

OFFICE OF THE SECRETARY OF STATE
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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
05/27/2020 4:15 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Updates rules to align tandem investigations with correct office of the Department of Human Services.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 06/22/2020 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.

CONTACT: Remy Watts
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700 Summer Street NE, Suite 350
Salem, OR 97301

Filed By:
Remember Watts
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 06/16/2020

TIME: 5:00 PM - 6:00 PM

OFFICER: Amy Joyce

ADDRESS: Virtual Meeting ONLY

700 Summer Street NE, Suite 350

Salem, OR 97301

SPECIAL INSTRUCTIONS:

Due to COVID-19, this will be a virtual meeting ONLY. Please email Remy Watts, Rules Coordinator for virtual access information or check the Early Learning Division website calendar.

NEED FOR THE RULE(S):

The Office of Child Care of the Early Learning Division has had success with tandem investigations with the Department of Human Services, but current ELD-OCC rule refers to the incorrect office of DHS with which tandem investigations take place. The rules need to be updated to align language with the appropriate investigative office of DHS.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Statutory authority; ORS 329A.030; ORS 329A.260.

FISCAL AND ECONOMIC IMPACT:

This work is currently staffed by the ELD, and there will be no change to the work for either ELD or DHS. There is no anticipated fiscal impact on the ELD.

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).

As this work is ongoing, there is no anticipated increase in cost to the ELD or other state agencies. The ELD also does not anticipate the public to be affected by this change in rule.

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

ELD has worked with the main childcare provider unions, which represent the majority of people who work and own small businesses in the industry, regarding these changes.

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

With no anticipated fiscal impact or impact to current work, the changes did not substantiate a RAC involvement.

RULES PROPOSED:

414-061-0020, 414-061-0035, 414-205-0170, 414-300-0400, 414-350-0390

AMEND: 414-061-0020

RULE SUMMARY: Updating language to reflect change in agency office performing investigations in tandem with Office of Child Care of the Early Learning Division.

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).¶¶
- (4) "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~~abuse and neglect reports and records as required or permitted by these rules.¶¶
- (7) "Computerized Criminal History (CCH) System" means the on-line computer files of significant criminal offender information maintained by the Oregon State Police (OSP).¶¶
- (8) "Conditional Enrollment" means enrollment in the CBR pursuant to ORS 329A.030(6)(a).¶¶
- (9) "Criminal Records" means information, including fingerprints and photographs, received, compiled, and

disseminated by the Oregon State Police, or by other states or jurisdictions, 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.¶¶

(10) "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 records 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 records, including through fingerprint identification or other means, conducted by OSP at the authorized agency or district's request;¶¶

(c) A nationwide check of criminal records, including through fingerprint identification, conducted by OSP through the Federal Bureau of Investigation (FBI);¶¶

(d) A check of criminal records repositories maintained by any state or jurisdiction, including through fingerprint identification or name-based identification;¶¶

(e) A check of the National Criminal Information Center's National Sex Offender Registry (NSOR); or¶¶

(f) A check of a sex offender registry maintained by any state or jurisdiction.¶¶

(11) "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.¶¶

(12) "Early Learning Program" means a preschool provider referenced in ORS 329.172(3) that has applied to participate in the preschool program described in that section.¶¶

(13) "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.¶¶

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

(15) "Enrollment" means approval for a 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 and foster care certification, and, an FBI records check.¶¶

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

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

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

(19) "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.¶¶

(20) "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.¶¶

(21) "Incident" means the commission of a Category I or Category II crime, a child abuse and neglect case, negative foster care history, or a substantiated finding of adult abuse or neglect¶¶

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

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

(24) "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.¶¶

(25) "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.¶

(26) "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)

Statutes/Other Implemented: ORS 329A.030

AMEND: 414-061-0035

RULE SUMMARY: Rule change summary: Updating language to reflect change in agency office performing investigations in tandem with Office of Child Care of the Early Learning Division.

CHANGES TO RULE:

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, 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 OCC's 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 individual's social security number or other personally identifying information for criminal, ~~child protective services history records checks~~, child abuse and neglect records checks, foster care certification checks 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; and¶

(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; or¶

(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 criminal records checks, child abuse and neglect records, foster care certification history, or adult protective services history; and¶

(b) Use those records and information to for the purpose of evaluating whether the subject individual is eligible 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: ORS 329A.030

Statutes/Other Implemented: ORS 329A.030

AMEND: 414-205-0170

RULE SUMMARY: Rule change summary: Updating language to reflect change in agency office performing investigations in tandem with Office of Child Care of the Early Learning Division.

