

Board Action Summary

AGENDA ITEM: Relief Nursery Administrative Rules, 414-600-0005 to 414-600-0120

Summary of Recommended Board Action

ACTION: Final Adoption

ISSUE: Administrative Rule Promulgation – Relief Nursery Programs

The Early Learning Council (ELC) is being presented with final proposed administrative rules relating to administration of Relief Nursery programs for adoption by the Council.

BACKGROUND:

The Council held a first reading of proposed rule language at its November 2017 meeting; staff presented a detailed history of the Child Care and Education Committee's (CCEC) consideration of proposed rules.

During the First Reading, the Council considered the draft proposed rule language and received testimony and amendment requests from the Oregon Association of Relief Nurseries. (See "OARN ELC Public Comment 11-14-17" attached).

The Council referred the following three items to the CCEC for additional consideration and were taken up by CCEC at its January meeting:

1) Exceptions to Staff Qualifications: OAR 414-600-0031 (Minimum Requirements of Relief Nurseries)

In November, OARN requested an allowable exception to this rule, to be granted by Relief Nursery directors, in special circumstances and under the condition a two-year Professional Development and Training Plan is written and implemented and more intense training and supervision during the two-year training period. OARN cites a discrepancy in access to education among minority populations and rural communities.

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

Staff presented revised rule language to the CCEC to a) allow for an exception to be granted by the Division in circumstances and conditions established in rule and b) allow the Relief Nursery director to establish and submit to the Division for approval the two-year professional development and training plan, which would include a description of "more intense" or additional training to be achieved.

OARN testified at the January CCEC meeting that OARN would prefer to be the entity to approve exception requests and submit biannual updates on the implementation of Professional Development and Training Plans (See “Letter to ELD and CCEC January 5, 2018” attached).

Typically, when an administrative rule exception is allowed, the Division would be responsible for establishing conditions under which an exception would be allowed to its rules. If an exception is granted, the Division would be responsible for monitoring whether the two-year Professional Development and Training Plan is written and implemented, the plan should be submitted to and approved by the Division. Allowing Relief Nursery Directors or OARN authority to grant administrative rule exceptions may not be an allowable delegation of authority.

CCEC Action: The CCEC did not reach consensus. This issue is returning to the Council without recommendation.

Staff Recommendation: Adopt language recommended by staff in V.6 dated 1.17.18.

2) Classroom Age Discrepancy: 414-600-0035

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

CCEC Action: CCEC agreed to recommend this revision to the Council, and staff has made the change in proposed rule language.

Staff Recommendation: Adopt language recommended by staff in V.6 dated 1.17.18.

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

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

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

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

- Considerations:
 - Needs to be in alignment with Relief Nursery contract terms and duration
 - Needs to ensure lawful and effective use of state funds
 - Should be consistent with other programmatic and financial monitoring requirements for all early learning programs.
 - Relief Nurseries are licensed by the Office of Child Care. As such each Relief Nursery would have annual licensing visits

- Relief Nurseries receive annual visits by ELD contract administrators.

CCEC Action: CCEC agreed to recommend this revision to the Council, and staff has made the change in proposed rule language.

Staff Recommendation: Adopt language recommended by staff in V.6 dated 1.17.18 which maintains the annual reviews but reduces the number of required site visits from annual to every four years, in alignment with OARN's current recertification practices.

The Early Learning Council deferred the following items for consideration at the January 2018 Council meeting:

4. The Funding Process: A funding formula is the instrument used to determine the share of legislatively allocated funds for Relief Nurseries that go to a particular Relief Nursery. While the CCEC reached consensus that the Division, in consultation with OARN, will establish this funding formula, the issue of how a Relief Nursery seeks those identified funds remained unresolved. OARN has expressed concern that the process proposed in the draft rule represents a "two step" process and is unclear whether the Division would be able to distribute funds without following the formula.

The process for applying for funds is necessary to maintain accountability and transparency on how state funds are distributed. It is not proposed as a means to circumvent the funding formula. To ensure appropriate processes are in place, the Division proposes in the draft rule **(V.6.1 dated 1.23.18)**, that a Relief Nursery would "apply" for the funds *identified through the funding formula* and that the Division shall "make all final decisions on a Relief Nursery's request for state funds *in accordance with the funding allocation formula.*" [Emphasis added]

Proposed rule language establishes that OARN is responsible for determining whether a Relief Nursery is eligible (through its certification process) to receive state funds. If a Relief Nursery, or any entity, is not certified by OARN, they are not eligible to receive state funds. Thus, the only entity that would receive state funds would be those entities certified as a Relief Nursery. This process determines *who* gets funding. The funding formula determines *how much* is distributed to each individual Relief Nursery.

Staff Recommendation: Adopt language recommended by staff in **V.6.1 dated 1.23.18**.

5. Appealing Funding Formula to the Early Learning Council: OARN seeks amendments to allow OARN to appeal the Division's funding allocation formula and decisions regarding the amount each Relief Nursery receives to a third party, specifically the Early Learning Council.

The Division does not believe this is necessary as the funding formula will be established by the Division in consultation with OARN which represents Relief Nurseries and OARN's Board of Directors is comprised of Relief Nursery directors.

Staff Recommendation: Adopt language recommended by staff in V.6 dated 1.17.18.

6. **Definition of Focus Populations:** The Council discussed the definition of “focus populations” contained in 414-600-0061(2). The Council acknowledged that the definition is not consistent with other early learning programs and discussed whether all early learning programs receiving state funds should adopt and follow a consistent definition. The discussion then turned to 414-600-0061 (Coordination with the Early Learning System) and how the Council, or early learning system generally, would determine that a Relief Nursery or other early learning programs receiving state funds is coordinating or being a “good partner” within the early learning system. The differing definitions of “focus populations” among programs may hinder coordination of an early learning system. This topic was referred to the Measuring Success Committee for further consideration.

OARN’s attorney submitted a letter for the record (see “Memo to ELC etc. 11-16-17” attached).

Staff Recommendation: Adopt definition found in 414-600-0061(2) (language recommended by staff in V.6 dated 1.17.18). The definition is consistent with the Relief Nursery model and is consistent with the definition found in SB 314 (2017).

ACTION PRECEEDING BOARD ACTION:

On October 12, 2017, the CCEC received proposed rule amendments from Mary Ellen Glynn, Executive Director of OARN. Between the October and November CCEC meeting, staff received additional comments on the proposed rule language from OARN. Staff also worked with the Department of Justice to conduct a comprehensive legal review.

Based on feedback received, staff developed proposed rule language for CCEC’s consideration in November. The CCEC met on November 9, 2017 and reviewed proposed rule language which included additional comments and proposed revisions submitted by OARN.

The CCEC was able to reach consensus on the majority of the proposed rule language in November, however was unable to reach consensus on the process for determining funding amounts for individual Relief Nurseries. That issue was deferred to the Council.

Equity Review: The Equity Implementation Committee (EIC) reviewed conceptual rule language in March 2017. The areas of interest raised by EIC are outlined below. The italicized text explains how the current proposed rule language addresses the areas when possible.

- Whether the certification process is equitable; whether all areas of the state have equal access to implementing a RN program; whether fees charged by OARN for an entity to undergo the certification process preclude some from participating. *(The draft rules attempt to respect and work in concert with the Relief Nursery model. To provide for equal access, the draft rules provide entities an opportunity to challenge OARN’s certification decisions to the Division.);*
- Ensuring a strengthened partnership with Hub equity work, identifying and serving target populations and reduce disparities in communities *(see Coordination with the Statewide Early Learning System.);*

- Include a definition of “Culturally responsive supports” or at a minimum require the inclusion of “Principles and guidelines for culturally responsive supports appropriate to the unique needs of the child and family” (*definition added*);
- Why adult child ratios reflected in the draft rule exceed those in child care licensing standards (*The draft rules attempt to respect and work in concert with the Relief Nursery model. The adult child ratios are specific to and mirror the RN model.*);
- EIC commented that Trauma-informed care (TIC) should apply to all RN services in general not just the therapeutic classroom setting (TCS). (*The draft rules attempt to respect and work in concert with the Relief Nursery model. The model calls out therapeutic classrooms as an integral component, with TIC a required component of the TCS.*)

Fiscal Analysis: Analysis of fiscal impact of any proposed rules must be assessed through the rule promulgation process. Analysis includes financial impacts of the rules to stakeholders, to small business (defined as a business that is independently owned and operated with 50 or fewer employees) or to local government. Through analysis and CCEC discussion, it was determined the proposed rule revisions will have no additional fiscal impact to Relief Nurseries or OARN given the rule requirements reflect current practice and do not impose additional requirements.

1 **OREGON DEPARTMENT OF EDUCATION**
2 **EARLY LEARNING DIVISION**
3 **DIVISION 600**

4 **Relief Nurseries DRAFT PROPOSED V.6_01.17.18**

5 **414-600-0005**

6 **Purpose Statement**

7 These rules, OAR 414-600-0005 to 414-600-0120, prescribe the process for determining eligibility and
8 eligibility requirements for Relief Nurseries to receive state funds to provide services to children and
9 families in accordance with ORS 417.788.

10 Stat. Auth.: ORS 326.425(7)

11 Stats. Implemented: ORS 417.788, Chapter 546, 2017 Oregon Laws (SB 314)

12 **414-600-0015**

13 **Definitions**

14 For the purposes of OAR 414-600-0005 to OAR 414-600-0120 the following definitions apply:

15 (1) “Culturally Responsive” means the use of the cultural knowledge, prior experiences, frames of
16 reference, and performance styles of diverse children and families to make services and programs more
17 appropriate and effective for them.

18 (2) “Early Learning Council” means the Council established to oversee a unified system of early learning
19 services and the Early Learning System.

20 (3) “Early Learning Division” or “Division” means the division of the Department of Education that
21 administers programs and funding, collects, and analyzes data, and monitors program and contractor
22 performance and accountability for the Early Learning System.

23 (4) “Early Learning System” means the system created by ORS 417.727 and described in ORS 417.728

24 (5) “OARN” means the Oregon Association of Relief Nurseries.

25 (6) “Regional Early Learning Hub” or “Hub” means an entity designated under ORS 417.827 and
26 contracted by the Early Learning Division to coordinate early learning services in a specific region within
27 the state.

1 (7) “Relief Nursery” means a non-governmental, community-based organization that is tax exempt under
2 IRC section 501(c)(3) that OARN has determined to be eligible to receive state funding in accordance
3 with OAR 414-600-0005 to 414-600-0120.

4 (8) “Therapeutic Early Childhood Program” means a program that includes home visiting, therapeutic
5 classrooms, parent education, support and outreach that provide trauma informed services and interactions
6 to promote the healthy development of children and works to strengthen families who have multiple risk
7 factors and stresses linked to neglect and abuse.

8 (9) “Trauma Informed Services” means services that are reflective of the consideration and evaluation of
9 the role that trauma plays in the lives of people, including recognition of the traumatic effect of
10 misdiagnosis and coercive treatment, are responsive to the vulnerabilities of trauma survivors, avoids re-
11 traumatization and facilitates direction of services.

12 Stat. Auth.: ORS 326.425(7)

13 Stats. Implemented: ORS 417.788, Chapter 546, 2017 Oregon Laws (SB 314)

14 **414-600-0021**

15 **Process to Determine Eligibility to Receive State Funding as a Relief Nursery**

16 (1) A non-governmental, community based organization that is tax exempt under IRC section 501(c)(3)
17 wanting to become a Relief Nursery or an existing Relief Nursery wanting to be determined eligible for
18 state funding must submit the following application materials to OARN by May 15 of each even-
19 numbered year:

- 20 (a) A letter of intent;
- 21 (b) A description of the entity’s governing structure or community group;
- 22 (c) Letters of support from partners;
- 23 (d) Documented evidence of community investment;
- 24 (e) Sample budget, including a plan for 25% cash match and sustainability plan; and
- 25 (f) A description of one or more age groups to be served.

26 (2) Upon receipt of the information and documentation required in OAR 414-600-0030(1), OARN shall
27 complete a comprehensive programmatic and financial assessment of the applicant.

1 (3) OARN shall determine whether an applicant to become a Relief Nursery or an existing Relief Nursery
2 is eligible to receive state funds. Such determination shall be made in accordance with OAR 414-600-
3 0005 to 414-600-0120.

4 (4) Not later than 15 days after a determination is made, OARN must notify the applicant or Relief
5 Nursery and the Division in writing of OARN's determination.

6 Stat. Auth.: ORS 326.425(7)

7 Stats. Implemented: ORS 417.788, Chapter 546, 2017 Oregon Laws (SB 314)

8 **414-600-0025**

9 **Eligibility of Relief Nurseries to Receive State Funding**

10 (1) Upon receiving determination of eligibility, the Division may contract with a Relief Nursery to receive
11 state funds in accordance with ORS 417.788 and OAR 414-600-0005 to 414-600-0120.

12 (2) To be eligible for state funds to carry out the provisions of ORS 417.788, a Relief Nursery must:

13 (a) Meet the definition of a Relief Nursery under OAR 414-600-0015;

14 (b) Comply with and maintain compliance with OAR 414-600-0005 to 414-600-0120 and with the terms
15 of the Relief Nursery's contract with the Division;

16 (c) Operate in accordance with ORS 417.788; and

17 (d) Provide matching community financial support equal to a minimum of 25 percent of funds allocated
18 by the Division for Relief Nursery services prescribed in ORS 417.788 and OAR 414-600-0005 to 414-
19 600-0120.

20 (3) Eligibility to receive state funding is contingent upon a Relief Nursery's compliance with OAR 414-
21 600-0005 to 414-600-0120 and the terms of the Relief Nursery's contract with the Division.

