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ARCHIVES DIVISION

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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 414
OREGON DEPARTMENT OF EDUCATION
EARLY LEARNING DIVISION

FILED
06/30/2018 4:41 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Rules governing Regulated Subsidy child care providers to conform with federal law and HB4065(2018).

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 08/20/2018 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.

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NEED FOR THE RULE(S):

The Early Learning Division Office of Child Care must comply with all requirements of the federal Child Care Development Fund (CCDF)/Child Care Development Block Grant (CCDBG). These requirements include the following changes.

Serious Injury & Reporting:

Federal law requires child care programs report any serious injury to OCC within 5 calendar days of the occurrence. The new rules specifies the injuries that must be reported and revised the reporting time to 5 calendar days. Serious injury is defined in rule to include such things as choking, concussion, poisoning, broken bones, near-drowning as well as several other specific situations. This does not include precautionary evaluations by a doctor, ongoing medical issues or injuries where first aid is administered at the center, but no further treatment is needed.

The Early Learning Division Office of Child Care has also identified the need for additional rules that will better meet the unique needs of infants while in child care. These practices are outlined below.

Safe Sleep:

The new rules expand on safe sleep standards by prohibiting any items in the crib with infants, except for a pacifier. The new rules prohibit swaddling and other clothing or items that could restrict a child's movement or pose a strangulation hazard.

Restrictive Infant Equipment:

The new rules limit the amount of time children can be in restrictive infant equipment. Restrictive infant equipment, such as bouncers, swings, infants seats, high chairs may be used for no more than 20 minutes in any 2 hour period. Studies have shown that restricting a child's freedom of movement can be detrimental to a child's physical, mental and emotional development. The use of infant walkers will continue to be prohibited.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

ORS 329A.: https://www.oregonlegislature.gov/bills_laws/ors/ors329A.html

Final Federal CCDF Rules: <https://www.acf.hhs.gov/occ/resource/ccdf-final-regulations>

CCDF Federal Law: <https://www.congress.gov/113/plaws/publ186/PLAW-113publ186.pdf>

CCDF Reauthorization: <https://www.acf.hhs.gov/occ/ccdf-reauthorization>

FISCAL AND ECONOMIC IMPACT:

Serious Injury & Reporting: No financial impact is anticipated. As injuries were already being required reports to OCC, a program would only need to modify the instances of reporting to meet the new requirements.

Safe Sleep for Infants: No financial impact expected. Current rules require that caregivers attend to the need of individual children. Caregivers may need to spend additional time comforting infants that may be accustomed to swaddling, but no additional financial costs are expected.

Restrictive Infant Equipment: Minimal to no financial impact expected. Current rules require that caregivers attend to the need of individual children. Caregivers may need to spend additional time actively engaging infants rather than the infants being left in restrictive infant equipment for prolonged periods of time, but no additional financial costs are expected.

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 economic impact anticipated for Regulated Subsidy child care providers; (2)(a) Based on current information, fewer than twelve child care facilities providing child care services, which qualify as a small business, would be subject to the rule.; (2)(b) Minimal impact due to added record keeping and posting notices for parents; (2)(c) No additional costs for professional services, equipment supplies, labor and increased administration for the majority of proposed rules.

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

A series of community engagements were conducted, public testimony accepted during the convening of the Rules

Advisory Committee meetings, a public hearing was held, and input from the public and small businesses was requested.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

414-180-0010, 414-180-0015, 414-180-0045, 414-180-0050

AMEND: 414-180-0010

RULE SUMMARY: Addition of definitions for "Serious Injury or Incident" and "Unsupervised Access to Children".

CHANGES TO RULE:

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) "Serious Injury or Incident" means any of the following: ¶¶

- (a) Injury requiring surgery:¶¶
- (b) Injury requiring admission to a hospital:¶¶
- (c) Injury requiring emergency medical attention:¶¶
- (d) Choking and unexpected breathing problems:¶¶
- (e) Unconsciousness:¶¶
- (f) Concussion:¶¶
- (g) Poisoning:¶¶
- (h) Medication overdose:¶¶
- (i) Broken bone:¶¶
- (j) Severe head or neck injury:¶¶
- (k) Chemical contact in eyes, mouth, skin, inhalation or ingestion:¶¶
- (l) Severe burn:¶¶
- (m) Allergic reaction requiring administration of Epi-Pen:¶¶
- (n) Severe bleeding or stitches:¶¶
- (o) Shock or confused state:¶¶
- (p) Near-drowning:¶¶

(19) "Substitute Provider" means a person who acts as the child's primary caregiver in the temporary absence of the provider.¶¶

(1920) "Toddler" means a child who is at least 12 months of age but is not preschool-age.¶¶

(201) "Unsupervised Access to 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.¶¶

(22) "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.