CHANGES TO RULE:

414-205-0170

Suspension, Denial, Revocation, Findings Reviews and Civil Penalties

- (1) A provider has the right to a review of any finding made by OCC. New applicants for registration will be given a copy of OCC's findings review procedures at the time of the on-site inspection. Information on the OCC findings review process will be in complaint letters. The OCC findings review procedures are also available upon request.¶
- (2) The Office of Child Care may immediately, and without prior notice, suspend the child care registration when, in the opinion of OCC, such action is necessary to protect the children from physical or mental abuse or a substantial threat to health, safety or well-being. Such action may be taken before an investigation is completed.¶
- (3) A provider whose registration has been suspended must immediately notify, verbally or in writing, all parents of the suspension.¶
- (4) A provider whose registration has been suspended must immediately provide OCC with all names, work and home telephone numbers and addresses of the parent(s) or legal guardian(s) for each child.¶
- (5) A provider whose registration has been suspended must post the suspension in the home where it can be viewed by parents and others for the duration of the suspension.¶
- (6) If necessary to protect children, OCC may give public notice of denial, suspension or revocation action taken. The type of notice will depend on individual circumstances.¶
- (7) If the provider does not request a hearing and the conditions which resulted in suspension have not been corrected, the registration shall be revoked.¶
- (8) Registration may be denied or revoked if a registered family child care home fails to meet requirements, provide OCC with information requested, allow an inspection, correct deficiencies, or is operated or maintained in a manner which is harmful to the health, safety or well-being of children in care.¶
- (9) A registered family child care home whose registration has been denied or revoked must immediately notify all parents of the closure and shall post a notice of the closure where it can be viewed by parents and others. The notice shall remain posted for a minimum of 2 weeks.¶
- (10) The provider has the right to appeal any decision to deny, suspend, or revoke the registration, subject to the provisions of Chapter 183, Oregon Revised Statutes.¶
- (11) Any action taken by OCC to deny, suspend, or revoke registration may be reported to the Department of Human Services, USDA Child Care Food Programs and child care resource and referral system.¶
- (12) A provider whose registration has been denied for cause (e.g. health and safety concerns, criminal activity or child ~~protective services~~ abuse and neglect involvement) or revoked for cause shall not be eligible to reapply for 5 years after the effective date of the closure.¶
- (13) If any person, who is enrolled in the CBR, has been charged with, arrested for, or a warrant is out for any of the crimes which OCC has determined indicate behavior which may have a detrimental effect on a child, with final disposition not yet reached, registration may be denied or suspended or revoked until the charge, arrest, or warrant has been resolved if the person continues to operate, be employed in or reside in the home, or have access to children in the home.¶
- (14) Registration may be denied, suspended or revoked if an individual listed in OAR 414-205-007540 has a child ~~protective services~~ abuse and neglect history or an open child ~~protective services~~ abuse and neglect or law enforcement case that would disqualify the individual from the CBR.¶
- (15) Violations of these rules or terms and conditions of certification under these rules may be subject to a civil penalty up to \$750 per violation.¶
- (16) Whenever the Office of Child Care (OCC) investigates an alleged complaint at a registered facility, or a facility that may be operating in violation of the requirements of ORS 329A.250 through 329A.450, OCC shall:¶
 - (a) Provide technical assistance as appropriate;¶

(b) Send written notice of the complaint visit to the facility with a finding of valid, unable to substantiate, or invalid; and¶¶

(c) OCC shall assess whether additional legal actions are appropriate, including but not limited to civil penalties, denials, revocations or suspensions, depending upon:¶¶

(A) Numbers of previous violations of the same rule; or¶¶

(B) Circumstances surrounding the rule violation.¶¶

(17) For a serious violation, as defined in OAR-414-~~350~~205-0010-~~(29)~~(30), a provider may be subject to a civil penalty not to exceed \$750 for each violation.¶¶

(18) For a non-serious violation, a provider may be subject to a civil penalty of \$250 for each violation.¶¶

(19) Each day that a child care facility is operating in violation of any of the rules and conditions of certification is a separate violation of the rules.¶¶

(20) An individual or entity that provides child care subject to licensing in a home or facility that is not certified with the Office of Child Care, may be subject to a civil penalty not to exceed \$1,500 per day of operation of the uncertified facility.¶¶

(21) Notwithstanding the Office of Child Care's (OCC) decision to impose a civil penalty for one or more rule violations, OCC may also take action to deny, suspend or revoke a certification for the same rule violation or violations.¶¶

(22) The provider has the right to appeal any decision to impose a civil penalty, subject to the provisions of chapter 183, Oregon Revised Statutes.¶¶

(23) Failure to pay a civil penalty in which the Office of Child Care has issued a final order by default or a final order after a contested case hearing shall be grounds for denial or revocation of the facility's certification.

Statutory/Other Authority: ORS 329.610, ORS 329A.260

Statutes/Other Implemented: ORS 329A.260

AMEND: 414-300-0400

RULE SUMMARY: Rule change summary: Updating language to reflect change in agency office performing investigations in tandem with Office of Child Care of the Early Learning Division.