22 Stat. Auth.: ORS 326.425(7)

23 Stats. Implemented: ORS 417.788, Chapter 546, 2017 Oregon Laws (SB 314)

24 **414-600-0031**

25 **Minimum Requirements**

26 (1) A Relief Nursery must:

- 1 (a) Establish and maintain appropriate internal fiscal controls and fund accounting procedures to assure
2 the proper accounting and disbursement of all funds provided by the Division;
- 3 (b) Collect and report data, including but not limited to child and family data including risk factors,
4 demographics, assessments, and abuse and neglect reports in the manner established by the Division;
- 5 (c) Agree to contracted services monitoring reviews and evaluations by Division staff, as deemed
6 necessary by the Division;
- 7 (d) Attend state and local training or meetings as required;
- 8 (e) Collaborate with the Regional Early Learning Hub and the Division in early learning system
9 development and expansion;
- 10 (f) Have an infrastructure that provides oversight, responsibility and resources necessary to provide
11 services on an ongoing basis; and
- 12 (g) Be licensed by the Office of Child Care in accordance with ORS 329A.280.
- 13 (2) Relief Nursery staff who provide direct services to children and families must meet one of the
14 following minimum requirements:
- 15 (a) A Bachelor of Arts degree in Early Childhood;
- 16 (b) A degree in a related field with early childhood teaching experience;
- 17 (c) A combination of an associate's degree, an equivalent step on the Oregon Registry and appropriate
18 experience; or
- 19 (d) A degree in a field other than child development or early childhood education and six courses in child
20 development or early childhood education focusing on children from birth to age five.
- 21 (3) A Relief Nursery Director may submit to the Division a request for an exception to the requirements
22 of 414-600-0031 (2). Requests must be accompanied by a plan that provides information on how the staff
23 for which the request is submitted will meet the requirements of 414-600-0031 (2). The information
24 provided must include a two-year professional development and training plan.
- 25 (3) A Relief Nursery shall provide new hire and ongoing training for all staff and volunteers.

1 (4) A Relief Nursery shall maintain a ratio of one supervisor to eight direct service staff to provide
2 regular, ongoing supervision and support in child and family case management, personnel issues, and
3 professional development.

4 Stat. Auth.: ORS 326.425(7)

5 Stats. Implemented: ORS 417.788, Chapter 546, 2017 Oregon Laws (SB 314)

6 **414-600-0035**

7 **Core Services**

8 (1) Relief Nursery services must include therapeutic early childhood programs, home visiting, and parent
9 education and support.

10 (2) A therapeutic early childhood program must include the following:

11 (a) Therapeutic classrooms;

12 (b) Focused interventions for children with emotional, social and behavioral concerns or delays;

13 (c) Principles and guidelines for developmentally appropriate practices;

14 (d) Physical, cognitive, social, emotional, and language development supports;

15 (e) Principles and guidelines for culturally responsive supports appropriate to the unique needs of the
16 child and family; and

17 (f) Home visits by the child's classroom teacher conducted as follows:

18 (i) At least monthly for children attending class twice a week; and

19 (ii) Weekly for children attending class once per week, with a duration of 1 to 2 hours.

20 (3) Minimum Hours. A Relief Nursery must operate one or more therapeutic classrooms with the
21 following time periods:

22 (a) A minimum of three hours per week for infants up to ~~18-24~~ months of age; and

23 (b) A minimum of six hours per week for children aged ~~18-24~~ months and older.

24 (4) Class Size and Ratios. A Relief Nursery must provide a minimum of three adults, at least two of
25 whom must be meet the qualifications in accordance with 414-600-0030 (2) for each class of:

26 (a) Six children, not less than 6 weeks but less than to 24 months of age;

27 (b) Eight children, not less than 2 months but less than 36 months of age; and

- 1 (c) Eleven children, 36 months to 5 years of age.
- 2 (5) Home visiting must be offered in all Relief Nursery program services.
- 3 (6) Parent Education and Support. All parents served by a Relief Nursery must be offered parenting
4 education, through home visiting, classes or groups, using culturally appropriate and evidence-based
5 curriculum that is adapted to and appropriate to the needs of the family.
- 6 (7) Nutritious Meals and Snacks. During program hours, a Relief Nursery must provide nutritious snacks
7 and meals following United States Department of Agriculture standards for nutrition.
- 8 (8) Ongoing Child Screenings and Assessments. Relief Nurseries shall regularly screen and assess all
9 children for appropriate development using research-based, culturally and linguistically appropriate
10 developmental screening.
- 11 (9) Basic Needs Support and Services. Relief Nurseries shall provide resource referral, short- and long-
12 term problem solving, and emergency food and clothing to children and families served by the Relief
13 Nursery, as those supports and services become available.

14 Stat. Auth.: ORS 326.425(7)

15 Stats. Implemented: ORS 417.788

16 **414-600-0041**

17 **Monitoring Compliance; Eligibility Review**

- 18 (1) A Relief Nursery eligible to receive state funds shall be subject to annual eligibility reviews and
19 monitoring.
- 20 (2) OARN may conduct site visits at any time to assist Relief Nurseries in maintaining funding eligibility
21 and compliance with OAR 414-600-0005 to 414-600-0120.
- 22 (3) OARN shall conduct annual Relief Nursery programmatic and financial eligibility reviews. OARN
23 shall conduct site visits every four years and monitoring consisting of ~~site visits and~~ observations of
24 ~~applicant's~~ the facility and classrooms and interviews with directors, managers, direct service staff, board
25 members, community partners, and parents associated with the Relief Nursery's facility, as well as a
26 review of documents.

1 (4) OARN shall provide annual review and monitoring reports to the Division to verify Relief Nursery
2 compliance with OAR 414-600-0005 to 414-600-0120 including programmatic and financial assessments,
3 ~~and documented.~~ The four-year site visit observations shall be documented and provided to the Division.

4 (5) Based on eligibility reviews and monitoring reports received by OARN, and when necessary, the
5 Division will work collaboratively with OARN to bring a Relief Nursery into compliance with these rules
6 and the terms of the Relief Nursery's contract with the Division.

7 (6) The Division shall notify OARN in writing if a Relief Nursery fails to comply with OAR 414-600-
8 0005 to 414-600-0120 or the terms of the Relief Nursery's contract with the Division.

9 (7) Upon receiving notification that a Relief Nursery is out of compliance with OAR 414-600-0005 to
10 414-600-0120 or the terms of the Relief Nursery's contract with the Division, OARN shall initiate a
11 review of the Relief Nursery's eligibility determination and take corrective action to bring the Relief
12 Nursery into compliance.

13 (8) As part of the annual eligibility review and monitoring, OARN shall ensure through written
14 verification from the Division that the Relief Nursery is in compliance with OAR 414-600-0005 to 414-
15 600-0120 and the terms of the Relief Nursery's contract with the Division.

16 (9) A Relief Nursery that does not receive verification of compliance from the Division may be deemed
17 by the Division to be ineligible for state funding.

18 Stat. Auth.: ORS 326.425(7)

19 Stats. Implemented: ORS 417.788, Chapter 546, 2017 Oregon Laws (SB 314)

20 **414-600-0043**

21 **Eligibility Appeals**

22 (1) An applicant or Relief Nursery that OARN determines is not eligible to receive state funding as a
23 Relief Nursery may appeal OARN's eligibility determination in the manner provided in this rule.

24 (2) Initial Appeal to OARN.

25 (a) To initiate an appeal of an eligibility determination made by OARN, an applicant or Relief Nursery
26 must submit a written appeal request to OARN within 30 calendar days after the date that OARN issues
27 the eligibility determination letter. The appeal must identify the issues that are the subject of the appeal.

1 (b) An appeal of an eligibility determination is limited to whether OARN’s determination comported with
2 the requirements of OAR 414-600-0015 to 414-600-0120.

3 (c) Upon receipt of a written appeal request, OARN shall notify the Division of the request and create an
4 appeal file. OARN must maintain all records and documents relating to the appeal and provide copies of
5 all records and documents relating to the appeal to the Division upon request by the Division.

6 (d) OARN’s review shall be conducted by individuals who did not participate in the initial eligibility
7 determination at issue in the appeal.

8 (e) OARN shall notify the applicant or Relief Nursery and the Division of OARN’s decision in writing
9 within 30 calendar days of receipt of the appeal request.

10 (3) Request for Division Review.

11 (a) If an applicant or Relief Nursery determined not eligible by OARN to receive state funds is not
12 satisfied with the outcome of the applicant’s or Relief Nursery’s appeal to OARN, the applicant or Relief
13 Nursery may request a review of OARN’s determination by the Division.

14 (b) A request for Division review must be received in writing by the Division within 30 days of the date
15 that OARN’s written determination notification was issued.

16 (c) An applicant’s or Relief Nursery’s request for Division review must identify in writing the
17 determination made by OARN, describe the alleged error in OARN’s determination and provide
18 information to support the applicant’s or Relief Nursery’s disagreement with the determination.

19 (d) The Division makes all final decisions on eligibility determination appeals. The Division’s review and
20 decision are limited to whether OARN’s initial eligibility determination comported with the requirements
21 of OAR 414-600-0015 to 414-600-0120 and otherwise comports with applicable law.

22 Stat. Auth.: ORS 326.425(7)

23 Stats. Implemented: ORS 417.788, Chapter 546, 2017 Oregon Laws (SB 314)

24 **414-600-0045**

25 **Conditions and Process for Revocation of Eligibility; Revocation Appeals**

1 (1) OARN may revoke a Relief Nursery's eligibility to receive state funding if OARN determines that the
2 Relief Nursery no longer meets eligibility requirements in accordance with OAR 414-600-0015 to 414-
3 600-0120.

4 (2) A Relief Nursery whose eligibility to receive state funding is revoked by OARN may appeal the
5 revocation in the manner provided in this rule.

6 (3) Initial Appeal to OARN.

7 (a) To initiate an appeal of a revocation of eligibility, a Relief Nursery must submit a written appeal
8 request to OARN within 30 calendar days of the date that OARN issues its proposed revocation of
9 eligibility decision letter.

10 (b) An appeal of a revocation decision is limited to whether OARN's decision to revoke was based on the
11 eligibility requirements in accordance with OAR 414-600-0015 to 414-600-0120.

12 (c) A Relief Nursery's appeal must identify how the Relief Nursery believes OARN misapplied the
13 eligibility requirements of OAR 414-600-0015 to 414-600-0120 and how that error led to OARN's
14 revocation of eligibility.

15 (d) Upon receipt of a written appeal request, OARN shall notify the Division of the request and create an
16 appeal file. OARN must maintain all records and documents relating to the appeal and provide copies of
17 all records and documents relating to the appeal to the Division upon request by the Division.

18 (e) OARN's review shall be conducted by individuals who did not participate in the revocation
19 determination at issue in the appeal.

20 (f) OARN shall notify the Relief Nursery and the Division of its decision in writing within 30 calendar
21 days of receipt of the appeal request.

22 (3) Request for Division Review.

23 (a) If a Relief Nursery is not satisfied with the outcome of its appeal to OARN, the Relief Nursery may
24 request a review of OARN's decision by the Division.

25 (b) The request for Division review must be received in writing by the Division within 30 days of the date
26 that OARN's written decision notification was issued.

1 (c) A Relief Nursery’s request for Division review must identify in writing the decision made by OARN,
2 describe the alleged error in OARN’s decision and provide information to support the Relief Nursery’s
3 disagreement with the decision.

4 (d) The Division makes all final decisions on revocation determinations. The Division’s review and final
5 decision are limited to whether OARN’s revocation decision comported with the requirements of OAR
6 414-600-0015 to 414-600-0120, and otherwise comports with applicable law.

7 Stat. Auth.: ORS 326.425(7)

8 Stats. Implemented: ORS 417.788, Chapter 546, 2017 Oregon Laws (SB 314)

9 **414-600-0051**

10 **Funding**

11 (1) The Division, in consultation with OARN, shall establish a methodology and formula for allocation of
12 legislatively appropriated funds. The Division shall document the methodology and factors considered in
13 the development of the funding allocation formula. The Division shall make all final decisions on the
14 funding allocation formula.

15 (2) State funds allocated to a Relief Nursery in accordance with ORS 417.788 must be used to:

- 16 (a) Improve child safety;
- 17 (b) Reduce foster care placements;
- 18 (c) Improve healthy child development; and
- 19 (d) Improve family supports resulting in improved family functioning.

20 (3) A Relief Nursery’s request for release of state funding funds determined through the funding
21 allocation formula established pursuant to 414-600-0051(1) must be submitted to the Division on forms
22 prescribed by the Division. The Division shall make all final decisions on a Relief Nursery’s request for
23 state funding funds.

24 (4) A Relief Nursery’s failure to comply with OAR 414-600-0015 to 414-600-0120 or the terms of the
25 Relief Nursery’s contract with the Division may result in termination of the Relief Nursery’s contract
26 with the Division and associated state funds at the Division’s sole discretion.

27 Stat. Auth.: ORS 326.425(7)

1 Stats. Implemented: ORS 417.788, Chapter 546, 2017 Oregon Laws (SB 314)

2 **414-600-0055**

3 **Funding Appeals**

4 (1) A Relief Nursery may appeal a funding decision made by the Division in the manner provided in this
5 rule.

6 (2) A Relief Nursery must submit a written request for review to the Division within 30 calendar days of
7 the date that the Division issued the funding decision letter.

8 (3) A Relief Nursery's appeal request must clearly identify in writing the reason the Relief Nursery
9 disagrees with the funding decision.

10 (4) The Early Learning System Director shall initiate a review of the funding decision and notify the
11 Relief Nursery of the decision within 30 days of receipt of the appeal request.

12 (5) The Early Learning System Director shall make all final decisions on funding appeals.

13 Stat. Auth.: ORS 326.425(7)

14 Stats. Implemented: ORS 417.788, Chapter 546, 2017 Oregon Laws (SB 314)

15 **414-600-0061**

16 **Coordination with the Early Learning System**

17 (1) To ensure Relief Nursery programs and services are consistent with the Early Learning System
18 created by and described in ORS 417.727 and 417.728, a Relief Nursery receiving state funds shall:

19 (a) Coordinate and work collaboratively with the Regional Early Learning Hub to ensure that the Relief
20 Nursery's program and services are consistent and aligned with the goals of the Early Learning System;

21 (b) Collaborate with the Regional Early Learning Hub to align strategies to meet the needs of children and
22 families in focus populations identified by the Hub and Relief Nursery. The strategies must take into
23 account the Relief Nursery's capacity, community priorities, initiatives and opportunities, and available
24 resources; and

25 (c) Coordinate with the Regional Early Learning Hub, health, human and other early learning programs to
26 plan, develop and implement an early childhood system of supports and services to achieve positive

1 outcomes for focus populations, maximize the effective use of available resources and avoid duplication
2 of services.

3 (2) For the purposes of this section “Focus Populations” means children or families with a child or
4 children who ~~is~~are at risk of entering foster care due to multiple factors, including but not limited to:

5 (a) Living in a household that is at or near poverty, as determined under federal poverty guidelines;

6 (b) Living in inadequate or unsafe housing;

7 (c) Having inadequate nutrition;

8 (d) Living in a household where there is significant or documented domestic conflict, disruption or
9 violence;

10 (e) Having a parent who suffers from mental illness, who engages in substance abuse or who experiences
11 a developmental disability or an intellectual disability;

12 (f) Living in circumstances under which there is neglectful or abusive care-giving;

13 (g) Having unmet health care and medical treatment needs; or

14 (h) Having a racial or ethnic minority status that is historically consistent with disproportionate over-
15 representation in academic achievement gaps or in the systems of child welfare, foster care or juvenile or
16 adult corrections.

