



# Oregon

Kate Brown, Governor

Early Learning Division



## Temporary Changes to Child Care Rules in Response to COVID-19 State of Emergency

**Amended April 24, 2020**

As authorized by Executive Orders [20-03](#), [20-08](#), [20-12](#), [20-19](#), [20-20](#) and as a necessary response to developments in the COVID-19 state of emergency, the Early Learning System Director hereby orders temporary changes to child care rules.

This order supersedes the [order issued on March 24, 2020](#). This order continues rule changes from the prior order pertaining to Emergency Child Care facilities, health guidance, emergency background checks, expedited training, and exception requests but (a) clarifies the scope of operation of Emergency Child Care as authorized by Executive Order 20-19, (b) provides that the stable group and priority enrollment requirements previously required by Executive Order 20-12 are now required by this order with further direction, and (c) modifies provisions for Emergency Child Care operations by non-licensed, experienced providers.

On March 23, 2020, Governor Brown issued [Executive Order 20-12](#). That order required that all licensed child care facilities close from March 25, 2020 through April 28, 2020. However, licensed facilities and other groups were allowed to seek permission from Office of Child Care (OCC) to operate as an Emergency Child Care Facility if they met certain requirements in addition to any currently applicable regulations. These requirements are that facilities must limit all group sizes in child care to a maximum of 10 children, and that facilities must prioritize providing child care for certain categories of essential workers.

On April 23, 2020, Governor Brown issued Executive Order 20-19, extending the restrictions on child care facilities, and expanding the Early Learning Division's authority to regulate Emergency Child Care services.

These temporary changes are effective immediately and expire after the Governor lifts the emergency declaration. An individual or entity is not eligible to provide Emergency Child Care if the individual's enrollment in the Central Background Registry was denied, suspended, or removed, or the individual or entity's child care facility license was previously denied, suspended, or revoked. Any individual or entity under an OCC legal order, settlement agreement, or currently in the administrative hearing process with OCC is ineligible to provide Emergency Child Care, unless OCC, in its discretion, approves the application with or without conditions. OCC may exercise discretion to allow Emergency Child Care by an ineligible individual or entity if conditions can be imposed to address OCC's concerns and there is a need for additional child care capacity in the area.

## **1. Emergency Child Care Facilities**

While licensed child care facilities were directed by the Governor to close on March 25, 2020, the facilities could remain open if they submitted an application to become an Emergency Child Care Facility and are approved by OCC. Recognizing the need to consult with families and staff about their willingness and ability to serve in Emergency Child Care, providers were required to submit their application to provide Emergency Child Care, as described below, by the deadlines established by OCC. Further, Recorded Programs under ORS 329A.255 and 329A.257 - both preschool and school-aged - may not operate without applying and being approved to operate as an Emergency Child Care Facility. These restrictions do not apply to license-exempt individuals that provide care that is not considered child care under ORS 329A.250(4)(a)-(i) such as care “by a person who cares for no more than three children other than the person’s own children.”

Any Licensed Child Care or Recorded Program that does not apply, applies and does not receive approval, or does not abide by the requirements, must close. Because social distancing during the state of emergency counsels against most in-person monitoring, OCC may deny approval to or revoke its approval for an individual or entity to provide Emergency Child Care at any time based on a determination that the facility has not maintained compliance with applicable requirements or that OCC is unable to ensure compliance without in-person monitoring. Further, if OCC determines there is danger to children, OCC may revoke or suspend the approval to provide Emergency Child Care. OCC accepts complaints from parents/caregivers or others who report concerns. OCC may inspect or investigate an Emergency Child Care Facility at any time.

### **A. Standards Applicable to All Types of Emergency Child Care**

Executive Order 20-12’s directives to limit group size, maintain consistent groupings, and prioritize child care for essential workers, available [here](#), are incorporated in and now a part of this order, notwithstanding Executive Order 20-19’s rescission of the same.

