**

**(f) Confining a child in an enclose area (e.g. a locked or closed room, closet or box);**



**(g) Withdrawal or the threat of withdrawal of food, rest or bathroom opportunities;**

**(h) Punishing a child for toileting accidents or for refusing to eat food;**

**(i) Engaging in any form of public or private humiliation, rejecting, terrorizing, neglecting or corrupting a child or any form of emotional abuse; and**

**(j) Requiring a child to remain silent or inactive for excessive periods of time or removing a child from activities or the group for excessive periods of time.**

**(7) Parental request or permission to use any form of behavior listed in subsection (6) of this rule, does not give the provider or substitute caregiver permission to do so.**

Stat. Auth.: ORS ~~657 329~~A.260

Stats. Implemented: ORS ~~657 329~~A.260

Hist.: CCD 1-2000, f. 3-31-00, cert. ef. 4-2-00; CCD 2-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; Administrative correction 7-27-10

**414-205-0090**

### **Program of Activities**

(1) The provider must give the children's needs first priority, assuring that they get adequate care and attention.

(2) Providers must make available activities, materials, and equipment for both indoor and outdoor play that provide a variety of experiences geared to the ages and abilities of the child(ren).

(3) The children's activities must allow choice and develop skills based on each child's age and abilities.

(4) A balance of active and quiet play must be provided, both indoors and outdoors.

(5) The provider must have routines for eating, napping, **diapering** and toileting, with flexibility to respond to the needs of each child.

**(a) An individual bed, mat or cot with individual bedding appropriate to the season shall be provided at nap time for each toddler and preschool-age child in the home and for each school-age child who wants to rest.**

**(A) Family beds or sofas may be used with individual bedding appropriate to the season.**

**(B) If the parent(s) so request, siblings may share the same bed.**

**(C) The upper level of bunk beds shall not be used for children under ten years of age.**

**(D) The upper level of bunk beds may be used for children ten years or older if the bed rail and safety ladder are in place.**

**(b) Infants shall have a crib, portable crib or playpen with a clean, non-absorbent mattress. All cribs must comply with current Consumer Product Safety Commission (CPSC) standards. There shall be no items in the crib with the infant (e.g. toys, pillows or stuffed animals).**

**(c) If a child uses a blanket for security purposes, the blanket may not cover the child's head or restrict the child from moving.**

**~~(6) No child may view television or videos or play computer or electronic games for more than two (2) hours per day.~~ Child care children shall not be exposed to more than two hours of screen time per day. All media exposure must be developmentally and age appropriate.**

Stat. Auth.: ORS ~~657~~ **329**A.260

Stats. Implemented: ORS ~~657~~ **329**A.260

Hist.: CCD 1-2000, f. 3-31-00, cert. ef. 4-2-00; CCD 2-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; Administrative correction 7-27-10

## **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 **or vaporizers** 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, **vaporizers** 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.

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

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

(i) 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.~~ **First aid supplies and a chart or handbook of first aid instructions shall be maintained in one identified place and kept out of reach of children.**

**(a) The first aid supplies shall include: band aids, adhesive tape, sterile gauze pads, soap or sealed antiseptic towelettes or solution to be used as a wound cleaning agent, scissors, disposable plastic gloves for handling blood spills, a solution for disinfecting after a blood spill, a sanitary temperature taking device and CPR mouth guards.**

**(b) A first aid kit and a copy of each child's emergency medical information including a medical release form shall be taken any time the caregiver is transporting child care children or taking child care children on field trips.**

(3) Infants must be ~~put to sleep on their backs.~~ **laid on their backs on a flat surface for sleeping.**

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

**(a) A provider shall not admit or retain in care, except with the written approval of the local health office, a child who:**

**(A) Is diagnosed as having or being a carrier of a child care restrictable disease, as defined in Oregon Health Authority administrative rule; or**