17 (3) OARN shall notify the Division of any changes in leadership, budget or location of any Relief
18 Nursery.

19 Stat. Auth.: ORS 326.425(7)

20 Stats. Implemented: ORS 417.788, Chapter 546, 2017 Oregon Laws (SB 314)

21 **414-600-0105**

22 **Reporting**

23 (1) A Relief Nursery shall provide information and data demonstrating program compliance to the
24 Division upon request and in a manner provided by the Division.

1 (2) A Relief Nursery must develop and record individual child goals in the child’s records.

2 Stat. Auth.: ORS 326.425(7)

3 Stats. Implemented: ORS 417.788, Chapter 546, 2017 Oregon Laws (SB 314)

4 **414-600-0115**

5 **Mandatory Reporters**

6 A Relief Nursery, Relief Nursery staff and other providers having reasonable cause to believe that any
7 child with whom the provider or program staff comes into contact has suffered or is suffering from abuse
8 or neglect shall report or cause a report to be made in the manner described in ORS 419B.005 to
9 419B.015.

10 Stat. Auth.: ORS 326.425(7)

11 Stats. Implemented: ORS 417.788, Chapter 546, 2017 Oregon Laws (SB 314)

12 **414-600-0120**

13 **Confidentiality of Child and Family Data**

14 (1) All personal information maintained by a Relief Nursery relating to a child or family served by the
15 Relief Nursery in one or more locations and in various forms, reports or documents, or stored or
16 transmitted by electronic media shall be treated as confidential.

17 (2) A Relief Nursery must obtain a completed and signed authorization for release of information from
18 the parent or guardian of the child served by the Relief Nursery before obtaining or using protected
19 information about the child from a third party or disclosing protected information about the child to a
20 third party.

21 (3) Any use or disclosure must be consistent with the purposes for which the parent or guardian
22 authorized use or disclosure by the Relief Nursery.

23 (4) Anonymous aggregated data may be shared among the Division, Regional Early Learning Hubs and
24 Relief Nurseries to effectively serve children and families in the Early Learning Hub region.

25 Stat. Auth.: ORS 326.425(7)

26 Stats. Implemented: ORS 417.788; Chapter 546, 2017 Oregon Laws (SB 314)



Mr. David Mandell
Early Learning Division
Oregon Department of Education
775 Summer St. NE Suite 300
Salem, OR 97301

Dear Mr. Mandell:

I am writing on behalf of the Oregon Association of Relief Nurseries (OARN) regarding the promulgation of the Oregon Administrative Rules related to Relief Nurseries. As you know, we asked the Child Care and Education Committee (CCEC) to defer consideration of the rules for another month. We appreciate your willingness to do so. This letter is intended to provide feedback on the memo given to the CCEC drafted by Lisa Pinheiro and to ask for further clarification of some of the language.

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

OARN is seeking exceptions for staff who may not have the requisite combination of degrees and experience. The reason that we are doing so is that there is a discrepancy in access to education among minority populations and rural communities.

OARN has suggested the following language be added:

OARN may make an exception to staff qualifications in a special circumstance. Applicants who do not meet the qualifications above may be hired if a two-year Professional Development and Training Plan is written and implemented. Staff hired under this exception must receive more intense training and supervision during the two-year training period.

Early Learning Division (ELD) staff have suggested that individual Relief Nursery Directors apply for exceptions, with the ELD following up to monitor the training plans. OARN believes that the process would be less cumbersome if the Executive Director of OARN applies for exceptions, and submit biannual updates on the implementation of those Professional Development and Training Plans.

2) Annual Reviews vs. 4-Year Recertification: 414-600-0041

OARN would like clarification about what ELD staff are referring to in the memo of December 14, 2017 regarding "annual licensing visits." This seems like a reasonable solution

to the issue noted in Lisa's memo, but without more detail about what these "annual licensing visits" entail, we cannot be fully supportive.

3) Funding Distribution Process: 414-600-0051

OARN continues to have concerns about subsection (3) of this section. We are currently waiting to hear back from ELD staff about the purpose of this section in order to find workable language for both parties.

4) Appealing Funding Distribution Process: 414-600-0051

We are requesting the CCEC take up the question of to whom OARN may make an appeal regarding funding distribution in the case of a disagreement about the funding formula. We understand that the ELD does not believe the ELC is an appropriate mediator in the case of a disagreement. We understand the rationale and instead request that the rules outline that "Either party may ask for third party review to resolve a dispute." This would simply make it clear that a third party should be brought in to help resolve a dispute before more drastic action is taken.

5) Focus Populations: 414-600-0061

The CCEC settled on a definition of "focus populations" for Relief Nurseries. That definition is consistent with the definition found in ORS 417.788 . While we understand that the Early Learning Council may want to establish common definitions across early learning programs, the Relief Nurseries cannot be expected to uphold two different standards. Therefore, we respectfully ask you to affirm the definition of focus populations in the statute governing Relief Nurseries. A copy of our lawyer's public testimony to the ELC is attached to this memo for consideration by the CCEC.

On a final note, we realize that this process has been long and arduous. But these rules will govern Relief Nurseries for at least a decade, and we all have an interest in making certain that they are fair and clear. We very much appreciate the ongoing effort from those involved at the ELD, ELC, and CCEC.

Sincerely,



Mary Ellen Glynn
OARN Executive Director

CC: Lisa Pinheiro
Nakeshia Knight-Coyle
Alyssa Chatterjee
Bobbie Weber



MEMORANDUM

**TO: Early Learning Council
Early Learning Division
Child Care Education Committee**

FROM: Howard F. Feinman

DATE: November 16, 2017

RE: Relief Nurseries Oregon Administrative Rules

Following is public comment on the definition of “Focus Populations” in OAR 414-600-0061.

In the most recent legislative session, the legislature passed Senate Bill 314 to be codified as ORS 417.788. This law became effective on August 2, 2017.

ORS 417.788(2) provides that a Relief Nursery program means a program that provides services to “families with at-risk children.”

ORS 417.788(1) provides that “at-risk” means “likely to enter foster care due to multiple risk factors, including but not limited to:

- (a) Living in a household that is at or near poverty, as determined under federal poverty guidelines;
- (b) Living in inadequate or unsafe housing;
- (c) Having inadequate nutrition;
- (d) Living in a household where there is significant or documented domestic conflict, disruption or violence;
- (e) Having a parent who suffers from mental illness, who engages in substance abuse or who experiences a developmental disability or an intellectual disability;

- (f) Living in circumstances under which there is neglectful or abusive caregiving;
- (g) Having unmet health care and medical treatment needs; or
- (h) Having a racial or ethnic minority status that is historically consistent with disproportionate overrepresentation in academic achievement gaps or in the system of child welfare, foster care or juvenile or adult corrections.

The Early Learning Division proposed Administrative Rules to prescribe the process for determining eligibility and eligibility requirements for Relief Nurseries to receive state funds to provide services to children and families in accordance with ORS 417.788 (OAR 414-600-0005, et seq.).

As part of that rule, OAR 414-600-0061 provided that a Relief Nursery receiving state funds, among other requirements, must “align strategies to meet the needs of children and families in *focus populations* identified by the Hub and Relief Nursery” (italics added).

OAR 414-600-0061(2), as originally proposed, provided that “‘Focus Populations’ means children or families with a child or children who is at risk of not entering school ready to learn due to factors, including but not limited to:” the factors enumerated in ORS 417.788(1)(a) through (h).

The problem with the proposed rule was that it exceeded the Early Learning Division’s authority and therefore would be invalid. The Early Learning Division, by rule, is not able to change the statutory definition of at-risk populations that Relief Nurseries are required to serve from at-risk meaning “likely to enter foster care due to multiple factors” (ORS 417.788(1)) to populations who are at risk “of not entering school ready to learn due to multiple factors” (OAR 414-600-0061(2) as proposed).

The Early Learning Division is not at liberty to change the populations that Relief Nurseries are to serve by Administrative Rule.

In recognition of this issue, the rule was modified and as now proposed, is acceptable to OARN and consistent with the legislative definitions of at-risk populations that Relief Nurseries are to serve. OAR 414-600-0061(2) as proposed now provides that “Focus Populations” means children or families with a child or children who is at risk of entering foster care due to multiple factors, including but not limited to the factors enumerated in ORS 417.788(1)(a) through (h).

OARN Public Comment and Requests for Revision – 11/14/17

Sue, Lisa,

Please add our comments below to the public record for Relief Nursery program rule making.

On behalf of the Oregon Association of Relief Nurseries (OARN), I would like to thank the ELD and CCEC for their hard work to get these rules to where they are today. We very much appreciate the spirit of collaboration and compromise. Since the CCEC meeting last week a few minor issues have come to our attention in addition to the section on funding that was left unresolved. We would like to request changes to the following sections of the proposed rules.

There are four remaining issues:

1) Exceptions for Staff Qualifications

In section **414-600-0031**, Relief Nurseries are motivated to meet the education requirements listed when possible. But we also acknowledge that there is a discrepancy in access to education among minority populations and rural communities. For example, an applicant with these education requirements would be tremendously hard to find in Madras, a town of 6500. In a town that size there is a very small pool of potential applicants that are looking for work and qualified. We believe this is aligned with the ELC's equity lens and would propose the following language highlighted in yellow be added to section **414-600-0031**:

(2) Relief Nursery staff who provide direct services to children and families must meet one of the following minimum requirements:

- (a) A Bachelor of Arts degree in Early Childhood;
- (b) A degree in a related field with early childhood teaching experience;
- (c) A combination of an associate's degree, an equivalent step on the Oregon Registry and appropriate experience; or
- (d) A degree in a field other than child development or early childhood education and six courses in child development or early childhood education focusing on children from birth to age five.

Add new section with the following:

Relief Nursery directors may make an exception to staff qualifications in a special circumstance. Applicants who do not meet the qualifications above may be hired if a two-year Professional Development and Training Plan is written and implemented. Staff hired under this exception must receive more intense training and supervision during the two-year training period

2) Classroom Age Discrepancy

In section **414-600-0035**, there is a discrepancy between how a classroom is defined for purposes of the minimum hours a classroom must operate and how many children may be in a classroom. We would suggest that subsection (3) be changed in the following ways:

(3) Minimum Hours. A Relief Nursery must operate one or more therapeutic classrooms with the following time periods:

- (a) A minimum of three hours per week for infants up to **18-24 months** of age; and
- (b) A minimum of six hours per week for children aged **18-24 months and older**.

(4) Class Size and Ratios. A Relief Nursery must provide a minimum of three adults, at least two of whom must be meet the qualifications in accordance with 414-600-0030 (2) for each class of:

- (a) Six children, not less than 6 weeks but less than to 24 months of age;
- (b) Eight children, not less than 2 months but less than 36 months of age; and
- (c) Eleven children, 36 months to 5 years of age.

3) Annual Reviews vs. 4-Year “Recertification”

At the opening of a new Nursery and every four years thereafter OARN completes a comprehensive review of compliance with all standards and rules, and adherence to the Relief Nursery model. This process is similar to subsection (3) of Section **414-600-0041**. Doing all of the work detailed in this subsection for each Nursery annually however would be tremendously burdensome for our Association staff that consists of just two people.

That said, we understand the need for an “annual eligibility review.” We suggest clarifying that subsection (4) convey the requirements for “annual eligibility reviews.” (For reference, our internal document says “OARN reviews documents provided annually by each Relief Nursery to monitor compliance and provide telephone consultation and/or site visits as needed to monitor improvements, provide technical assistance, or review any major changes in programming, leadership, budget, or location.”) Subsection (3) can then convey the more in depth, but less frequent, eligibility reviews as OARN currently does for what we call “recertification.” We recommend these changes:

(3) OARN shall conduct **every four years annual** Relief Nursery programmatic and financial eligibility reviews and monitoring consisting of site visits and observations of applicant’s facility and classrooms and interviews with directors, managers, direct service staff, board members, community partners, and parents associated with the Relief Nursery’s facility, as well as a review of documents.

(4) OARN shall provide annual (eligibility review) and monitoring reports to the Division to verify Relief Nursery compliance with OAR 414-600-0005 to 414-600-0120 including programmatic and financial assessments and **documented site visit observations** major changes in programming, leadership, budget or location.

4) Funding Distribution Process Clarification

In **414-600-0051**, the way the allocation formula in subsection (1) and the “request for state funding” in subsection (3) are separated into two distinct processes makes it sound like the allotments themselves could be decided without following the formula. OARN understands that the ELD needs to have ultimate say over the allocation formula and by extension the allocations themselves, but this ought to be described as a single process.

We would also request subsection (5) be added with the additional language below to clarify that OARN may appeal this singular process.

We believe these changes fulfill the Division's requirement to have final authority over funding allocations and provides OARN with the opportunity to provide input on the development of the formula and appeal the outcome if necessary. We request the following modifications:

(1) The Division, in consultation with OARN, shall establish a methodology and formula for allocation of legislatively appropriated state funds. The Division shall document the methodology and factors considered in the development of the funding allocation formula. A Relief Nursery's request for the release of their allocation must be submitted to the Division on forms prescribed by the Division. The Division shall make all final decisions on the funding allocation formula, which determines the amount each Relief Nursery receives from legislatively appropriated funds.

(3) Delete in its entirety

(5) OARN may appeal the Division's funding allocation formula and decision regarding the amount each Relief Nursery receives to the Council. Such an appeal must be submitted to the Early Learning Division. The Division shall notify the Early Learning Council of the appeal request.

Board Action Summary

AGENDA ITEM: Administrative Rules Child Care Contribution Tax Credit Program

Summary of Recommended Board Action

ACTION: Adopt the proposed changes to the Administrative Rules for the Child Care Contribution Tax Credit

ISSUE: Administrative Rules for Child Care Contribution Tax Credit Program

Proposed administrative rule language is being presented to the Council for first reading.