Statutory/Other Authority: ORS 326.425(7)

Statutes/Other Implemented: ORS 329A.505

AMEND: 414-180-0015

RULE SUMMARY: Addition to rules pertaining to safe sleep for infants. Addition to rules pertaining to children who cannot feed themselves and infant feeding. Addition of rule prohibiting children of any age being laid down with a bottle.

CHANGES TO RULE:

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) ↓ The following safe sleep practices must be followed:¶¶
 - (a) Each infants shall havesleep in a crib, portable crib, bassinet or playpen with a clean, non-absorbent mattress. All cribs, portable cribs, bassinets and playpens 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);¶¶
 - (b) Bassinets may only be used until the infant is able to roll over on their own;¶¶
 - (c) Each mattress shall:¶¶
 - (A) Fit snugly; and¶¶
 - (B) Be covered by a tightly fitting sheet; ¶¶
 - (d) A clean sheet shall be provided for each child;¶¶
 - (e) Infants must be placed on their backs on a flat surface for sleeping;¶¶
 - (f) If an infant falls asleep in a place other than their crib, portable crib, bassinet or playpen, the provider must immediately move the infant to an appropriate sleep surface;¶¶
 - (g) No child shall be routinely left in a crib, portable crib, bassinet or playpen except for sleep or rest;¶¶
 - (h) There shall be no items in the crib with the infant, except a pacifier (e.g. bottles, toys, pillows, stuffed animals, blankets, bumpers); ¶¶
 - (i) Swaddling or other clothing or covering that restricts the child's movement is prohibited; ¶¶
 - (j) Clothing or items that could pose a strangulation hazard (e.g. teething necklaces, pacifier attachments, clothing drawstrings) are prohibited; and¶¶
 - (k) Car seats are to be used for transportation only. Children who are asleep in a car seat must be removed upon arrival to the child care facility and placed in an appropriate sleep surface.¶¶
- (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 theChildren who cannot feed themselves shall be held or, if able to sit alone, fed inf, ant's head or face upright position.¶¶
- (10a) Infants must be laid on their backs on a flat surface for sleeping up to 6 months of age shall be held or sitting up in a caregiver's lap for bottle feeding;¶¶
- (b) Bottles shall never be propped. The child or a caregiver shall hold the bottle; and¶¶
- (c) Infants no longer being held for feeding shall be fed in a manner that provides safety and comfort.¶¶
- (14) 0) Children of any age shall not be laid down with a bottle for sleeping.¶¶
- (12) 1) 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.¶¶
- (13) 2) 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.¶¶

(143) 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.¶

(154) Section 143 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.¶

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

(176) 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.¶

(187) 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.¶

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

(2019) 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.¶

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

(221) 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.¶

(232) 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.¶

(243) 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.¶

(254) 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.¶

(265) "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.¶

(276) All marijuana, marijuana derivatives and associated paraphernalia must be stored under child safety lock.¶

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

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

(3029) Dogs and cats shall be kept free of fleas, ticks and worms.¶

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

(321) 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.¶

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

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

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

(365) 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.¶

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

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

(398) 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.¶

(4039) Parents must be given the telephone number so they can contact the provider if needed.

Statutory/Other Authority: ORS 326.425(7)

Statutes/Other Implemented: ORS 329A.505

AMEND: 414-180-0045

RULE SUMMARY: Removal of rule requiring providers to report injuries to a child which required attention from a medical professional within 7 days to OCC. New reporting requirements are added to the General Requirements section.

CHANGES TO RULE:

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.~~

Statutory/Other Authority: ORS 326.425(7)

Statutes/Other Implemented: ORS 329A.505

AMEND: 414-180-0050

RULE SUMMARY: Addition of rules requiring providers to report deaths, serious injuries or incidents and animal bites to OCC.

CHANGES TO RULE:

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.¶

(3) The provider shall report to OCC:¶

(a) Any death of a child while in care, within 24 hours:¶

(b) Any serious injury or incident, as defined in OAR 414-180-0010(21) within 5 calendar days after the occurrence. This does not include:¶

(A) Injuries for which a child is evaluated by a professional as a precaution;¶

(B) Injuries for which first aid is administered at the operation, but no further treatment by a medical professional is warranted: or ¶

(C) Medical events due to routine, ongoing medical issues, such as asthma or seizures.¶

(c) Any animal bites to a child within 48 hours of occurrence.

Statutory/Other Authority: ORS 326.425(7)

Statutes/Other Implemented: ORS 329A.505