**(B) Has one of the following symptoms or combination of symptoms or illness;**

**(i) fever over 100°F, taken under the arm;**

**(ii) diarrhea (more than one abnormally loose, runny, watery or bloody stool);**

**(iii) vomiting;**

**(iv) nausea;**

**(v) severe cough;**

**(vi) unusual yellow color to skin or eyes;**

**(vii) skin or eye lesions or rashes that are severe, weeping or pus-filled;**

**(viii) stiff neck and headache with one or more of the symptoms listed above;**

**(ix) difficulty breathing or abnormal wheezing;**

**(x) complaints of severe pain.**

**(b) A child, who, after being admitted into child care, shows signs of illness, as defined in this rule, shall be separated from the other children, and the parent(s) notified and asked to remove the child from the provider's home as soon as possible.**

~~(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.~~ **If a child has mild cold symptoms**

**that do not impair his/her normal functioning, the child may remain in the provider's home and the parent(s) notified when they pick up their child.**

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

(7) Prescription and non-prescription medication ~~may~~ **shall only** 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.~~ **All medications must be properly labeled and secured with a child-safety lock or latch and stored so that they are not accessible to children.**

(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, **tightly** 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.

**(e) Children shall not be laid down with a bottle for sleeping.**

(12) Any animal at the family child care home ~~must~~ **shall** 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.

**(c) Dogs and cats shall be maintained on a flea, tick and worm control program.**

(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~~ **Exotic animals, including, but not limited to: reptiles** (e.g. lizards, turtles, snakes, ~~iguanas~~) ~~frogs, amphibians,~~ monkeys, ~~hooked~~ **hook-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.~~ **on the premises.**

Stat. Auth.: ORS 329A.260

Stats. Implemented: ORS 329A

Hist.: CCD 1-2000, f. 3-31-00, cert. ef. 4-2-00; CCD 1-2008(Temp), f. & cert. ef. 8-6-08 thru 2-2-09; CCD 3-2008, f. & cert. ef. 10-2-08; CCD 2-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; Administrative correction 7-27-10; CCD 7-2010, f. 12-29-10, cert. ef. 1-1-11; CCD 1-2012(Temp), f. & cert. ef. 6-12-12 thru 11-6-12; CCD 2-2012, f. 9-28-12, cert. ef. 10-10-12; ELD 9-2014(Temp), f. & cert. ef. 8-7-14 thru 2-3-15

#### **414-205-0110**

##### **Safety**

(1) Children shall be protected from fire and safety hazards. Providers must have the following protections in place:

(a) ~~If any preschool age or younger children are in care, hard-to-remove protective caps on all exposed electrical outlets in rooms used by children.~~ **All exposed electrical outlets in rooms used by preschool or younger children must have hard-to-remove protective caps or safety devices installed when the outlet is not in use. In addition:**

**(A) extension cords shall not be used as permanent wiring;**

**(B) all appliance cords must be in good condition;**

**(C) multiple connectors for cords shall not be used; and**

**(D) a grounded power strip outlet with a built-in over-current protection may be used.**

(b) ~~If any preschool age or younger children are in care, barriers to protect children from fireplaces, space heaters, wood stoves, stairways and other hazards. Gates and enclosures should have the Juvenile Products Manufacturers Assn. (JPMA) certification seal to ensure safety.~~ **A rigid screen or guard shall be installed to prevent children from falling into hazards,**

including, but not limited to: fireplaces, heaters and woodstoves that are in use when child care children are present;

**(c) A movable barrier, such as a mesh-type gate, shall be placed at the top and/or bottom of all stairways accessible to infants and toddlers;**

~~(c)~~ **(d)** A working smoke detector on each floor and in any area where children nap;

~~(d)~~ **(e)** A working fire extinguisher with a rating of at least 2-A:10-BC;

~~(e)~~ **(f)** ~~Firearms and ammunition kept under lock. Ammunition stored separately from firearms. Firearms must remain unloaded;~~ **Firearms, BB guns, pellet guns and ammunition kept under lock, with ammunition stored and locked separately. Firearms, BB guns and pellet guns must remain unloaded;**

