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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 414
OREGON DEPARTMENT OF EDUCATION
EARLY LEARNING DIVISION

FILED
07/31/2018 2:35 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Administrative Rules for licensed child care facilities concerning parent information & notification of lead testing results.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 09/18/2018 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):

ORS 329A directs the Early Learning Council to write administrative rules regulating certified child care facilities to ensure the health and safety of children cared for outside their own homes. Per the Governor's Directive dated June 11, 2018, the Early Learning Council shall draft and adopt rules increasing the availability of information about the child care program to parents of children enrolled in the facility. These rules address an urgent need to increase the availability of information to parents about the child care program where their children are enrolled.

Additionally, these rules include notification and posting requirements regarding required lead testing in all licensed child care facilities.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

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

FISCAL AND ECONOMIC IMPACT:

Minimal impact due to added record keeping and posting notices for parents.

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) None; (2)(a) Approximately 1342 licensed facilities; (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 are being conducted, public testimony accepted and input from the public and small businesses was requested.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

These rules are a result of a directive from Governor Brown and thus were not brought forward to a Rule Advisory Committee for consultation.

RULES PROPOSED:

414-205-0035, 414-300-0030, 414-350-0050

AMEND: 414-205-0035

RULE SUMMARY: ORS 329A directs the Early Learning Council to write administrative rules regulating registered family child care homes to ensure the health and safety of children cared for outside their homes. Per the Governor's Directive dated June 11, 2018, the Early Learning Council drafted rules increasing the availability of information about the child care program to parents of children enrolled in the program.

To ensure that young children have access to clean drinking water, a rule was drafted which would require registered family child care homes to post lead testing results for drinking water where it can be seen by parents and guardians.

CHANGES TO RULE:

414-205-0035

General Requirements ¶¶

- (1) The home in which child care is provided must be the residence of the provider.¶¶
- (2) The provider may not hold a medical marijuana card, grow marijuana, or be a distributor of marijuana.¶¶
- (3) Registration is limited to one provider per household.¶¶
- (4) A registration applies to only the person and address on the certificate of registration and is not transferable to another location or individual.¶¶
- (5) The registration is valid for a maximum of two years. The registration period begins with the effective date shown on the certificate of registration. A provider may not care for more than three (3) children, other than the provider's own children, at any one time prior to receiving a certificate of registration from OCC.¶¶
- (6) OCC registration records are open to the public on request. However, information protected by state or federal law will not be disclosed.¶¶
- (7) The name, address, telephone number, and registration status of providers is public information. However, OCC may withhold from the public a provider's address and telephone number if the provider makes a written request documenting that disclosure of the address and/or telephone number would endanger him/her or a family member living in the home (OAR 137-004-0800). The request must be on a form supplied by OCC.¶¶
- (8) The Certificate of Registration must be posted in the family child care home in an area where it can be viewed by parents.¶¶
- (9) Water testing results, in accordance with OAR 414-205-0020(8) must be posted in a prominent place in the family child care home where it can be seen by parents and guardians. Information provided to parents and

guardians shall be in accordance with United States Environmental Protection Agency 3T's for Reducing Lead in Drinking Water in Schools: Revised guidance dated October 2006.

(10) The provider shall have no other employment, either in or out of the home, during the hours children are in care.

(101) OCC staff may conduct an unannounced monitoring visit at least once during the license period.

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

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

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

(145) 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.

(156) Any caregiver who has reason to believe that any child has suffered abuse (physical injury, mental injury, neglect that leads to physical harm, sexual abuse and/or exploitation, or threat of harm) must report the information to the Department of Human Services Child Welfare (DHS) or to a law enforcement agency. By statute, this requirement applies 24 hours per day.

(167) The provider must notify parents if there will be a substitute provider and the caregiver's name. In the event of an emergency, a good faith effort will be made to notify parents that a substitute will be caring for the children.

(178) The provider must notify parents if the children will be away from the home for any part of the day for visits, field trips or any other activity off the premises and the name of the caregiver.

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

(1920) Registered providers shall comply with all conditions placed on their license.