BACKGROUND: In 2003, the state legislature enacted the Oregon Child Care Contribution Tax Credit to improve the quality of child care programs through education awards and quality improvement grants. The Early Learning Division is authorized to issue tax credit certificates up to \$500,000 in total certificates per year. By making a contribution to the program, taxpayers receive an Oregon state tax credit of 50 cents for each dollar contributed. The credit claimed cannot exceed the lesser of 50 percent of the amount contributed in the tax year or the tax liability of the taxpayer for the tax period in which the credit is claimed. The Child Care Contribution Tax Credit has a sunset date of January 1, 2022.

Past and present contributions have been disbursed to individuals through education awards and to licensed providers engaged in Spark. Supported activities include quality improvement dollars for center and family-based care facilities. Less than three percent of tax credit dollars have been spent on administration of the program.

Legislation passed in 2015 limited the amount that can be claimed against a taxpayer's liability to 50 percent. Prior to passage of HB 2171 in 2015, the amount was set by the Early Learning Council by rule.

During the 2017 legislative session, the Oregon Legislature amended the Child Care Contribution Tax Credit. HB 3066 provided technical fixes to the statutes governing administration of the tax credit. The bill removed erroneous statutory language and added language to support strategies identified following enactment of the tax credit program.

Rule revisions to be considered will align existing rule with these statutory changes.

ACTION PRECEDING BOARD ACTION:

The Early Learning Council received a briefing at their October 26, 2017. The CCEC considered proposed rules at its November 9, 2017 meeting and forwards the rule set for Council's first reading on November 16th, 2017.

FISCAL IMPACT:

Staff determined the proposed amendments to these administrative rules will have no fiscal impact on state agencies, units of local government or the public; will add no additional requirements to small businesses and industries; small businesses will not be subject to these rules; will add no additional record keeping or other administrative requirements, and no professional services, equipment, supplies, labor or increased administration is required for compliance.

BOARD MEMBER PRESENTING REPORT FOR ADOPTION: Bobbie Weber

CONTACT: Dawn Woods, Child Care Director, Sandy Gorsage, Program Development Specialist, Office of Child Care, Lisa Pinheiro, Early Learning Policy Analyst, ELD

414-700-0000

Purpose

(1) The purpose of these rules is provide guidance for administration of the child care contribution tax credit program as authorized in ORS 314.752, 315.213 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.

(2) The intent of the tax credit and use of the contributions are to :

(a) Encourage taxpayers to make contributions to the Office of Child Care by providing a financial return on qualified contributions and by soliciting other contributions.

(b) Achieve specific and measurable goals for targeted communities and populations.

(c) Strengthen the viability and improve the professional development of child care providers.

(d) Encourage child care providers or programs to increase the quality of child care.

414-700-0010

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) "Division" or "ELD" means the Early Learning Division of the Oregon Department of Education.

(3) "Office of Child Care" or "OCC" means the Office of Child Care of the Early Learning Division.

(4) "Employment Related Day Care program" or "ERDC Program" means a subsidy program within the Oregon Department of Human Services which helps low-income families pay for child care while they are working.

(5) "High quality child care" means child care that meets standards for high quality child care established or approved by the Early Learning Council.

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

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

414-700-0020

Advisory Committee

(REPEAL RULE)

Board Action Summary

AGENDA ITEM: Final Adoption permanent administrative rules for the Central Background Registry

Summary of Recommended Board Action

ACTION: Adoption of permanent administrative rules

ISSUE: The Early Learning Division, Office of Child Care (OCC) administers the Central Background Registry (CBR) pursuant to ORS 329A.030. OCC conducts background checks on individuals associated with child care facilities. Background checks consist of criminal and child welfare (child abuse and neglect) as well as a suitability determination for enrollment in the CBR. The enrollment period is two years at which time the individual must apply for renewal.

The Legislature passed HB 2259, creating statutory changes to further allow the Office of Child Care to be compliant with CCDBG. Specifically, HB 2259 prohibits convicted criminals from ever being eligible for the Central Background Registry.

ACTION PRECEDING RECOMMENDED BOARD ADOPTION:

Temporary rules, adopted by the Council in January 2017, allowed the OCC to begin fingerprinting all subject individuals in order to meet the September 2017 deadline and to mitigate anticipated increased costs of fingerprinting. The Council adopted permanent rule language at the August 2017 meeting to meet the CCDBG requirements. CCEC discussed additional rule language in light of HB 2259 at their October 2017 meeting and the rules were posted for public comment.

BOARD MEMBER PRESENTING REPORT FOR ADOPTION: Bobbie Webber

CONTACT: Dawn Woods, Child Care Director

OFFICE OF THE SECRETARY OF STATE
DENNIS RICHARDSON
SECRETARY OF STATE

LESLIE CUMMINGS
DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION
MARY BETH HERKERT
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 414
OREGON DEPARTMENT OF EDUCATION
EARLY LEARNING DIVISION

FILED
10/23/2017 2:19 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Rules governing the Central Background Registry to conform with federal law and HB 2259 (2017).

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 11/21/2017 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

A public rulemaking hearing may be requested in writing by 10 or more people, or by a group with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the Oregon Bulletin or 28 days from the date the Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

CONTACT: Lisa Pinheiro
503-910-8135
lisa.pinheiro@ode.state.or.us

775 Summer Street NE
Suite 300
Salem, OR 97317

Filed By:
Lisa Pinheiro
Rules Coordinator

NEED FOR THE RULE(S):

Rule amendments are necessary due to the passage of HB 2259 (2017 session), which modifies existing statutory language in ORS 329A.030 related to the Office of Child Care's Central Background Registry (CBR). Additionally, the Child Care Development Block Grant (CCDBG) of 2014, codified at 45 CFR 98, established new requirements for CBR background checks, and established a list of crimes that make an individual ineligible for enrollment in the CBR.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

ORS 329A.030 https://www.oregonlegislature.gov/bills_laws/Pages/ORS.aspx

HB 2259 Enrolled (2017) <https://olis.leg.state.or.us/liz/2017R1/Downloads/MeasureDocument/HB2259>

S.1086. Public Law 113-186. <https://www.congress.gov/113/plaws/publ186/PLAW-113publ186.pdf>

FISCAL AND ECONOMIC IMPACT:

We anticipate no additional fiscal impact as a result of these rules changes. The costs to businesses and individuals may actually decrease if the rule establishes enrollment periods longer than the current 2 year period. More information on fiscal impact will be established as the rules are finalized.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

1) No impact to governmental units or state agencies; 2) (a) There are approximately 4,000 licensed programs, and 1,800 license exempt providers receiving child care subsidies that are subject to the rules; (b) no reporting, recordkeeping or other additional administrative activities.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Licensed child care centers are represented on the Early Learning Council Rules Advisory Committee.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

414-061-0000, 414-061-0020, 414-061-0030, 414-061-0035, 414-061-0040, 414-061-0045, 414-061-0050, 414-061-0060, 414-061-0070, 414-061-0075, 414-061-0080, 414-061-0090, 414-061-0100, 414-061-0110, 414-061-0120

AMEND: 414-061-0000

RULE SUMMARY: 414-060-0000 is proposed to be amended to reflect statutory and federal requirements relating to adult protective services and foster care records checks.

CHANGES TO RULE:

414-061-0000

Purpose ¶

(1) The Office of Child Care (OCC) will conduct criminal records checks ~~and child, child abuse and neglect records checks, and checks of foster care certification and adult~~ 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 OCC ~~obtain~~ conducts criminal records and child ~~protective services records on subject individuals~~ abuse and neglect records checks, checks a subject individual's foster care certification and adult protective services history, obtains relevant records when necessary, applies such information to its determination about the suitability of the subject individual, and enrolls approved subject individuals in the Central Background Registry.

Statutory/Other Authority: ORS 329A.030(7)

Statutes/Other Implemented: ORS 329A.030

AMEND: 414-061-0020

RULE SUMMARY: 414-061-0020 is proposed to be amended to reflect statutory and federal requirements and definitions relating to adult protective services and foster care records checks.

CHANGES TO RULE:

414-061-0020

Definitions ¶¶

(1) Adult Protective Services history means information about whether the subject individual has a substantiated finding of abuse or neglect in an adult abuse investigation conducted by the Oregon Department of Human Services or its contractor or designee, or similar information held by another state, county, municipal or other governmental entity or its contractor or designee.¶¶

(2) Adult protective services check means a certification by the subject individual of the presence or absence of a substantiated finding of abuse or neglect in an adult abuse investigation, or obtaining and reviewing adult protective services records from appropriate governmental authority, its designee or contractor as required or permitted by these rules .¶¶

(3) "Agency Agreement" means the written agreement between the Oregon State Police (OSP) and the Oregon Office of Child Care (OCC).¶¶

~~(24) "Child Protective Services Records" means information on child abuse and neglect cases.¶¶~~

(3) Child Protective Services Central Background Registry or CBR means the registry established and operated pursuant to ORS 329A.030.¶¶

(5) "Child Abuse and Neglect Records" means information on child abuse and neglect cases conducted by the Oregon Department of Human Services or its contractor or designee, or similar information held by another state, county, municipal or other governmental entity or its contractor or designee.¶¶

(6) Child Abuse and Neglect Records Check means obtaining and reviewing child protective services reports and records as required or permitted by these rules.¶¶

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

(58) "Conditional Enrollment" means temporary approval to be enrolled in the Central Background RegistryBR following an OSP criminal records check and child protective servicesabuse and neglect records check but prior to receipt by OCC of the results of a required FBI criminal records check.¶¶

(69) "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.¶¶

(710) "Criminal Records Check" means obtaining and reviewing criminal records as required or permitted by these rules and includes any or all of the following;¶¶

(a) A check of Oregon criminal offender information and driving records conducted through use of the Law Enforcement Data System (LEDS) maintained by OSP, in accordance with the rules adopted and procedures established by OSP;¶¶

(b) A check of Oregon criminal offender information, including through fingerprint identification or other means, conducted by OSP at the authorized agency or districts request; or¶¶

(c) A nationwide check of federal criminal offender information, including through fingerprint identification, conducted by OSP through the Federal Bureau of Investigation (FBI).¶¶

(811) "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.¶¶

(912) "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.¶¶

(103) "Employee of the Early Learning Division" means any individual employed by the Early Learning Division.¶

(114) "Enrollment" means approval for a ~~two~~^{five}-year period to be enrolled in the Central Background Registry following an OSP criminal records check, child abuse and neglect records check, checks of adult protective services records check and, if required, foster care certification, and, an FBI records check.¶

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

(136) "FBI" means the Federal Bureau of Investigation.¶

(147) Fingerprint-Based Criminal Records means criminal offender information compiled and maintained by the Federal Bureau of Investigation.¶

(158) Foster Care Certification History means information and records regarding the status of any application for or approval of the Oregon Department of Human Services permitting the subject individual to provide foster care, or similar information held by another state, county, municipal or other governmental authorities or their contractors or designees.¶

(19) Foster care certification check means a certification by the subject individual of the presence or absence of any negative action taken on their foster care certification by appropriate governmental authority, or obtaining and reviewing foster care from appropriate governmental authority, its designee or contractor as required or permitted by these rules.¶

(20) "Incident" means the commission of a Category I or Category II crime ~~or, a child protective services case.~~¶

~~(15)~~ abuse and neglect case, negative foster care history, or a substantiated finding of adult abuse or neglect.¶

(21) OCC means the Office of Child Care of the Early Learning Division of the Department of Education.¶

(1622) "OSP" means the Oregon State Police.¶

(1723) 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 ORS 418.205, for parents pursuant to a properly executed power of attorney under ORS 109.056.¶

(1824) "Requesting Agency" means a childhood care and education program or individual providing care to children that is:¶

(a) Regulated by OCC under ORS 329A.280 or 329A.330; or¶

(b) An early childhood care and education program.¶

(1925) "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 staff with supervisory authority.¶

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

Statutory/Other Authority: ORS 329A.030(7), HB 2259 (2017)

Statutes/Other Implemented: ORS 329A.030, HB 2259 (2017)

AMEND: 414-061-0030

RULE SUMMARY: Rule revisions are proposed to update definitions relating to child abuse and neglect, adult protective services and foster care checks; require adult protective services and foster care checks prior to enrollment in the CBR; Updating definition of "subject individual" to allow enrollment, when appropriate, in the CBR of employees or providers of child care services of one of the nine federally recognized tribes in Oregon or administrators of the Tribal Child Care and Development Fund.

CHANGES TO RULE:

414-061-0030

Subject Individuals ¶¶

(1) For purposes of criminal records checks, including fingerprint-based criminal records checks, and child abuse and neglect records checks, foster care or adult protective services records checks, "Subject Individual" means a person who 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 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) A designated employee or a contractor 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.¶¶

(i) An employee, contractor or provider of child care services under any memorandum of understanding or similar arrangement with one of the nine federally recognized tribes in Oregon or administrators of the Tribal Child Care and Development Fund.¶¶

(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.

Statutory/Other Authority: ORS 329A.030(7)

Statutes/Other Implemented: ORS 329A.030, HB 2259 (2017)

Board Action Summary

AGENDA ITEM: Regulated Subsidy Rules Final Adoption

Summary of Recommended Board Action

ACTION: Adoption of Regulated Subsidy Family Home and Center Based Provider Administrative Rules

ISSUE: The Child Care and Development Block Grant Act of 2014 (CCDBG) requires states to develop health and safety requirements for all child care facilities that accept subsidy payments through the Child Care and Development Fund.

The Early Learning Division adopted permanent rules at their March 2017 meeting. Due to a clerical error, these rules are being brought before the Council again.

BOARD MEMBER PRESENTING REPORT FOR ADOPTION: Bobbie Webber

CONTACT: Dawn Woods, Child Care Director

Division 180

REGULATED SUBSIDY FAMILY CHILD CARE [HOMES/FACILITIES](#)

414-180-0005

Purpose

Oregon Administrative Rules (OAR) 414-180-0005 through 414-180-0100 are the Early Learning Division's minimum health and safety requirements for license exempt child care providers who accept federal child care subsidy payments through the state. The purpose of these rules is to protect the health, safety, and well-being of children in care. These rules apply to child care providers who accept federal child care subsidies from the Oregon Department of Human Services or the Early Learning Division Office of Child Care and are exempt from child care licensing as outlined in ORS 329A.250

414-180-0010

Definitions

The following definitions apply to Oregon Administrative Rules 414-180-0015 through 414-180-0100.