~~(f)~~ **(g)** Cleaning supplies, paints, matches, ~~cigarette~~ lighters, and plastic bags kept under child-~~proof~~ **safety** lock;

~~(g)~~ **(h)** Other potentially dangerous items, such as medicine, drugs, **sharp knives** and poisonous and toxic materials kept under child-~~proof~~ **safety** lock;

~~(h)~~ **(i)** If any preschool age or younger children are in care, poisonous plants must be kept out of the reach of children; and

~~(i)~~ **(j)** All clear glass panels in doors clearly marked at child level.

(2) All floor levels used by children must have access to two usable exits, as defined in OAR 414-205-0010(27), to the outdoors.

(a) If a basement is used for child care purposes, the requirement for two usable exits may be met by one of the following:

(A) A sliding glass door to the outdoors and a window ~~which~~ **that** meets the definition of a usable exit;

(B) A swinging door to the outdoors and a window ~~which~~ **that** meets the definition of a usable exit; or

(C) A window which meets the definition of a usable exit and an internal stairway to ground level ~~which~~ **that** has unobstructed and direct access to the outdoors.

(b) If a window, which meets the definition of a usable exit, is used:

(A) Steps must be placed under the window to allow children to exit without assistance; and



(B) The window must be kept in good working condition.

(c) If a window used as an exit has a window well, a mechanism must be in place to allow children to exit the window well.

**(3) Second floors (does not apply to providers registered continuously at the same address before 2009, unless the provider has moved the child care license to a new residence):**

**(a) Child care children shall not sleep on the second floor or above;**

**(b) Care shall not be provided for infants and toddlers on the second floor or above;**

**(c) Night care shall be provided on the second floor or above;**

**(d) Children may be allowed on the second floor to use the bathroom if the only bathroom is on the second floor;**

**(e) Care can be provided for preschool or school-age children on the second floor or above, if:**

**(A) There are two staircases to the ground level and all children are mobile enough to exit safely; or**

**(B) The designated fire marshal has approved the use of the upper floor.**

~~(3)~~ **(4)** The provider must have a written plan for evacuating **and removing** children **to a safe location** in an emergency. The plan must be posted in the home, familiar to the children and the caregivers, and practiced at least every other month. **and must include:**

**(a) Procedures for notifying parents or other adults responsible for the children, of the relocation;**

**(b) Procedures to address the needs of individual children, including those with special needs; and**

**(c) An acceptable method to ensure that all children in attendance are accounted for.**

~~(4)~~ **(5)** A telephone in working condition must be in the family child care home.

(a) Parents must be given the telephone number so they can contact the provider if needed.

(b) Emergency telephone numbers for fire, ambulance, police and poison control **and the provider's home address** must be posted ~~near the telephone.~~ **in a visible location.**

~~(5)~~ **(6)** The building, grounds, water supply, and toys, equipment and furniture used by children must be maintained in a hazard-free condition.

(a) Broken toys, furniture and equipment must be removed from areas accessible to children.

(b) Both the exterior and interior of the home must be maintained in good repair.

(c) Painted surfaces must be in good condition, both inside and outside, to avoid exposing children to lead paint chips.

**(d) The provider shall report to OCC any damage to the building that affects the provider's ability to comply with these requirements, within 48 hours after the occurrence.**

~~(6)~~ **(7)** If a caregiver is transporting children, the caregiver must have a valid driver's license and proof of appropriate insurance.

~~(7)~~ **(8)** The number of children transported shall not exceed the number of seat belts or child safety systems available in the vehicle.