#### ***a. Child Care Facilities Must Limit Group Size to a Maximum of 10 Children***

Child care must be carried out in maximum “stable” groups of 10 or fewer children. “Stable” means the same 10 or fewer children, and the teacher or other staff, are in the same group each day. Further, this group of 10 children must be cared for in a room that cannot be accessed by children outside of the stable group, and must maintain specific age group limits. Emergency Child Care providers may serve new children if the provider has not yet reached the maximum, age-specific group size or if an opening becomes available due to a family ending enrollment. If a vacancy exists, the provider is allowed to accept new enrollments up to the age-specific group size limits.

Under the prior order, Certified Family Emergency Child Care (CF) was limited to a single group of 10. Under this new order, a CF may serve the number of children up to their licensed capacity if there are separate stable groups of children, with no more than 10 children per group, and they are in separate rooms that cannot be accessed by the other group. The separate stable groups may use common bathrooms, eating areas, and outdoor areas, but must do so in shifts. If a CF seeks to exercise this provision, the provider must communicate with their licensing specialist a plan of how they will meet the requirements; the licensing specialist will review and approve, or deny the plan based on their knowledge of the program's operation.

***b. Child Care Facilities Must Prioritize Providing Care for Certain Categories of Workers***

Facilities must prioritize providing child care for individuals in the essential workforce. Guidance on how to determine whether a person is in the essential workforce can be found in the March 19, 2020 guidance from the U.S. Department of Homeland Security ("Homeland Security Guidance"), linked and summarized [here](#) by the ELD.

A facility may not disenroll or refuse to enroll children of a parent/caregiver in the essential workforce because of a belief that these children may be more likely to transmit the COVID-19 virus. Facilities do not have to provide child care services to parents/caregivers who are working from their home. There may be exceptions to this, for example, a parent/caregiver who is providing telehealth services from home. Providers may choose to prioritize families with these extenuating circumstances.

***c. COVID-19 Safety Requirements***

ELD and Oregon Health Authority's Safety Procedures and Guidance for Child Care Facilities Operating During COVID-19 ("COVID-19 Safety Requirements"), are available [here](#). Following the COVID-19 safety requirements is required. The requirements may be updated at any time and will likely continue to evolve as new information becomes available on how best to prevent the spread of COVID-19 or more specific guidance is developed in response to questions from providers. Providers will be notified of updates via email and must update their own procedures to comply with updates.

**B. Non-School Based Emergency Child Care**

Licensed child care providers who want to provide Emergency Child Care must apply and be approved as an Emergency Child Care Facility. Under the prior order, experienced child care providers, including Recorded Programs, that were opening temporary sites for emergency care could also apply to become an Emergency Child Care Facility. At this time, OCC will only accept applications from experienced providers that are not licensed if they demonstrate a lack of child care capacity in their local area.

**a. Basic Standards for Non-School Based Emergency Child Care**

Currently licensed child care facilities providing Emergency Child Care must continue to follow all applicable rules for their licensed child care type. However, if any of those rules conflict with either the group and priority enrollment requirements, or the COVID-19 safety requirements, the COVID-19 related requirements supersede the rule.

For experienced child care providers, including Recorded Programs, that are operating temporary sites for Emergency Child Care, the following basic standards from the March 18 and March 24, 2020 orders remain in place:

- Child care providers must adhere to specific social distancing guidelines as directed by the Governor.
- Staff may use the emergency background check process described below if they do not have sufficient staff enrolled in the Central Background Registry (CBR).
- Staff must complete basic online training. At least one person on site must have First Aid/Infant CPR (online acceptable) certification and complete the training “Intro to Child Care Health and Safety;” any staff caring for infants must complete the training “Safe Sleep,” and all staff must complete the training “Recognizing and Reporting Child Abuse and Neglect.”
- To the extent it furthers the opening of Emergency Child Care Facilities, OCC will allow child care facilities to open without seeking other approval from local jurisdictions.
- Equipment (e.g., cribs, playpens, and high chairs) must meet U.S. Consumer Product Safety Commission or equivalent standards.
- Smoking, vaping, alcohol, marijuana, and illegal substances are prohibited.
- Building, grounds, and water supply must be maintained and hazard-free.
- Toilets, sinks, smoke detectors, fire extinguishers, and phone (mobile acceptable) must be on site and in working condition.
- Children must be supervised, and adults must provide positive guidance/discipline. Hand washing and other hygiene practices must be enforced. Toxics and weapons must be child-safety locked. Safe sleep and safe bottle-feeding rules must be enforced.
- Home-based care may have up to 10 children total. Of the 10, there may be no more than 6 children ages preschool and younger and of the 6, no more than 2 under 24 months.
- Center-based care may have the following ratios:

Age	Caregiver to Child ratio	Max children in group
6 weeks – 23 months	1:4	8
24 months – 35 months	1:5	10
36 months – Kindergarten	1:10	10
Attending Kindergarten and older	1:10	10

***b. Application Information for Non-School Based Emergency Child Care***

A licensed facility that wants to provide Emergency Child Care must submit an Emergency Child Care Facility application to OCC whereby the facility agrees to follow the applicable rules including the group size and priority enrollment requirements, and the COVID-19 safety requirements.

The application for all types of Emergency Child Care is available [here](#). A group may only apply once. For licensed facilities, Recorded Programs, and experienced child care providers opening temporary sites, OCC will review the application and determine whether to approve the request.

If a group has submitted an Emergency Child Care Facility application by the deadlines established by OCC and agreed to abide by all applicable requirements, the group may continue to provide Emergency Child Care in compliance with all applicable requirements, pending OCC's decision on whether to approve the application. Any group that submits an Emergency Child Care Facility application after the deadlines established by OCC may not open or otherwise provide Emergency Child Care until OCC approves the application.

Emergency Child Care applications for licensed and Recorded Programs to operate in a different location, or other experienced providers who did not have a license to operate at that location before applying to provide Emergency Child Care, will no longer be accepted unless there is a demonstrated lack of child care supply in the proposed service area. These requests will be processed on a case-by-case basis. Any Emergency Child Care program currently operating in a temporary location/facility or without an underlying license should begin making plans to transition families to other approved Emergency Child Care programs and/or reopening their child care programs in the licensed or registered facility address as an approved Emergency Child Care provider.

The Early Learning Division is working with the Governor's Office to develop a plan to appropriately transition children in unlicensed facilities to care that is licensed under existing statute and rule.

**C. School-based Emergency Child Care**

Corresponding to the end of the school year, school-based Emergency Child Care must end no later than June 30, 2020, unless the school provided child care prior to the state of emergency.

***a. Basic Standards for School-Based Emergency Child Care***

Typically, schools that operate child care are license exempt. However, during the state of emergency, the following basic standards for school-based Emergency Child Care from ELD's March 18 and March 24, 2020 orders remain in place:

- Child care providers must adhere to specific social distancing guidelines as directed by the Governor.

- Staff may use the emergency background check process described below if they do not have sufficient staff enrolled in the CBR.
- Staff must complete basic online training. At least one person on site must have First Aid/Infant CPR (online acceptable) certification and complete the training “Intro to Child Care Health and Safety;” any staff caring for infants must complete the “Safe Sleep” training, and all staff must complete the training “Recognizing and Reporting Child Abuse and Neglect.”
- To the extent it furthers the opening of Emergency Child Care Facilities, OCC will allow child care to open without seeking other approval from local jurisdictions.
- Equipment (e.g., cribs, playpens, and high chairs) must meet U.S. Consumer Product Safety Commission or equivalent standards.
- Smoking, vaping, alcohol, marijuana, and illegal substances are prohibited.
- Building, grounds, and water supply must be maintained and hazard-free.
- Toilets, sinks, smoke detectors, fire extinguishers, phone (mobile acceptable) must be on site and in working condition.
- Children must be supervised, and adults must provide positive guidance/discipline. Hand washing and other hygiene practices must be enforced. Toxics and weapons must be child-safety locked. Safe sleep and safe bottle-feeding rules must be enforced.
- Home-based care may have up to 10 children total. Of the 10, there may be no more than 6 children ages preschool and younger and of the 6, no more than 2 under 24 months.
- Center-based care may have the following ratios:

Age	Caregiver to Child ratio	Max children in group
6 weeks – 23 months	1:4	8
24 months – 35 months	1:5	10
36 months – Kindergarten	1:10	10
Attending Kindergarten and older	1:10	10

***b. Application Information for School-Based Emergency Child Care***

School-based Emergency Child Care includes any type of child care provided by a school, including those types that, absent the Governor’s Emergency Declaration, would not be subject to standards and regulation by the OCC. No new applications for Emergency Child Care at a school will be accepted, unless the school demonstrates a capacity need in the area. A school that wants to provide Emergency Child Care must submit an Emergency Child Care Facility application to OCC whereby the facility agrees to follow the applicable rules including the group size and priority enrollment requirements, and COVID-19 safety requirements.

For school districts, ODE/ELD staff will review the application and provide direct follow up.

The Early Learning Division is working with the Governor's Office to develop a plan to appropriately transition children to care that is licensed under existing statute and rule that was directed by Executive Order 20-08.

## **2. Social Distancing**

The Governor's early directive on social distancing has been strengthened by her "Stay Home, Save Lives" Executive Order, available [here](#). Social distancing has been adapted for child care and will be updated as part of the COVID-19 safety requirements.

## **3. Licensed Care Exceptions on a Case-by-Case Basis**

OCC will consider case-by-case exceptions to current licensing requirements, as is already provided for in law, on an expedited timeframe. Examples could include allowing mixed-age groupings in Certified Center facilities, or allowing existing child care centers to open additional temporary rooms without seeking approval from local jurisdictions or other state agencies.

Approval of an exception will be based on the size of facility, staffing, compliance history, and guidance from public health officials.

## **4. Expedited Training**

OCC will adapt training requirements so that staff can begin working more quickly, without sacrificing safety. OCC will grant extensions to rule requirements for completing training for license renewals. OCC will also allow online training for most subjects including those that ordinarily require in-person training. For example, staff who have unsupervised access to children will complete online training that addresses health and safety, child abuse reporting, First Aid/CPR, and safe sleep practices.

## **5. Emergency Background Check**

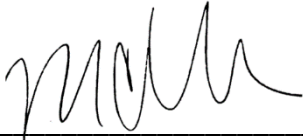
To expedite filling the child care need for essential workforce during this declared emergency, and due to the significant time required to achieve enrollment in the Central Background Registry (CBR), OCC is establishing an emergency background check process for those not currently enrolled in the CBR. Applicants will be subject to LEADS (Law Enforcement Data System) check for Oregon criminal and sex offender registry, Child and Protective Services check for child abuse, National Sex Offender Registry Public website check, and run against the CBR.

Emergency Child Care Facilities located at public schools and staffed by school district employees may continue using their existing background checks to qualify staff.

OCC will work with organizations that are filling the child care gap during this public health emergency – child care providers, Child Care Resource and Referral (CCR&R) agencies, 211 Info, and others – to supply information on applicants who have passed the emergency background check. OCC may cancel or revoke an emergency background authorization at any time, due to any concern that the person poses a risk to children. Once the emergency declaration is lifted,

the authorization provided by this emergency background check is canceled. That person will need to be enrolled in the CBR to continue work in child care.

Child care must operate in a safe manner, while being made accessible to Oregonians in the essential workforce.

So ordered by  on April 24, 2020.  
Miriam Calderon, Early Learning System Director