- (1) "Caregiver" means any person, including the provider, who cares for the children in Regulated Subsidy child care and works directly with the children, providing care, supervision and guidance.
- (2) "Child Care" means the care, supervision and guidance on a regular basis of a child, unaccompanied by a parent, legal guardian or custodian, during a part of the 24 hours of the day, with or without compensation.
- (3) "Child Care Child" 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 provider has supervisory responsibility for the child in the temporary absence of the parent.
- (4) "Child Care Facility" means the location where child care is being conducted. This can be either a private residence or commercially zoned building.
- (5) "Child with Special Needs" means a child under 18 years of age who requires a level of care over and above the norm for their age due to a physical, developmental, behavioral, mental or medical disability.
- (6) "Communicable Disease" means an illness caused by an infectious agent or its toxins.
- (7) "Disinfecting" means using a process for destroying or irreversibly inactivating harmful organisms, including bacteria, viruses, germs and fungi.

- (8) "Family" 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) "Infant" means a child who is at least six weeks of age up to 12 months of age.
- (10) "OCC" means the Office of Child Care, Early Learning Division of the Department of Education.
- (11) "Outbreak of Communicable Disease" means two cases from separate households associated with a suspected common source.
- (12) "Premises" means the structure where child care is conducted that is identified on the application or listed with the Department of Human Services, including indoors and outdoors and space not directly used for child care.
- (13) "Preschool-Age Child" means a child who is 36 months of age up to eligible to attend kindergarten in a public school.
- (14) "Provider" means the person or facility who is responsible for the children in care; is the children's primary caregiver; and who is listed with the Department of Human Services as the provider.
- (15) "Regulated Subsidy Child Care" means care that is provided to children whose families access federal child care subsidy funds through the state.
- (16) "Restrictable Disease" means an illness or infection that would prohibit the child from attending child care.
- (17) "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.
- (18) "Substitute Provider" means a person who acts as the child's primary caregiver in the temporary absence of the provider.
- (19) "Toddler" means a child who is at least 12 months of age but is not preschool-age.
- (20) "Useable Exit" means an unobstructed door or window through which the provider and the children can evacuate the child care facility in case of a fire or emergency. Doors must be able to be opened from the inside without a key.

(a) For buildings 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 buildings 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.

414-180-0015

Health

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

(2) The child care facility must be a healthy environment for children.

(3) All caregivers shall take appropriate precautions to prevent shaken baby syndrome and abusive head trauma.

(4) There must be at least one flush toilet and one hand-washing sink available to children.

(5) 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.

(6) 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).

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

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

(9) If an infant uses a blanket, the blanket may not cover the infant's head or face.

(10) Infants must be laid on their backs on a flat surface for sleeping.

(11) Children shall not be laid down with a bottle for sleeping.

(12) 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.

(~~4113~~) 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, a solution for disinfecting after a blood spill, a sanitary temperature taking device.

(~~4214~~) Illness:

(a) Except for mild cold symptoms that do not impair a child's daily functioning, sick children shall not be in care.

(b) 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) Difficult breathing or abnormal wheezing; or

(x) Complaints of severe pain.

(c) A child who, after being admitted into child care, shows signs of illness, as defined in this rule, whenever possible will be separated from the other children, and the parent(s) notified and asked to remove the child from the child care facility as soon as possible.

(d) If a child has mild cold symptoms that do not impair his/her normal functioning, the child may remain in the child care facility and the parent(s) notified when they pick up their child.

~~(1315)~~ Section ~~12-14~~ of this rule does not apply when the provider is caring only for children from the same family and no other unrelated child care children are present, except that the provider shall notify the parent if a child who, after being admitted into child care, shows signs of illness.

~~(1416)~~ Parents must be notified if their child is exposed to an outbreak of a communicable disease.

(17) If a child with allergies is enrolled who needs a specific plan for caring for that child, such a plan shall be developed in writing between the provider and parents, and, if necessary, outside specialists. All caregivers who come in contact with that child shall be fully aware of the plan.

~~(1518)~~ No person shall smoke or carry any lighted smoking instrument, including an e-cigarette or vaporizer in the child care facility 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.

~~(1619)~~ No person shall use smokeless tobacco in the child care facility during child care hours or when child care children are present.

~~(1720)~~ No person shall smoke, carry any lighted smoking instrument, including an e-cigarette, or vaporizer or use smokeless tobacco in motor vehicles while child care children are passengers.

~~(1821)~~ No one shall consume alcohol on the child care facility premises during child care hours or when child care children are present.

~~(1922)~~ No one shall be under the influence of alcohol on the child care facility premises during child care hours or when child care children are present.

~~(2023)~~ No one shall possess, use or store illegal controlled substances on the child care facility premises. No one shall be under the influence of illegal controlled substances on the child care facility premises.

~~(2124)~~ No one shall grow or distribute marijuana on the premises of the child care facility. No adults shall use marijuana on the child care facility premises during child care hours or when child care children are present.

~~(2225)~~ Child care providers and any individual supervising, transporting, preparing meals, or otherwise working in the proximity of child care children and those completing daily attendance and billing records shall not be under the influence.

(~~23~~26) "Under the influence" means observed abnormal behavior or impairments in mental or physical performance leading a reasonable person to believe the individual has used alcohol, any controlled substances (including lawfully prescribed and over-the-counter medications), marijuana (including medical marijuana), or inhalants that impairs their performance of essential job function or creates a direct threat to child care children or others. Examples of abnormal behaviors include, but are not limited to hallucinations, paranoia, or violent outbursts. Examples of impairments in physical or mental performance include, but are not limited to slurred speech as well as difficulty walking or performing job activities.

(~~24~~27) All marijuana, marijuana derivatives and associated paraphernalia must be stored under child safety lock.

(~~25~~28) Any animal at the child care facility shall be in good health and be a friendly companion for the children in care.

(~~26~~29) Dogs and cats must be vaccinated according to a licensed veterinarian's recommendations.

(~~27~~30) Dogs and cats shall be kept free of fleas, ticks and worms.

(~~28~~31) Animal litter boxes shall not be located in areas accessible to children or areas used for food storage or preparation.

(~~29~~32) Exotic animals, including, but not limited to: reptiles (e.g. lizards, turtles, snakes) amphibians, monkeys, 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.

(~~30~~33) Prescription and non-prescription medication shall only be given to a child if the provider has written authorization from the parent.

(~~31~~34) Prescription and non-prescription medications must be properly labeled and stored.

(~~32~~35) Non-prescription medications or topical substances must be labeled with the child's name.

(~~33~~36) 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.

(3437) Medication requiring refrigeration must be kept in a separate, tightly covered container, marked "medication," in the refrigerator.

(3538) Parents must be informed daily of any medications given to their child or any injuries their child has had.

(3639) Sunscreen may be used with written parental authorization.

(a) In instances where parent has provided written permission to use sunscreen, providers must reapply sunscreen every two hours while the child care children are exposed to the sun.

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

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

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

(3740) Parents must be given the telephone number so they can contact the provider if needed.

414-180-0020

Sanitation

(1) Pre-mixed sanitizers and disinfectants that are EPA registered and meet Oregon Health Authority criteria may be used in all areas of the [home-child care facility](#) per manufacturer instructions.

(2) All caregivers and children must wash their hands with soap and warm, running water:

(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.

(3) Hand sanitizers shall not replace hand washing. If hand sanitizers are present in the [home-child care facility](#), they shall be kept out of children's reach and shall not be used on children.

(4) Clean toys, equipment and furniture used by children when 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 building, grounds, any toy, equipment, and furniture are maintained in a clean, sanitary, and hazard free condition.

(7) All garbage, solid waste, and refuse must be disposed of regularly, in a safe and sanitary manner.

(8) Bio-contaminants including but not limited to bodily fluids and blood shall be disposed of in a manner that prevents exposure to children.

(9) The [home-child care facility](#) has safe drinking water.

414-180-0025

Safety

(1) The room temperature must be at least 68°F during the hours which child care children are in care.

(2) Rooms child care children are predominantly occupying must have a combination of natural and artificial lighting.

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

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

(5) Children shall be protected from fire and safety hazards. Providers must have the following protections in place:

(a) 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.

(b) Extension cords shall not be used as permanent wiring;

(c) All appliance cords must be in good condition;

(d) Multiple connectors for cords shall not be used;

(e) A grounded power strip outlet with a built-in over-current protection may be used;

(f) A stable barrier 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;

(g) A secure barrier shall be placed at the top and/or bottom of all stairways accessible to infants and toddlers;

(6) The [home-child care facility](#) has a working smoke detector on each floor level and in any area where a child naps.

(7) Cleaning supplies, paints, matches, lighters, and any plastic bags large enough to fit over a child's head kept under child-safety lock.

(8) Other potentially dangerous items, such as medicine, drugs, sharp knives and poisonous and toxic materials kept under child-safety lock.

(9) 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;

(10) If any preschool age or younger children are in care, poisonous plants must be kept out of the reach of children;

(11) All clear glass panels in doors clearly marked at child level.

(12) Each provider must:

(a) Ensure that the [home-child care facility](#) where care is provided meets all of the following standards:

(A) Each floor level used by a child has two useable exits to the outdoors (a sliding door or window that can be used to evacuate a child is considered a useable exit). If a second floor is used for child care, the provider must have a written plan for evacuating occupants in the event of an emergency.

(B) The [home-child care facility](#) has a working telephone or telephone service in operating condition.

(C) Emergency telephone numbers for fire, ambulance, police and poison control and the [home-child care facility](#) address must be posted in a visible location.

(D) The building, grounds, water supply, and toys, equipment and furniture used by children must be maintained in a hazard-free condition.

(E) Broken toys, furniture and equipment must be removed from areas accessible to children.

(13) Wading pools are prohibited for wading.

(14) The provider is responsible for the children in care. At all times the provider must:

(a) Be within sight or sound of all children;

(b) Be aware of what each child is doing;

(c) Be near enough to children to respond when needed.

[\(15\) A center-based child care facility may not exceed the ratios and group sizes in Table A.](#)

[Table A](#)

Age of Children	Minimum Number of Caregivers to Children	Maximum Number of Children in a Group
Six Weeks of Age through 23 Months	1:4	8
24 Months of Age through 35 Months	1:5	10
36 Months of Age to Attending Kindergarten	1:10	20
Attending Kindergarten and Older	1:15	30

(16) In a mixed-age group of children, the number of caregivers and group size shall be determined by the age of the youngest child in the group.

(17) 414-180-0025(15) and 414-180-0025(16) apply to center-based child care defined as a child care facility located in a building constructed as other than a single-family dwelling.

~~(1518)~~ 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 child care ~~home~~facility, 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 and how children will be reunited with their families;

(b) Procedures to address the needs of individual children, including infants and toddlers, children with special needs and children with chronic medical conditions;

(c) An acceptable method to ensure that all children in attendance are accounted for;

(d) Procedures for handling natural disasters (e.g. fire, earthquake, etc.) and man-caused events, such as violence at a child-care facility;

(e) Procedures in the event that children must shelter-in-place or if the child-care ~~home~~facility must be locked-down so that no one can enter or leave; and

(f) Procedures for maintaining continuity of child care operations.

~~(1619)~~ If a caregiver is transporting children, the caregiver must have a valid driver's license and proof of appropriate insurance.

~~(1720)~~ The number of children transported shall not exceed the number of seat belts or child safety systems available in the vehicle.

~~(1821)~~ Car seats are to be used for transportation only. Children who arrive at and brought into the ~~provider's home~~child care facility asleep in a car seat may remain in the car seat until the child awakens.

~~(1922)~~ The provider must take precautions to protect children from vehicular traffic. The provider shall:

(a) Require drop off and pick up only at the curb or at an off-street location protected from traffic.

(b) Assure that any adult who supervises drop-off and loading can see and assure that children are clear of the perimeter of all vehicles before any vehicle moves.

(2023) The following vehicles may be used to transport child care children:

(a) A vehicle manufactured to carry fewer than ten passengers;

(b) A school bus or a multi-function school activity bus;

(c) A vehicle manufactured to carry ten or more passengers that was manufactured in 2010 or after; or

(d) A vehicle manufactured to carry ten or more passengers that was manufactured before 2010, with the following conditions:

(A) Travel speed may not exceed 50 mph; and

(B) The vehicle must have an annual safety inspection by a garage, dealership or auto repair shop. Proof of inspection must be on the form provided by the Early Learning Division or on a form provided by the inspector which contains the same information.

(2424) The provider must have a written statement from the parent(s) regarding whether or not the provider is authorized to:

(a) Take a child on a field trip or other activity ~~outside the child care home~~ away from the child care facility or participate in any water activity; and

(b) Transport a child to or from school or allow a child to bus or walk to or from school or child care ~~home~~ facility.

414-180-0030

Guidance and Discipline

(1) The following behaviors by caregivers are 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) Parental request or permission to use any form of behavior listed in subsection (a) of this section, does not give the provider or substitute provider permission to do so.

414-180-0035**Nutrition**

- (1) Meals and snacks must be based on the guidelines of the USDA Child and Adult Care Food Program.
- (2) Foods must be stored and maintained at the proper temperature.
- (3) Infants must be held or sitting up for bottle feeding. Propping bottles is prohibited.

414-180-0040**Access to Physical Activity**

- (1) 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) with a balance of active and quiet play.
- (2) 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. Screen time is defined as time spent using a device such as a computer, television, or games console.

414-180-0045**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;
 - (D) Names, work and home telephone numbers and addresses, and the work hours of the parent(s) or legal guardian(s);
 - (E) Name and telephone number of person(s) to contact in an emergency;
 - (F) Name and telephone number of person(s) to whom the child may be released;
 - (G) 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.

(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 obtain emergency medical treatment for a child.

414-180-0050

General Requirements

(1) OCC records are open to the public on request. However, information protected by state or federal law will not be disclosed.

(2) The name and status of providers is public information.

414-180-0055

Enforcement of Regulatory Requirements

(1) The provider shall allow an inspection of all areas of the child care facility that are accessible to child care children, and a health and safety review of other areas of the child care [home-facility](#) to ensure the health and safety of child care children.

(2) The provider or substitute must allow a representative from the Office of Child Care access to the child care facility any time child care children are present.

(3) The provider must allow parents or legal guardians of child care children access to the child care facility during the hours their child or children are in care.

414-180-0090

Compliance with Child Abuse Reporting Requirements

Any caregiver who has reason to believe that any child has suffered or is currently suffering from 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.