(201) Information provided to OCC on applications, in records or reports, or any other written or verbal communication, shall be current, complete and accurate.

(22) Effective July 1, 2018, providers must post all serious valid complaint and serious non-compliance letters for 12 calendar months.

(23) Effective July 1, 2018, providers shall immediately notify all parents of any closure of the active license.

(24) Providers must have parent(s) or guardian(s) of each child enrolled in the registered family child care home, sign a declaration provided by the Office of Child Care verifying they have reviewed a copy of the current license certificate. The declaration shall be updated any time the information on the license certificate has changed. Providers must comply with this requirement by August 31, 2018.

(25) Providers must post the Early Learning Division Website [www.oregonearlylearning.com] and phone number [1-800-556-6616], and a statement advising parents that they can access information about their child care provider on the child care safety portal. Providers must comply with this requirement by August 31, 2018.

Statutory/Other Authority: ORS 329A.260

Statutes/Other Implemented: ORS 329A

AMEND: 414-300-0030

RULE SUMMARY: ORS 329A directs the Early Learning Council to write administrative rules regulating certified centers to ensure the health and safety of children cared for outside their homes. Per the Governor's Directive dated June 11, 2018, the Early Learning Council drafted rules increasing the availability of information about the child care program to parents of children enrolled in the program.

CHANGES TO RULE:

414-300-0030

General Requirements ¶

(1) The operator shall display the following near the entrance, or in some other area of the center, where they may be viewed by parent(s) of children in care:¶

(a) The most current certificate issued by QCCD;¶

(b) Name of the director and/or the substitute director;¶

(c) Notice of planned field trips away from the immediate neighborhood, showing the date and place of each excursion;¶

(d) The current week's menu for all meals and snacks, if meals are provided by the center. Any substitution shall be recorded on the menu;¶

(e) A notice that the items identified in section (2) of this rule are available for review on request;¶

(f) Information on how to report a complaint to QCCD regarding certification requirements;¶

(g) Notice that custodial parents have access to the center during the hours of operation and without advance notice; ~~and~~¶

(h) Notice of center closures (vacation days, holidays, etc.);¶

~~(2);¶~~

(i) The Early Learning Division Website [www.oregonearlylearning.com] and phone number [1-800-556-6616], and a statement advising parents that they can access information about their child care provider on the child care safety portal. Centers must comply with this requirement by August 31, 2018.¶

(2) Effective July 1, 2018, centers must post all serious valid complaint and serious non-compliance letters for 12 calendar months.¶

(3) Effective July 1, 2018, the certified child care center shall immediately notify all parents of any closure of the active license.¶

(4) The operator shall have available for review on request:¶

(a) A copy of OAR 414-300-0000 through 414-300-0415, Rules for the Certification of Child Care Centers; and¶

(b) The most recent QCCD, sanitation, and fire safety inspection reports.¶

~~(35)~~ (35) The operator shall report to QCCD:¶

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

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

(c) Damage to the building which affects the operator's ability to comply with these requirements, within 48 hours after the occurrence; and¶

(d) Any change in director prior to the director being on site. Such prior notification must include the replacement person's qualifications for the position and documentation that the person is enrolled in the Central Background Registry. An e-mail or a phone call, followed by written documentation, or a FAX will serve as notification.¶

~~(46)~~ (46) Information provided to QCCD on applications, in records or reports, or any other written or verbal communication, shall be current, complete, and accurate.¶

~~(57)~~ (57) Staff shall report suspected child abuse or neglect immediately, as required by the Child Abuse Reporting Law

(ORS 419B.005 through 419B.050), to the Department of Human Services Child Welfare (DHS) or to a law enforcement agency. By statute, this requirement applies 24 hours per day.¶

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

(79) The following information shall be in writing and made available to staff, QCCD, and to parent(s) at the time of enrollment:¶

(a) Name, business address, and business telephone number of the person(s) who have immediate responsibility for the daily operation of the center;¶