**(9) Car seats are to be used for transportation only. Children who arrive at the provider's home asleep in a car seat may remain in the car seat until they awaken.**

**(10) 15-passenger vans shall not be used to transport child care children after January 1, 2018.**

Stat. Auth.: ORS ~~657~~ **329**A.260

Stats. Implemented: ORS ~~657~~ **329**A.260

Hist.: CCD 1-2000, f. 3-31-00, cert. ef. 4-2-00; CCD 2-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; Administrative correction 7-27-10; CCD 7-2010, f. 12-29-10, cert. ef. 1-1-11

**414-205-0120**

## **Sanitation**

**(1) Pre-mixed EPA registered and Oregon Health Authority approved sanitizers and disinfectants may be used in all areas of the home per manufacturer instructions on the bottle. Bleach or quaternary ammonium**

**that requires mixing with water must be tested for correct concentration with test strips.**

~~(1)~~ **(2)** All caregivers **and children** must wash their hands with soap and warm, running water:

~~(a) After changing a diaper;~~

~~(b) Before feeding a child or handling food; and~~

~~(c) After assisting a child with toileting or nose wiping.~~

**(a) Before handling food;**

**(b) Before assisting with feeding;**

**(c) Before and after eating;**

**(d) After diapering;**

**(e) After using the toilet;**

**(f) After assisting someone with toileting;**

**(g) After nose wiping;**

**(h) After playing outside; and**

**(i) After touching an animal or handling pet toys.**

~~(2) All caregivers and children must wash their hands with soap and warm, running water:~~

~~(a) After using the toilet;~~

~~(b) Before and after eating;~~

~~(c) After nose wiping;~~

~~(d) After playing outside; and~~

~~(e) After playing with animals or handling pet toys.~~

**(3) Hand sanitizers shall not replace hand washing. If hand sanitizers are present in the home, they shall be kept out of children's reach and shall not be used on children.**

~~(3)~~ **(4)** All toys, equipment and furniture used by children must be cleaned, **rinsed** and sanitized regularly and whenever soiled.

**(5) Diaper changing surfaces must be either:**

**(a) Non-absorbent and easily disinfected;**

**(b) Disposed of after each use; or**

**(c) Laundered after each use.**

**(6) The diaper changing area shall be located so that hand washing can occur immediately after diapering without contacting other surfaces or children.**

~~(4)~~ **(7)** The building and grounds must be maintained in a clean and sanitary manner.

~~(5)~~ **(8)** All garbage, solid waste, and refuse must be disposed of regularly, in a safe and sanitary manner.

~~(6)~~ **(9)** The home's water supply must be safe to drink.

~~(7)~~ **(10)** Wading pools are prohibited. **for wading.**

Stat. Auth.: ORS ~~657~~ **329**A.260

Stats. Implemented: ORS ~~657~~ **329**A.260

Hist.: CCD 1-2000, f. 3-31-00, cert. ef. 4-2-00; CCD 2-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; Administrative correction 7-27-10

**414-205-0130**

### **Record Keeping**

(1) The following records must be kept by the provider for at least one year and must be available at all times to OCC:

(a) Information from the parent(s) for each child at the time of admission:

(A) Name and birth date of the child;

(B) Any chronic health problem(s), including allergies, the child has;

**(C) Date child entered care;**

~~(G)~~ **(D)** Names, work and home telephone numbers and addresses, and the work hours of the ~~custodial~~ parent(s) or guardian(s);

~~(D)~~ **(E)** Name and telephone number of person(s) to contact in an emergency;

~~(E)~~ **(F)** Name and telephone number of person(s) to whom the child may be released;

~~(F)~~ **(G)** The **name of the** school attended by ~~a school-age~~ **the child care** child; and

~~(G)~~ **(H)** Name, address and telephone number of the child's doctor and dentist.

**(I) Health history of any problems that could affect the child's participation in child care.**

(b) Daily attendance records, including dates each child attended and arrival and departure times **for** each day. **Times shall be recorded as the child care children arrive and depart;**

(c) Medications administered, including the child's name, and the date and time of dosage **and the dosage amount;** and

(d) Injuries to a child.