414-180-0100

Exceptions to Rules

~~(1) A provider may request an exception to a rule.~~

~~(2) An exception must be requested on a form provided by OCC.~~

~~(3) 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.~~

~~(4) The provider must be in compliance with the rule as written until the provider has received approval for the exception from OCC.~~

~~(5) No exception to a rule shall be granted unless the health, safety, and well-being of the children are ensured.~~

~~(6) An exception is valid only for the specified dates for which it is issued.~~

~~(7) The granting of an exception to a rule shall not set a precedent, and each request shall be evaluated on its own merits.~~

ADOPT: 414-061-0035

RULE SUMMARY: Prescribes enrollment application process for enrollment in the Office of Child Care's Central Background Registry, including payment of required application fee and requirements for the applicant to provide information to the Office of Child Care to complete the application process.

CHANGES TO RULE:

414-061-0035

Applications

414-061-0035 Applications

(1) As part of an initial or renewal application, a subject individual must submit requested fee and provide all information required for a criminal records check of the Oregon State Police Computerized Criminal History (CCH) System, and FBI criminal records check, a child abuse and neglect records check, a foster care certification check, and an adult protective services check; including:

(a) A properly completed and signed Application for Enrollment in OCCs Central Background Registry, available from the agency;

(b) For a subject individual who acknowledges criminal history, child abuse and neglect history, foster care certification history, or adult protective services history, an explanation of the history and any steps the subject individual has taken to address the history;

(c) Consent to the use of the subject individuals social security number or other personally identifying information for criminal, child protective services history, child abuse and neglect, foster care certification or adult protective services checks, for identifying enrollees in the Central Background Registry, for sharing information with other governmental agencies their contractors or designees to verify child care licensing status for child care payments, and for compiling statistical information for program planning and evaluation;

(d) The information required for the FBI criminal records check under OAR 414-061-0080

(2) At the time of initial application or renewal of enrollment in the Central Background Registry, subject individuals shall attest on their application or renewal form:

(a) Whether they are a foster parent or have ever been a foster parent, including but not limited to:

(A) Dates of participation in the foster care program

(B) Locations, including street address, city, county and state, at which they provided foster care

(C) Any negative foster care history, including:

(i) Revocation, denial, suspension, closure in lieu of legal action, or other loss of certification or approval to operate a foster home or provide foster care

(ii) Any criminal or civil matters initiated against the individual related to their foster care certification

(b) Whether they have adult protective services history, including but not limited to any record of a substantiated finding of abuse or neglect of an adult;

(3) As part of the application process, the subject individual shall, upon request from OCC, provide OCC with an authorization sufficient to:

(a) allow OCC to obtain records and information regarding out-of-state child abuse and neglect history, foster care certification history, or adult protective services history; and

(b) use those records and information to for the purpose of evaluating the subject individuals suitability for enrollment in the Central Background Registry.

(4) An application is incomplete if:

(a) it does not include all of the required information identified in subsections (1), (2) or (3) of this rule; or

(b) is not accompanied by the required fee.

(5) OCC shall provide the applicant a reasonable time to cure an incomplete application, not to exceed 30 days from the date the application was received by OCC. OCC shall return the incomplete application to the applicant.

(6) Application fees are non-refundable.

Statutory/Other Authority: 329A.030(7)

Statutes/Other Implemented: 329A.030, HB 2259

AMEND: 414-061-0040

RULE SUMMARY: Update rule language to reflect statutory changes and changes to the Child Care Development Block Grant (CCDBG) of 2014, codified at 45 CFR 98, which established new requirements for CBR background checks

CHANGES TO RULE:

414-061-0040

Limitations of Criminal and Judicial Inquiries ¶

(1) Only OCC employees or contractors 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(~~423~~). 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 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 service held by the FBI, OSP or other state, county or municipal law enforcement agency and records of all state, federal or municipal judicial proceedings~~ information shall be obtained by OCC to determine whether a subject individual has criminal history ~~or has child protective services 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 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 FBI's CJIS Division.

Statutory/Other Authority: ORS ~~657329A.030~~(7)

Statutes/Other Implemented: ORS ~~657329A.030~~, HB 2259 (2017)

ADOPT: 414-061-0045

RULE SUMMARY: 414-061-0045 is being proposed due to the new requirements of CCDGB of 2014 (45 CFR 98) that establish disqualifying conditions for enrollment in the Central Background Registry and the passage of HB 2259 in 2017.

CHANGES TO RULE:

414-061-0045

Disqualifying Conditions for Enrollment

(1) A subject individual shall be ineligible for enrollment in the Central Background Registry and if enrolled may be removed or suspended, or have their renewal application denied if such individual:

(a) Refuses to consent to OCCs criminal background check or required fingerprinting;

(b) Knowingly makes or has knowingly made a materially false statement in connection with their application for initial enrollment or renewal of their enrollment in the Central Background Registry, including but not limited to the required criminal background check, or the individuals records or history related (b) to child abuse and neglect, foster care, or adult protective services;

(c) Is registered, or is required to be registered, on any State, tribal, or US territory sex offender registry or repository or the National Sex Offender Registry; or

(d) Has been convicted of a felony or misdemeanor consisting of:

(A) Aggravated murder, murder, criminal homicide, aggravated vehicular homicide, or manslaughter in the first degree as defined by ORS 163.005, ORS 163.095, ORS 163.115, ORS 163.118, or ORS 163.149;

(B) Child abuse or neglect, or other crimes against children as defined by ORS 163.207, ORS 163.405, ORS 163.408, ORS 163.432, ORS 163.433, ORS 163.435, ORS 163.535, ORS 163.537, ORS 163.545, ORS 163.547, ORS 163.555, ORS 163.575, ORS 163.670, ORS 163.684, ORS 163.686, ORS 163.687, ORS 163.688, or ORS 163.689;

(C) A crime involving rape, sexual assault, sexual abuse, sodomy, sexual misconduct or other sexual offenses as defined by; ORS 163.365, ORS 163.375, ORS 163.395, ORS 163.405, ORS 163.408, ORS 163.411, ORS 163.415, ORS 163.425, ORS 163.427 ORS 163.452, or ORS 163.454;

(D) Kidnapping or trafficking in persons as defined by ORS 163.225, ORS 163.235 or ORS 163.266;

(E) Arson as defined in ORS 164.315 or ORS 164.325;

(F) Physical assault or battery as defined by ORS 163.165, ORS 163.175, ORS 163.185, ORS 163.187;

(G) A drug-related offense under ORS chapter 475, committed during the preceding five years, that results in the conviction of the subject individual of a Class A felony, Class B felony, Class C felony, or a Class A Misdemeanor.

(2) These rules also apply to:

(a) A conviction of a crime in another jurisdiction which is the substantial equivalent of a crime listed Section 1(d);

(b) An adjudication of guilt by reason of insanity, of an act that is the substantial equivalent of a crime listed in section 1(d);

(c) An adjudication by a juvenile court that a youth has committed an act that is the substantial equivalent of a crime listed in Section 1(d);

(d) Any attempts, conspiracies or solicitations to commit any Felony or Misdemeanor crime listed in Section 1(d);

(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 Section 1(d);

(f) Any crime that is no longer codified in Oregon, but which is the substantial equivalent of any of the crimes listed in Section 1(d);

Statutory/Other Authority: 329A.030(7)

Statutes/Other Implemented: 329A.030

AMEND: 414-061-0050

RULE SUMMARY: Rule revisions are necessary due to the new requirements of CCDGB Act of 2014 (45 CFR 98) and the passage of HB 2259 in 2017.

CHANGES TO RULE:

414-061-0050

History to be Considered ¶

>>>end_of_rule<<<¶

(1) 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 (89) of this rule.¶

(a) OCC will consider conviction of the following crimes for 15 years or less prior to the date the subject individual signed the Application for Enrollment in OCCs Central Background Registry. The 15 years will run from the date of arrest, citation, charge, or conviction whichever is later.¶

~~(Aa) 163.165 Assault in the third degree.~~ OCC will consider conviction of the following crimes for 15 years or less prior to the date the subject individual signed the Application for Enrollment in OCCs Central Background Registry. The 15 years will run from the date of arrest, citation, charge, or conviction whichever is later.¶

~~(BA) 163.515 Bigamy.~~¶

~~(CB) 164.225 Burglary in the first degree.~~¶

~~(DC) 163.275 Coercion.~~¶

~~(ED) 163.200 Criminal mistreatment in the second degree.~~¶

~~(F) 163.555 Criminal nonsupport.~~¶

~~(GE) 163.225 Kidnapping in the second degree.~~¶

~~(HF) 166.270 Possession of weapons by certain felons.~~¶

~~(IG) 166.720 Racketeering activity unlawful; penalties.~~¶

~~(JH) 164.405 Robbery in the second degree.~~¶

~~(KI) 164.395 Robbery in the third degree.~~¶

~~(LJ) 163.445 Sexual misconduct.~~¶

~~(MK) 163.732 Stalking.~~¶

~~(NL) 162.185 Supplying contraband.~~¶

~~(OM) 166.220 Unlawful use of weapon.~~¶

~~(PN) 163.257 Custodial interference in the first degree.~~¶

(b) OCC will consider conviction of the following crimes for 20 years or less prior to the date the subject individual signed the Application for Enrollment in OCCs Central Background Registry. The 20 years will run from the date of arrest, citation, charge, or conviction whichever is later.¶

~~(A) 166.087 Abuse of corpse in the first degree.~~¶

~~(B) 166.085 Abuse of corpse in the second degree.~~¶

~~(C) 167.262 Use of minor in controlled substance offense.~~¶

~~(D) 164.325 Arson in the first degree.~~¶

~~(E) 163.185 Assault in the first degree.~~¶

~~(F) 163.175 Assault in the second degree.~~¶

~~(G) 475.908 Causing another person to ingest a controlled substance.~~¶

~~(H) 167.017 Compelling prostitution.~~¶

~~(I) 163.205 Criminal mistreatment in the first degree.~~¶

~~(J) 163.145 Criminally negligent homicide.~~¶

~~(K) 162.165 Escape in the first degree.~~¶

(LG) 163.693 Failure to report child pornography.¶
(MH) 181.812 Failure to report as sex offender; defense.¶
(NI) 166.429 Firearms used in felony.¶
(OJ) 163.525 Incest.¶
(PK) 166.165 Intimidation in the first degree.¶
(QL) 166.155 Intimidation in the second degree.¶
(R) 163.235 Kidnapping in the first degree.¶
(S) 163.118 Manslaughter in the first degree.¶
(TM) 163.125 Manslaughter in the second degree.¶
(UN) 166.382 Possession of destructive device prohibited; exceptions.¶
(VQ) 166.275 Possession of weapons by inmates of institutions.¶
(WP) 167.012 Promoting prostitution.¶
(XQ) 167.090 Publicly displaying nudity or sex for advertising purposes.¶
(YR) 163.355 Rape in the third degree.¶
(ZS) 164.415 Robbery in the first degree.¶
(AAT) 167.062 Sadomasochistic abuse or sexual conduct in live show.¶
(BBU) 167.212 Tampering with drug records.¶
(CCV) 164.075 Theft by extortion.¶
(DDW) 163.479 Unlawful contact with a child.¶
(EEY) 166.384 Unlawful manufacture of destructive device.¶
(FFY) 166.660 Unlawful paramilitary activity.¶
(GGZ) 166.272 Unlawful possession of machine guns, certain short-barreled firearms and firearms silencers.¶
(HHA) 163.212 Unlawful use of an electrical stun gun, tear gas or mace in the second degree.¶
(HBB) 163.476 Unlawfully being in a location where children regularly congregate.¶
(c) OCC will consider the following crimes regardless of the length of time since the conviction.¶
(A) 163.535 Abandonment of a child.¶
(B) 163.095 Aggravated murder defined.¶
(C) 163.149 Aggravated vehicular homicide.¶
(D) 163.537 Buying or selling a person under 18 years of age.¶
(E) 163.547 Child neglect in the first degree.¶
(F) 163.545 Child neglect in the second degree.¶
(G) 167.820 Concealing the birth of an infant.¶
(H) 163.435 Contributing to the sexual delinquency of a minor.¶
(I) 163.005 Criminal homicide.¶
(J) 163.452 Custodial sexual misconduct in the first degree.¶
(K) 163.454 Custodial sexual misconduct in the second degree.¶
(L) 167.080 Displaying obscene materials to minors.¶
(M) 163.684 Encouraging child sexual abuse in the first degree.¶
(N) 163.686 Encouraging child sexual abuse in the second degree.¶
(O) 163.687 Encouraging child sexual abuse in the third degree.¶
(P) 163.575 Endangering the welfare of a minor.¶
(Q) 167.075 Exhibiting an obscene performance to a minor.¶
(R) 163.207 Female genital mutilation.¶
(S) 167.057 Luring a minor.¶
(T) 163.115 Murder; affirmative defense to certain felony murders; sentence of life imprisonment required; minimum term.¶
(U) 163.433 Online sexual corruption of a child in the first degree.¶
(V) 163.432 Online sexual corruption of a child in the second degree.¶
(W) 166.370 Possession of firearm or dangerous weapon in public building or court facility exception; discharging

a firearm in a school.¶

(X) 163.688 Possession of materials depicting sexually explicit conduct of a child in the first degree.¶

(Y) 163.689 Possession of materials depicting sexually explicit conduct of a child in the second degree.¶

(Z) 163.375 Rape in the first degree.¶

(AA) 163.365 Rape in the second degree.¶

(BB) 163.427 Sexual abuse in the first degree.¶

(CC) 163.425 Sexual abuse in the second degree.¶

(DD) 163.415 Sexual abuse in the third degree.¶

(EE) 167.333 Sexual assault of an animal.¶

(FF) 163.405 Sodomy in the first degree.¶

(GG) 163.395 Sodomy in the second degree.¶

(HH) 163.385 Sodomy in the third degree.¶

(II) 7.820 Concealing the birth of an infant.¶

(B) 167.080 Displaying obscene materials to minors.¶

(C) 167.075 Exhibiting an obscene performance to a minor.¶

(D) 167.057 Luring a minor.¶

(E) 166.370 Possession of firearm or dangerous weapon in public building or court facility exception; discharging a firearm in a school.¶

(F) 433.010 Spreading disease prohibited; health certificates to be issued by physicians; rules.¶

(J) 163.187 Strangulation.¶

(KK) 163.264 Subjecting another person to involuntary servitude in the first degree.¶

(LL) 163.263 Subjecting another person to involuntary servitude in the second degree.¶

(MM) 163.266 Trafficking in persons.¶

(NN) 163.670 Using child in display of sexually explicit conduct.¶

(OO) 163.411 Unlawful sexual penetration in the first degree.¶

(PP) 163.408 Unlawful sexual penetration in the second degree.¶

(QQ) 163.213 Unlawful use of an electrical stun gun, tear gas or mace in the first degree.¶