(b) Guidance and discipline policy;¶

(c) Arrival and departure procedures;¶

(d) Emergency plan, as specified in OAR 414-300-0170(3);¶

(e) Procedures for field trips; and¶

(f) Information on transportation, when provided by the center;¶

(810) Representatives of all agencies involved in certification and custodial parents shall have immediate access to all parts of the center during hours of operation. QCCD staff shall have the right to enter and inspect the center, including access to all staff, records of children enrolled in the center, and all records and reports related to the center operation regarding compliance with these rules.¶

(911) The center shall comply with the Health Division's administrative rules relating to:¶

(a) Immunization of children (OAR 333-050-0010 through 333-050-0140);¶

(b) Reporting communicable diseases (OAR 333-019-0000);¶

(c) Child care restrictable diseases (OAR 333-019-0010); and¶

(d) Dishwashing (OAR 333-150-0000).¶

(102) Facilities must have parent(s) or guardian(s) of each child enrolled in the center, sign a declaration provided by the Office of Child Care verifying they have reviewed a copy of the current license certificate. The declaration shall be updated any time the information on the license certificate has changed. Centers must comply with this requirement by August 31, 2018.¶

(13) A center shall have written health policies and procedures approved by the Health Division or the county health department which cover, but are not limited to, the following:¶

(a) Storage and handling of food;¶

(b) Diaper changing and disposal, if applicable. The diaper changing procedure must be posted in the diaper changing area;¶

(c) Bathing infants, if the center cares for infants;¶

(d) Care of bed linen;¶

(e) Hand washing procedures. The hand washing procedures must be posted at hand washing sinks; and¶

(f) Serving formula, storage and handling of bottles, and feeding infants, if the center cares for infants.¶

(144) Parental request or permission to waive any of the rules for the certification of child care centers does not give the center permission to do so.¶

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

Statutory/Other Authority: ORS ~~657329~~A.260

Statutes/Other Implemented: ORS ~~657329~~A.260

AMEND: 414-350-0050

RULE SUMMARY: ORS 329A directs the Early Learning Council to write administrative rules regulating certified family child care homes to ensure the health and safety of children cared for outside their homes. Per the Governor's Directive dated June 11, 2018, the Early Learning Council drafted rules increasing the availability of information about the child care program to parents of children enrolled in the program.

To ensure that young children have access to clean drinking water, a rule was drafted which would require certified family child care programs to post lead testing results for drinking water for the past six years.

CHANGES TO RULE:

414-350-0050

General Requirements ¶

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

(a) The child care certificate;¶

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

(c) The evacuation plan; and¶

(d) Lead testing results for drinking water for the past six years;¶

~~(de)~~ A notice that the following items are available for parents to review:¶

(A) The guidance/discipline policy;¶

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

(C) The description of the general routine;¶

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

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

(2f) The Early Learning Division Website [www.oregonearlylearning.com] and phone number [1-800-556-6616], and a statement advising parents that they can access information about their child care provider on the child care safety portal. Providers must comply with this requirement by August 31, 2018.¶

(2) Effective July 1, 2018, providers must post all serious valid complaint and serious non-compliance letters for 12 calendar months.¶

(3) Effective July 1, 2018, providers shall immediately notify all parents of any closure of the active license.¶

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

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

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

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

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

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

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

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

(a) Guidance and discipline policy;¶

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

(c) The plan for handling emergencies and/or evacuations, including, but not limited to, acute illness of a child or staff, natural disasters (e.g. fire, earthquake, etc.), man-caused events, such as violence at a child care facility, power outages, and situations which do not allow reentry to the home after evacuation.¶

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

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

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

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

(911) The provider shall report to OCC:¶

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

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

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

Documentation is limited to the three weeks prior to the request.¶

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

(124) Facilities must have parent(s) or guardian(s) of each child enrolled in the certified family child care home, sign a declaration provided by the Office of Child Care verifying they have reviewed a copy of the current license certificate. The declaration shall be updated any time the information on the license certificate has changed. Providers must comply with this requirement by August 31, 2018.¶

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

Statutory/Other Authority: ORS 657329A.260

Statutes/Other Implemented: ORS 657329A.260, 657329A.280, 657329A.290, 657329A.300, 657329A.390, 657329A.400