CHANGES TO RULE:

414-300-0400

Suspension, Denial and Revocation

- (1) The Office of Child Care may immediately, and without prior notice, suspend the child care certification when, in the opinion of OCC, such action is necessary to protect the children from physical or mental abuse or a substantial threat to health, safety or well-being. Such action may be taken before an investigation is completed.¶
- (2) A center whose certification has been suspended must immediately notify, verbally or in writing, all parents of the suspension.¶
- (3) A center whose certification has been suspended must immediately provide OCC with all names, work and home telephone numbers and addresses of the parent(s) or legal guardian(s) for each child.¶
- (4) A center whose certification has been suspended must post the suspension on the main entry door where it can be viewed by parents and others for the duration of the suspension.¶
- (5) If necessary to protect children, OCC may give public notice of denial, suspension or revocation action taken. The type of notice will depend on individual circumstances.¶
- (6) If the center does not request a hearing and the conditions which resulted in suspension have not been corrected, the certification shall be revoked.¶
- (7) Certification may be denied or revoked if the center fails to meet requirements, provide OCC with information requested, allow an inspection, correct deficiencies, or is operated or maintained in a manner which is harmful to the health, safety or wellbeing of children in care.¶
- (8) A center whose certification has been denied or revoked must immediately notify all parents of the closure and shall post a notice of the closure where it can be viewed by parents and others. The notice shall remain posted for a minimum of 2 weeks.¶
- (9) The center has the right to appeal any decision to suspend, deny or revoke the certification, subject to the provisions of chapter 183, Oregon Revised Statutes.¶
- (10) Any action taken by OCC to deny, suspend, or revoke certification may be reported to the Department of Human Services, USDA Child Care Food Programs, child care resource and referral system.¶
- (11) A center whose certification has been denied for cause (e.g. health and safety concerns, criminal activity or child ~~protective services~~ abuse and neglect involvement) or revoked shall not be eligible to reapply for five years after the effective date of the closure.¶
- (12) If any person, who is enrolled in the CBR, has been charged with, arrested for, or a warrant is out for any of the crimes which OCC has determined indicate behavior which may have a detrimental effect on a child, with final disposition not yet reached, certification may be denied or suspended or revoked until the charge, arrest, or warrant has been resolved if the person continues to operate, be employed in or reside in the center, or have access to children in the center.¶
- (13) Certification may be denied, suspended or revoked if an individual listed in OAR 414-350-0080(5) has a child ~~protective services~~ abuse and neglect history or an open child ~~protective services~~ abuse and neglect or law enforcement case that would disqualify the individual from the CBR.

Statutory/Other Authority: ORS 329A

Statutes/Other Implemented: ORS 329A.260

AMEND: 414-350-0390

RULE SUMMARY: Rule change summary: Updating language to reflect change in agency office performing investigations in tandem with Office of Child Care of the Early Learning Division.

CHANGES TO RULE:

414-350-0390

Suspension, Denial and Revocation

- (1) Certification may be denied or revoked if a certified family child care home fails to meet requirements, provide OCC with information requested, allow an inspection, correct deficiencies, or is operated or maintained in a manner which is harmful to the health, safety or well-being of children in care.¶
- (2) The provider has the right to appeal any decision to suspend, deny or revoke the certification, subject to the provisions of Chapter 183, Oregon Revised Statutes.¶
- (3) A provider whose certification has been denied for cause (e.g. health and safety concerns, criminal activity or child ~~protective services~~abuse and neglect involvement) or revoked shall not be eligible to reapply for 5 years after the effective date of the closure.¶
- (4) If necessary to protect children, OCC may give public notice of denial, suspension or revocation action taken. The type of notice will depend on individual circumstances.¶
- (5) OCC may immediately, and without prior notice, suspend the child care certification when, in the opinion of OCC, such action is necessary to protect the children from physical or mental abuse or a substantial threat to health, safety or well-being. Such action may be taken before an investigation is completed.¶
- (6) A provider whose certification has been suspended must immediately notify, verbally or in writing, all parents of the suspension.¶
- (7) A provider whose certification has been suspended must post the suspension in the home where it can be viewed by parents and others for the duration of the suspension.¶
- (8) If the provider does not request a hearing and the conditions which resulted in suspension have not been corrected, the certification shall be revoked.¶
- (9) An owner whose certification has been suspended must immediately provide OCC with all names, work and home telephone numbers and addresses of the parent(s) or legal guardian(s) for each child.¶
- (10) A certified family child care home whose certification has been denied or revoked must immediately notify all parents of the closure and shall post a notice of the closure where it can be viewed by parents and others. The notice shall remain posted for a minimum of 2 weeks.¶
- (11) Any action taken by OCC to deny, suspend, or revoke certification may be reported to the Department of Human Services, USDA Child Care Food Programs, child care resource and referral system.¶
- (12) If any person, who is enrolled in the CBR, has been charged with, arrested for, or a warrant is out for any of the crimes which OCC has determined indicate behavior which may have a detrimental effect on a child, with final disposition not yet reached, certification may be denied or suspended or revoked until the charge, arrest, or warrant has been resolved if the person continues to operate, be employed in or reside in the home, or have access to children in the home.¶
- (13) Certification may be denied, suspended or revoked if an individual listed in OAR 414-350-0080(5) has a child ~~protective services~~abuse and neglect history or an open child ~~protective services~~abuse and neglect or law enforcement case that would disqualify the individual from the CBR.

Statutory/Other Authority: ORS 329A.260

Statutes/Other Implemented: ORS 329A.260