(2) 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, OCC will seek to obtain and review information on all intervening circumstances and other background information related to criminal activity, subject to section (89) of this rule. OCC will make a determination whether an individual is suitable for enrollment in the Central Background Registry based on all information available.¶

(a) OCC will consider conviction of the following crimes for 5 years or less prior to the date the subject individual signed the Application for Enrollment in OCCs Central Background Registry. The 5 years will run from the date of arrest, citation, charge, or conviction whichever is later.¶

(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) 811.182 Criminal driving while suspended or revoked; penalties.¶

(G) 164.354 Criminal mischief in the second degree.¶

(H) 192.865 Criminal penalty (192.852 Prohibition on obtaining actual address or telephone number; prohibition on disclosure by employee of public body).¶

(I) 165.022 Criminal possession of a forged instrument in the first degree.¶

(J) 165.017 Criminal possession of a forged instrument in the second degree.¶

(K) 165.032 Criminal possession of a forgery device.¶

(L) 164.245 Criminal trespass in the second degree.¶
(M) 166.025 Disorderly conduct in the second degree.¶
(N) 830.475 Duties of operators and witnesses at accidents (failure to perform the duties of an operator of a boat).¶
(O) 162.145 Escape in the third degree.¶
(P) 162.205 Failure to appear in the first degree.¶
(Q) 162.195 Failure to appear in the second degree.¶
(R) 811.705 Failure to perform duties of driver to injured persons; penalty (hit and run, injury).¶
(S) 811.700 Failure to perform duties of driver when property is damaged; penalty (hit and run, property).¶
(T) 165.007 Forgery in the second degree.¶
(U) 418.630 Foster home must be certified as approved.¶
(V) 165.570 Improper use of emergency reporting system.¶
(W) 162.375 Initiating a false report.¶
(X) 165.572 Interference with making a report.¶
(Y) 162.257 Interfering with a firefighter or emergency medical services provider.¶
(Z) 162.247 Interfering with a peace officer or parole and probation officer.¶
(AA) 166.116 Interfering with public transportation.¶
(BB) 418.327 Licensing of certain schools and organizations offering residential programs; fees; rules.¶
(CC) 166.095 Misconduct with emergency telephone calls.¶
(DD) 162.425 Misuse of confidential information.¶
(EE) 166.450 Obliteration or change of identification number on firearms.¶
(FF) 162.235 Obstructing governmental or judicial administration.¶
(GG) 162.415 Official misconduct in the first degree.¶
(HH) 162.405 Official misconduct in the second degree.¶
(II) ~~830.325 Operating boat while under the influence of intoxicating liquor or controlled substance.~~¶
(JJ) 167.431 Participation in cockfighting.¶
(KK) 167.370 Participation in dogfighting.¶
(LL) 162.065 Perjury.¶
(MM) 165.070 Possessing fraudulent communications device.¶
(NN) 164.235 Possession of a burglary tool or theft device.¶
(OO) 164.335 Reckless burning.¶
(PP) 811.140 Reckless driving; penalty.¶
(QQ) 811.231 Reckless endangerment of highway workers; penalties.¶
(RR) 830.315 Reckless operation; speed (boat).¶
(SS) 162.315 Resisting arrest.¶
(TT) 165.090 Sports bribe receiving.¶
(UU) 165.085 Sports bribery.¶
(VV) 411.675 Submitting wrongful claim for payment of public assistance or medical assistance.¶
(WW) 162.295 Tampering with physical evidence.¶
(XX) 162.305 Tampering with public records.¶
(YY) 164.045 Theft in the second degree.¶
(ZZ) 166.649 Throwing an object off an overpass in the second degree.¶
(AAA) 033.045 Types of sanctions (Contempt of Court).¶
(BBB) 162.175 Unauthorized departure.¶
(CCC) 165.074 Unlawful factoring of payment card transaction.¶
(DDD) 165.810 Unlawful possession of a personal identification device.¶
(EEE) 165.813 Unlawful possession of fictitious identification.¶
(FFF) 411.840 Unlawfully obtaining or disposing of supplemental nutrition assistance.¶
(GGG) 411.630 Unlawfully obtaining public assistance or medical assistance.¶

(HHHGGG) 811.060 Vehicular assault of bicyclist or pedestrian; penalty.¶

(HHHH) 163.750 Violating a courts stalking protective order.¶

(b) OCC will consider conviction of the following crimes for 7 years or less prior to the date the subject individual signed the Application for Enrollment in OCCs Central Background Registry. The 7 years will run from the date of arrest, citation, charge, or conviction whichever is later.¶

(A) 163.196 Aggravate driving while suspended or revoked.¶

(B) 167.340 Animal abandonment.¶

(C) 167.330 Animal neglect in the first degree.¶

(D) 167.325 Animal neglect in the second degree.¶

(E) 166.240 Carrying of concealed weapons.¶

(F) 164.365 Criminal mischief in the first degree.¶

(G) 166.023 Disorderly conduct in the first degree.¶

(H) 813.010 Driving under the influence of intoxicants; penalty.¶

(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; penalty.¶

(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 Telephonic harassment.¶

(R) 166.651 Throwing an object off an overpass in the first degree.¶

(S) 164.135 Unauthorized use of a vehicle.¶

(T) 166.250 Unlawful possession of firearms.¶

(U) 167.808 Unlawful possession of inhalants.¶

(V) 133.310 Authority of peace officer to arrest without warrant (Violation of restraining order).¶

(c) OCC will consider conviction of the following crimes for 10 years or less prior to the date the subject individual signed the Application for Enrollment in OCCs Central Background Registry. The 10 years will run from the date of arrest, citation, charge, or conviction whichever is later.¶

(A) 165.803 Aggravated identity theft.¶

(B) 167.315 Animal abuse in the second degree.¶

(C) 164.215 Burglary in the second degree.¶

(D) 165.581 Cellular counterfeiting in the first degree.¶

(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 in the first degree.¶

(K) 164.265 Criminal trespass while in possession of a firearm.¶

(L) 163.245 Custodial interference in the second degree.¶

(M) 167.365 Dogfighting.¶

(N) 165.013 Forgery in the first degree.¶

(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 firearm at another; courts having jurisdiction over offense.¶
(W) 819.300 Possession of a stolen vehicle; penalty.¶
(X) 162.369 Possession of false law enforcement identification card.¶
(Y) 163.467 Private indecency.¶
(Z) 685.990 Penalties (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; allowing consumption by minor on property; mandatory minimum penalties.¶
(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) 164.095 Theft by receiving.¶
(GG) 164.055 Theft in the first degree.¶
(HH) 164.125 Theft of services.¶
(II) 164.272 Unlawful entry into a motor vehicle.¶
(d) OCC will consider conviction of the following crimes for 15 years or less prior to the date the subject individual signed the Application for Enrollment in OCCs Central Background Registry. The 15 years will run from the date of arrest, citation, charge, or conviction whichever is later.¶
(A) 167.322 Aggravated animal abuse in the first degree.¶
(B) 166.070 Aggravated harassment.¶
(C) 164.057 Aggravated theft in the first degree.¶
(D) 167.320 Animal abuse in the first degree.¶
(E) ~~164.315 Arson in the second degree.~~¶
(F) 163.160 Assault in the fourth degree.¶
(~~GF~~) 163.208 Assaulting a public safety officer.¶
(~~HG~~) 167.339 Assaulting a law enforcement animal.¶
(~~HJ~~) 475.900 Crime category classification; proof of commercial drug offense.¶
(~~JL~~) 475.962 Distribution of equipment, solvent, reagent, or precursor substance with intent to facilitate manufacture of controlled substance.¶
(~~KJ~~) 164.172 Engaging in a financial transaction in property derived from unlawful activity.¶
(~~LK~~) 162.155 Escape in the second degree.¶
(~~ML~~) 475.955 Failure to report missing precursor substances.¶
(~~NM~~) 475.950 Failure to report precursor substance transaction.¶
(~~ON~~) 167.222 Frequenting a place where controlled substances are used.¶
(~~PO~~) 162.325 Hindering prosecution.¶
(~~QP~~) 475.960 Illegally selling drug equipment.¶
(~~RQ~~) 167.352 Interfering with an assistance, a search and rescue or a therapy animal.¶
(~~SR~~) 167.337 Interfering with law enforcement animal.¶
(~~TS~~) 163.700 Invasion of personal privacy.¶
(~~UT~~) 164.170 Laundering a monetary instrument.¶
(~~VU~~) 165.117 Metal property transaction records; prohibited conduct; commercial sellers; penalties.¶
(~~WV~~) 166.180 Negligently wounding another.¶
(~~XW~~) 475.967 Possession of precursor substance with intent to manufacture controlled substance.¶
(~~YX~~) 475.977 Possession or disposing of methamphetamine manufacturing waste.¶
(~~ZY~~) 475.914 Prohibited acts for registrants; penalties.¶
(~~AAZ~~) 475.752 Prohibited acts generally; penalties; affirmative defense for certain peyote uses; causing death by Schedule IV substance.¶

(BBAA) 475.916 Prohibited acts involving records and fraud; penalties.¶
(CCBB) 167.007 Prostitution.¶
(DDCC) 475.965 Providing false information on precursor substance report or record.¶
(EEDD) 163.465 Public indecency.¶
(FFEE) 166.015 Riot.¶
(GGFF) 475.525 Sale of drug paraphernalia prohibited; definition of drug paraphernalia; exceptions.¶
(HHGG) 166.005 Treason.¶
(HHH) 475.870 Unlawful delivery of 3,4-methylenedioxymethamphetamine.¶
(JJJJ) 475.880 Unlawful delivery of cocaine.¶
(KKJJ) 475.850 Unlawful delivery of heroin.¶
(LLKK) 475.810 Unlawful delivery of hydrocodone.¶
(MMLL) 475.912 Unlawful delivery of imitation controlled substance.¶
(NNMM) 475.860 Unlawful delivery of marijuana.¶
(OONN) 475.820 Unlawful delivery of methadone.¶
(PPOO) 475.890 Unlawful delivery of methamphetamine.¶
(QQPP) 475.830 Unlawful delivery of oxycodone.¶
(RRQQ) 475.866 Unlawful manufacture of 3,4-methylenedioxymethamphetamine.¶
(SSRR) 475.876 Unlawful manufacture of cocaine.¶
(TTSS) 475.846 Unlawful manufacture of heroin.¶
(UUUU) 475.806 Unlawful manufacture of hydrocodone.¶
(VVUU) 475.856 Unlawful manufacture of marijuana.¶
(WWWV) 475.816 Unlawful manufacture of methadone.¶
(XXWW) 475.886 Unlawful manufacture of methamphetamine.¶
(YYXX) 475.826 Unlawful manufacture of oxycodone.¶
(ZZYY) 475.814 Unlawful possession of hydrocodone.¶
(AAAZZ) 475.824 Unlawful possession of methadone.¶
(BBBAAA) 475.834 Unlawful possession of oxycodone.¶
(CCG BBB) 475.874 Unlawful possession of 3,4-methylenedioxymethamphetamine.¶
(DDDDCCC) 475.971 Unlawful possession of anhydrous ammonia.¶
(EEEEDDD) 475.884 Unlawful possession of cocaine.¶
(FFFFEEE) 475.854 Unlawful possession of heroin.¶
(GGGFFF) 475.975 Unlawful possession of iodine in its elemental form; recording transfers; unlawful distribution of iodine in its elemental form.¶
(HHHGGG) 475.976 Unlawful possession of iodine matrix; recording transfers; unlawful distribution of iodine matrix.¶
(HHHHH) 475.979 Unlawful possession of lithium metal or sodium metal.¶
(JJJJJJ) 475.864 Unlawful possession of marijuana or marijuana product.¶
(KKKJJJ) 475.894 Unlawful possession of methamphetamine.¶
(LLLKKK) 475.969 Unlawful possession of phosphorus.¶
(e) OCC will consider conviction of the following crimes for 20 years or less prior to the date the subject individual signed the Application for Enrollment in OCCs Central Background Registry. The 20 years will run from the date of arrest, citation, or conviction whichever is later.¶
(A) 475.910 Application of controlled substance to the body of another person; prohibition.¶
(B) 475.906 Penalties for unlawful delivery to minors.¶
(C) 475.744 Providing hypodermic device to minor prohibited; exception.¶
(D) ~~463.263 Subjecting another person to involuntary servitude in the second degree.~~¶
(E) 475.872 Unlawful delivery of 3,4-methylenedioxymethamphetamine within 1,000 feet of school.¶
(FE) 475.882 Unlawful delivery of cocaine within 1,000 feet of school.¶
(GF) 475.852 Unlawful delivery of heroin within 1,000 feet of school.¶

(HG) 475.812 Unlawful delivery of hydrocodone within 1,000 feet of school.¶

(HH) 475.862 Unlawful delivery of marijuana within 1,000 feet of school.¶

(HJ) 475.822 Unlawful delivery of methadone within 1,000 feet of school.¶

(KK) 475.892 Unlawful delivery of methamphetamine within 1,000 feet of school.¶

(LK) 475.832 Unlawful delivery of oxycodone within 1,000 feet of school.¶

(ML) 475.868 Unlawful manufacture of 3,4-methylenedioxymethamphetamine within 1,000 feet of school.¶

(NM) 475.878 Unlawful manufacture of cocaine within 1,000 feet of school.¶

(ON) 475.848 Unlawful manufacture of heroin within 1,000 feet of school.¶

(PO) 475.808 Unlawful manufacture of hydrocodone within 1,000 feet of school.¶

(QP) 475.858 Unlawful manufacture of marijuana within 1,000 feet of school.¶

(RQ) 475.818 Unlawful manufacture of methadone within 1,000 feet of school.¶

(SR) 475.888 Unlawful manufacture of methamphetamine within 1,000 feet of school.¶

(TS) 475.828 Unlawful manufacture of oxycodone within 1,000 feet of school.¶

(UT) 475.904 Unlawful manufacture or delivery of controlled substance within 1,000 feet of school.¶

(3) 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 and II;¶

(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;¶

(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¶

(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.¶

(4) OCC has determined that child protective services abuse and neglect history may substantially jeopardize the safety of children and is inconsistent with any position of unsupervised contact with children or otherwise vulnerable persons. If any subject individual has a child abuse and neglect history, OCC will seek to obtain and review information related to the history, including information from the subject individual, subject to section (9) 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.¶

(5) OCC has determined that a substantiated finding of adult abuse may substantially jeopardize the safety of child care children and could be inconsistent with any position of unsupervised contact with children. If a subject individual discloses adult protective services history, OCC will seek to obtain and review information related to the history, including information from the subject individual, subject to section (89) 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.¶

(5) If OCC determines a subject individual is a registered sex offender in Oregon or any other jurisdiction, OCC has determined that foster care certification history may, depending on the history, substantially jeopardize the safety of child care children and could be inconsistent with any position of unsupervised contact with children. If a subject individual discloses foster care certification history, OCC will seek to obtain and review information

related to the history, including information from the subject individual, subject to section (9) 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.