(2) Injuries to a child which require attention from a licensed health care professional, such as a physician, EMT or nurse, must be reported to OCC within seven days.

(3) The provider must have a written statement from the parent(s) regarding whether or not the provider is authorized to:

(a) Obtain emergency medical treatment for a child;

(b) Administer medications to a child;

(c) Take a child on a field trip or other activity outside the home or participate in any water activity; and

(d) Transport a child to ~~and/or~~ from school or allow a child to bus or walk to ~~and/or~~ from school or home.

Stat. Auth.: ORS ~~657~~ **329**A.260

Stats. Implemented: ORS ~~657~~ **329**A.260

Hist.: CCD 1-2000, f. 3-31-00, cert. ef. 4-2-00; CCD 2-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; Administrative correction 7-27-10

## 414-205-0140

### Night Care

(1) A provider providing night care must:

~~(1)~~ (a) Have a written plan for the care, ~~jointly~~ **mutually** agreed ~~to~~ **upon** by the parent(s) and the provider;

~~(2)~~ (b) Have a written plan for emergency situations occurring during the night;

~~(3)~~ (c) Be awake for the arrival and departure of each child in night care; and

~~(4)~~ (d) Follow all other applicable Registration rules.

Stat. Auth.: ORS ~~657 329~~ A.260

Stats. Implemented: ORS ~~657 329~~ A.260

Hist.: CCD 1-2000, f. 3-31-00, cert. ef. 4-2-00; CCD 2-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; Administrative correction 7-27-10

## 414-205-0150

### Exceptions to Rules

(1) A provider may request an exception to a rule.

(a) An exception must be requested on a form provided by OCC;

(b) The provider must provide a justification for the requested exception and an explanation of how the provider will ensure, through safeguards or other conditions, the health, safety and well-being of the children.

(2) The provider must be in compliance with the rule as written until the provider has received approval for the exception from OCC.

(3) In instances where care that is subject to registration, as defined in subsection (2) of rule 414-205-0000, will not be provided in the provider's own residence, the applicant/provider must request and receive approval for an exception prior to providing care at that location. In all respects, the location must appear and be arranged as a residence.

(4) No exception to a rule shall be granted unless the health, safety, and well-being of the children are ensured.

(5) An exception is valid only for the ~~registration period~~ **specified dates** for which it is issued. ~~A new exception must be requested with each renewal application.~~

(6) The granting of an exception to a rule shall not set a precedent, and each request shall be evaluated on its own merits.

~~(7) Waivers in effect on April 1, 2000, will remain in effect until the expiration of the current registration.~~

Stat. Auth.: ORS ~~657 329~~ A.260

Stats. Implemented: ORS ~~657 329~~ A.260

Hist.: CCD 1-2000, f. 3-31-00, cert. ef. 4-2-00; CCD 2-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; Administrative correction 7-27-10

#### **414-205-0160**

##### **Complaints**

(1) The Office of Child Care (~~OCC~~) will respond to complaints made on registered and illegal providers, and ~~may~~ **will** cooperate with law enforcement or other agencies in response to allegations of child abuse or noncompliance.

(a) Any and all complaints may result in an on-site ~~investigation~~ **assessment** at the family child care home;

(b) All serious complaints will result in an on-site ~~investigation~~ **assessment** at the family child care home;

(c) Complaints alleging child abuse or neglect will be reported to the Department of Human Services Child Welfare (DHS) or local law enforcement agencies.