~~(67) If OCC has determined 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 depending on the history, may substantially jeopardize the safety of child care children and could be inconsistent with any position of unsupervised contact with children. If a subject individual discloses a diversion program or similar agreement. Based on all information obtained for any Category I or Category II crime, OCC will seek to obtain and review information related to the history, including information from the subject individual, subject to section (9) 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.~~

(78) 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.

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

- (a) The nature of the child abuse and neglect, foster care, adult protective services, or criminal history;
- (b) The facts that support the child abuse and neglect, foster care, adult protective services, or criminal history or that indicate the making of a false statement;
- (c) The relevancy of the child abuse and neglect, foster care, adult protective services history, or criminal history, or false statement to the individual's enrollment in the Central Background Registry; and
- (d) Intervening circumstances relevant to the individual's enrollment in the Central Background Registry, including but not limited to:
 - (i) The passage of time since the child abuse and neglect, foster care, adult protective services, or criminal history;
 - (ii) The age of the individual at the time of the child abuse and neglect, foster care, adult protective services, or criminal history;
 - (iii) The likelihood of repetition of the incident or the commission of another crime;
 - (iv) The existence of subsequent child abuse and neglect, foster care, adult protective services, or criminal history;
 - (v) The recommendation of an employer, if provided;
 - (vi) For criminal history, whether the conviction was set aside or overturned and the legal effect of that setting aside or overturning; and
 - (vii) For child abuse and neglect, foster care, adult protective services history, whether the subject individual has had an opportunity to contest the abuse finding through the Department of Human Services agency or entity that made the finding and, if so, the status of any such challenge.

(910) 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.]

Statutory/Other Authority: ORS 657A.030

Statutes/Other Implemented: ORS 657A.030, HB 2259 (2017)

AMEND: 414-061-0060

RULE SUMMARY: Rule revisions are necessary due to the new requirements of CCDGB of 2014 (45 CFR 98) that establish disqualifying conditions for enrollment in the CBR and the passage of HB 2259 in 2017.

CHANGES TO RULE:

414-061-0060

Requirements of Requesting Agencies ¶

Requesting agencies, as defined in OAR 414-061-0020(~~1724~~), 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, child abuse and neglect records checks, foster care certification check, and adult protective services check.¶

(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. Conditionally enrolled individuals shall not have unsupervised access to childcare children at any time. 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.

Statutory/Other Authority: ORS 329A.030(7)

Statutes/Other Implemented: ORS 329A.030, HB 2259 (2017)

AMEND: 414-061-0070

RULE SUMMARY: Rule revisions will reflect the new requirements of CCDGB Act of 2014 (45 CFR 98) and HB 2259 adopted in 2017.

CHANGES TO RULE:

414-061-0070

~~Procedures for Conducting Oregon State Police Criminal Records Checks and Child Criminal Records Checks, Child Abuse and Neglect Records Checks, Foster Care Certification Checks, and Adult 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 OCC shall perform a criminal records check, child abuse and neglect records check, foster care certification check, and adult protective services check on all subject individuals who:~~

~~(a) Are currently enrolled 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 181.534 and 329A.030. The form shall also be as of January 1, 2017; or~~

~~(b) Submit an initial or renewal application for enrollment in notice that child protective services checks will be conducted; the Office of Child Care's Central Background Registry after January 1, 2017~~

~~(3) Subject individuals shall provide all information required for a criminal records check and a child protective consent to being fingerprinted, and complete all requirements of OAR 414-061-0035~~

~~(a) If the Office of Child Care receives services check, including:~~

~~(a) A properly completed and signed Application for information a subject individual who is conditionally enrolled or enrollment in OCC is in the Central Background Registry;~~

~~(b) For a subject individual who acknowledges a prior criminal offense, as listed in OAR 414-061-0050, or a child protective services history, it shall require the person to sign a release and waiver of confidentiality so OCC may check whether the services record, an explanation of the relationship of the person has a substantiated finding of abuse or neglect or negative facts that support action taken on the criminal offense or child protective services record and intervening circumstances. Upon request of OCC, the subject individual must authorize OCC to verify information provided by the individual; and~~

~~(c) Consent to the use of their social security numbers for criminal and child protective services records checks, for identifying enrollees in their certification.~~

~~(b) If the person fails to sign the release and waiver of confidentiality, the Office of Child Care shall:~~

~~(i) If the individual is conditionally enrolled in the Central Background Registry the agency shall remove the conditional enrollment and cease processing the individual's application for enrollment or renewal.~~

~~(ii) If the individual is enrolled in the Central Background Registry the Office of Child Care shall commence action to remove the person from the registry.~~

~~(3) Central Background Registry enrollment forms sharing information with other agencies to verify child care licensing status for all contain notice that a criminal records check of the Oregon State Police Computerized Criminal History (CCH) System, a child care payments, and for compiling statistical information for program planning and evaluation.~~

~~(4) OCC will review the criminal records information, child protective services abuse and neglect records check, a foster care certification check and a check of adult protective services will be conducted as required by ORS 181.534 and 329A.030.~~

~~(4) OCC will review the criminal records information, child abuse and neglect, foster care and substantiated adult abuse or neglect records information, and any additional relevant information and will make a determination whether or not a subject individual may be enrolled in the Central Background Registry.~~

~~(5) OCC may accept FBI criminal background checks performed by the Department of Human Services when the FBI criminal background check has been completed within 24 months of the of the application date for enrollment in the central background registry~~

(6) Fees for each name checked through OSP CCH and child ~~protective services~~abuse and neglect systems are as follows:¶¶

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

(b) 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~~abuse and neglect checks and enrollment in the Central Background Registry, to be paid at the time of ~~the request~~application.¶¶

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

Statutory/Other Authority: ORS 329A.030(7)

Statutes/Other Implemented: ORS 329A.030, HB 2259 (2017)

ADOPT: 414-061-0075

RULE SUMMARY: Rule revisions will reflect the new requirements of CCDGB Act of 2014 (45 CFR 98) and passage of HB 2259 in 2017.

CHANGES TO RULE:

414-061-0075

Duty of Subject Individuals

A subject individual who is conditionally enrolled or enrolled in the CBR shall inform the Office of Child Care within 30 days of the date of any change in their mailing address, phone number or email listed on their application materials.

Statutory/Other Authority: 329A.030(7)

Statutes/Other Implemented: 329A.030, HB 2259 (2017)

AMEND: 414-061-0080

RULE SUMMARY: Rule revisions will reflect the new requirements of the CCDGB Act of 2014 (45 CFR 98) and HB 2259 adopted in 2017.

CHANGES TO RULE:

414-061-0080

Procedures for Conducting FBI Criminal History Checks ¶

(1) An FBI criminal records check will be done on all subject individuals who:¶

(a) Are currently enrolled in the CBR; or¶

(b) Are submitting an application for enrollment in the Office of Child Care's Central Background Registry.¶

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

(a) One properly completed FBI fingerprint card, with printing in the reason fingerprinted block that reads License/Certificate/Permit ORS 181.534A.195 ; and¶

(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 .¶

(3) 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 the Central Background Registry.¶

(4) ~~OCC will charge the subject individual 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.~~¶

(5) Individuals currently enrolled in the Central Background Registry or with pending applications for enrollment in the Central Background Registry will receive a request to complete an FBI criminal records check from the Office of Child Care and must complete the FBI criminal records check by the date indicated on the request.¶

(65) Failure to complete and pass the FBI criminal records check is a basis for suspension of enrollment in the Central Background Registry, removal from the Central Background Registry, or denial of the application.¶

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

Statutory/Other Authority: ORS 329A.030(7)

Statutes/Other Implemented: ORS 329A.030, HB 2259 (2017)

AMEND: 414-061-0090

RULE SUMMARY: Rule revisions will reflect the new requirements of the CCDGB Act of 2014 (45 CFR 98) and HB 2259 adopted in 2017.

CHANGES TO RULE:

414-061-0090

~~CC~~Central Background Registry Enrollment Procedures ¶

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

(a) Has provided all information and/or documents requested by OCC;¶

(b) Has no history as described in ~~414-061-0050~~OAR 414-061-0045, 414-061-0050, or OAR 414-061-0075 or has dealt with the issues and provided adequate evidence of suitability;¶

(c) Has completed the application;¶

(d) Has paid the applicable fee; and¶

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

(2) ~~As of January 1, 2017, all enrollments~~ in the Central Background Registry shall expire ~~two~~five years from the date of enrollment, unless suspended or removed sooner, and may be renewed upon application to OCC, payment of the required fee and compliance with the rules adopted by 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 OCC of his or her enrollment and the enrollment dates. Notification of enrollment status may be sent via email at the request of the individual. 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 ~~criminal records information and child protective services information.~~¶

(~~a~~) A conditionally enrolled subject individual who is subsequently determined to be suitable based on FBI criminal records information shall be enrolled in the Central Background Registry upon their application having no disclosures of negative foster care history or a substantiated finding of adult abuse or neglect, no state disqualifying criminal records information as outlined in OAR 414-061-0045, no category I or II crime as listed in OAR 414-061-0050, and no negative child abuse and registry information.¶

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

(~~b~~) A conditionally enrolled subject individual who has subsequently been determined not to be suitable based on FBI criminal records information, or any other information that was not disclosed on the application that OCC becomes aware of, shall be suspended or removed from the Central Background Registry, according to the provisions of OAR 414-061-0110.¶

(c) A conditionally enrolled subject individual who is subsequently determined to be suitable based on FBI criminal records information shall be enrolled in the Central Background Registry.¶

(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 the required fee is received by OCC at least 14 days prior to the expiration date of the current enrollment, ~~unless the individual is removed,~~the enrollment remains in effect until OCC has acted upon the application for renewal and ~~has~~ given notice of the action taken. This subsection does not apply to a renewal application submitted by an individual who is removed from the Central Background Registry at the time of submission of the renewal application.

Statutory/Other Authority: ORS 329A.030(7)

Statutes/Other Implemented: ORS 329A.030, HB 2259 (2017)

AMEND: 414-061-0100

RULE SUMMARY: Rule revisions will reflect the new requirements of the CCDGB Act of 2014 (45 CFR 98) and HB 2259 adopted in 2017.

CHANGES TO RULE:

414-061-0100

Office of Child Care Denial Procedures ¶

- (1) A subject individual ~~shall~~may 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 for a Category I or Category II crime in OAR 414-061-0050 with final disposition not yet reached;¶
 - (d) Has an open ~~protective services~~child abuse or neglect investigation, or a substantiated finding of abuse or neglect against an adult, 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; ~~or~~¶
 - (f) Has been charged with, arrested for, or has a warrant for a crime listed in OAR 414-061-0045(4) or of a crime from another jurisdiction that is substantially similar.¶
- (2) A subject individual may appeal OCCs 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.¶
- (4) A subject individual who has been determined to be ineligible for enrollment in the Central Background Registry due to conviction of a crime listed in OAR 414-061-0045(4)(g) or convicted of a crime from another jurisdiction that is substantially similar, may apply for enrollment in the Registry after five or more years since the date of their last conviction.

Statutory/Other Authority: ORS ~~657329A~~.030(7)

Statutes/Other Implemented: ORS ~~657329A~~.030, HB 2259 (2017)

AMEND: 414-061-0110

RULE SUMMARY: Rule revisions will reflect the new requirements of the CCDGB Act of 2014 (45 CFR 98) and HB 2259 adopted in 2017.

CHANGES TO RULE:

414-061-0110

OCC Removal Procedures ¶¶

(1) An individual enrolled in the Central Background Registry shall be removed or suspended from the Registry by 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) 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; or¶¶

(d) has a disqualifying condition listed in OAR 414-061-0045.¶¶

(2) OCC may immediately, and without prior hearing, remove or suspend a subject individual from the Central Background Registry when, in the opinion of 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) 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, 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 three years from the date of removal.

Statutory/Other Authority: ORS 657A.030(7)

Statutes/Other Implemented: ORS 657A.030, HB 2259 (2017)

AMEND: 414-061-0120

RULE SUMMARY: Rule revisions will reflect the new requirements of the CCDGB Act of 2014 (45 CFR 98) and HB 2259 adopted in 2017.

CHANGES TO RULE:

414-061-0120

Rights for Review and Contested Case Hearings ¶¶

(1) OCC shall afford subject individuals the right to appeal a decision made by OCC that the subject individual 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 submit a request for a contested case hearing in writing.¶¶

(2) OCC does not have authority to change decisions, records, or information from other agencies.¶¶

(3) OCC is entitled to rely on the criminal records ~~information or the child protective services, child abuse and neglect records and information, foster care and adult protective services records and information or the child abuse and neglect~~ information until notified that the information has been changed or corrected in a manner that would alter the OCC decision.¶¶

(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 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.

Statutory/Other Authority: ORS ~~657329A~~.030(7)

Statutes/Other Implemented: ORS ~~657329A~~.030, HB 2259 (2017)

414-700-0030
Distribution of Funds

(1) Child Care providers may apply to receive funds using the application form available from the Division.

(2) The Division or its designated entity shall disburse funds to support the professional development activities of eligible child care providers in the state.

414-700-0040
Application and Renewal Process for Community Agencies

(REPEAL RULE)

414-700-0050
Distribution of Funds to Community Agencies

(REPEAL RULE)

414-700-0060
Participating Provider Eligibility Requirements

To be eligible for disbursements, child care providers shall:

- (1) Be an individual or supervisor providing direct care to children under the age of 13 for at least 20 hours a week;
- (2) Achieve a step 3 or higher on the Oregon Registry; and
- (3) Be regulated by the Office of Child Care; or
- (4) Meet the requirements of the Oregon Department of Human Services to provide care to families under the ERDC program; and
- (5) Accept children for whom child care is paid for through Oregon Department of Human Services' ERDC program.

414-700-0070
Distribution of Funds to Participating Providers

(REPEAL RULE)

414-700-0080
Allocation of Certificates

(REPEAL RULE)

414-700-0090
Taxpayer Requirements

(REPEAL RULE)