(2) ~~Applicants~~ **New applicants** for registration will be given a copy of OCC's complaint procedures at the time of the on-site health and safety review. The complaint procedures are also available upon request. ~~to all applicants/providers for family child care registration.~~

Stat. Auth.: ORS ~~657 329~~ A.260

Stats. Implemented: ORS ~~657 329~~ A.260

Hist.: CCD 1-2000, f. 3-31-00, cert. ef. 4-2-00; CCD 2-2007, f. & cert. ef. 7-13-07; CCD 2-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; Administrative correction 7-27-10

#### **414-205-0170**

##### **Grievance Findings Review and Sanctions**

(1) ~~Providers have a right to review any action or decision affecting them. The OCC grievance procedures are available upon request to all applicants/providers for family child care registration.~~ **A provider has the right to a review of any**

**finding made by OCC. Applicants for registration will be given a copy of OCC's findings review procedures at the time of the on-site health and safety review. Information on the OCC findings review process will be in complaint letters. The OCC findings review procedures are also available upon request.**

(2) Registration may be denied, suspended, or revoked if a provider fails to meet requirements, provide OCC with information requested, allow an inspection, or correct deficiencies.

(3) Any action taken by OCC to deny, suspend, or revoke registration may be reported to USDA Child Care Food Programs, child care resource and referral agencies, Children, Adults and Families, Office of Self-Sufficiency and Office of Safety and Permanency for Children.

(4) A registration may be suspended immediately when OCC believes children may be at risk of harm in the family child care home. Such action may be taken before an investigation is completed.

(a) A provider whose registration has been suspended must immediately notify, verbally or in writing, all parents of the suspension.

(b) A provider whose registration has been suspended must post the suspension in the home where it can be viewed by parents.

**(c) A provider whose registration has been suspended must immediately provide OCC with all names, work and home telephone numbers and addresses of the parent(s) or guardian(s) for each child.**

(5) Registration will be denied, suspended or revoked if the provider or other resident of the home has been removed or suspended from the ~~Central Background Registry~~ **CBR**.

(6) If an individual listed in 414-205-0040(2)(a) or (b) has been charged with, arrested for, or a warrant is out for any crime which OCC has determined indicates behavior that would have a detrimental effect on a child, the provider's application will be denied or registration will be suspended or revoked until the charge, arrest, or warrant has been resolved.

(7) Registration will be denied, suspended or revoked if an individual listed in OAR 414-205-0040(2)(a) or (b) has been convicted of or sentenced for offenses that would disqualify the individual from the ~~Central Background Registry~~ **CBR**.

(8) Registration will be denied, suspended or revoked if an individual listed in OAR 414-205-0040(2)(a) or (b) has a founded child protective services case or



an open child protective services or law enforcement case that would disqualify the individual from the ~~Central Background Registry~~ **CBR**.

(9) A provider whose registration has been **denied for cause or** revoked **for cause** shall not be eligible to reapply for three years after the effective date of the revocation.

(10) A provider who violates these rules or the terms and conditions of registration under these rules may be subject to a civil penalty.

(a) For a serious violation, as defined in OAR 414-205-0010(25) a provider may be subject to a civil penalty of \$100 for ~~the first~~ **a** violation after a written warning with time to correct is issued; and \$100 for each subsequent violation, not to exceed \$1,000 in a quarter for all rule violations.

(b) For other violations, a provider may be subject to a civil penalty of \$50 for ~~the first~~ **a** violation after a written warning with time to correct is issued; \$100 for a second violation, and \$100 for each subsequent violation, not to exceed \$1,000 in a quarter for all rule violations.

(11) The provider has the right to appeal any decision to deny, suspend, or revoke registration or to impose a civil penalty, subject to the provisions of Chapter 183, Oregon Revised Statutes.

Stat. Auth.: ORS 657.610 & ~~657 329~~ **329**A.260

Stats. Implemented: ORS ~~657 329~~ **329**A.260

Hist.: CCD 1-2000, f. 3-31-00, cert. ef. 4-2-00; CCD 5-2004, f. & cert. ef. 11-16-04; CCD 1-2005, f. & cert. ef. 4-29-05; CCD 2-2009(Temp), f. 12-30-09, cert. ef. 1-1-10 thru 6-30-10; CCD 2-2010, f. 6-29-10, cert. ef. 7-1-10; CCD 7-2010, f. 12-29-10, cert. ef. 1-1-11