



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

Amended September 2, 2020

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I. Authority and Applicability

- A. As authorized by [Executive Orders](#) 20-03, 20-08, 20-19, 20-20, 20-25, and 20-27 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 (“Order”).
- B. This Order supersedes the order issued on June 2, 2020 as well as three sets of temporary standards issued in March 2020¹. This Order continues rule changes from the prior order pertaining to various topics but (i) incorporates by reference the requirements of the Early Learning Division (ELD) and Oregon Health Authority (OHA)’s Health and Safety Guidelines for Child Care and Early Education Operating During COVID-19 dated August 14, 2020 (“COVID-19 Health and Safety Requirements”) and requires adherence to these requirements by Emergency Child Care Facilities and other providers of child care and preschool, (ii) further clarifies the operational requirements for Emergency Child Care Facilities as authorized by Executive Order 20-19, (iii) reorganizes the requirements in this Order to make these temporary changes easier to reference, and (iv) updates the exceptions and training sections.
- C. These temporary changes are effective immediately and expire after the Governor lifts the emergency declaration.

2. Emergency Child Care Facilities

A. Requirement to be Approved or Close

- a. Pursuant to Executive Order 20-19², any licensed child care facility or recorded program³ that does not apply with the Office of Child Care (OCC) to become an Emergency Child Care Facility, applies and does not receive approval, or does not abide by the requirements for Emergency Child Care Facilities, must close.

¹ These standards are (1) Summary of **Certified Center** Temporary Standards in Response to the COVID-19 Crisis, (2) Summary of Certified Temporary Standards in Response to the COVID-19 Crisis **Certified Family**, and (3) Summary of Temporary Standards in Response to the COVID-19 Crisis **Registered Family** (emphasis added).

² Governor Brown’s Executive Order 20-19 includes the directives that:

1. Any childcare facility licensed or program recorded under ORS 329A.030 and ORS 329A.250 to ORS 329A.450 (“childcare facility”) not approved by the Department of Education, Early Learning Division, Office of Child Care (“ELD”) to operate as an emergency childcare facility must remain closed.

2. Notwithstanding paragraph 1, a childcare facility can be approved or remain approved to operate as an emergency childcare facility if it meets and complies with all requirements for emergency childcare as provided by the ELD, including any conditions imposed on a childcare facility’s approval.

³ Recorded Programs under ORS 329A.255 and 329A.257—both preschool and school-aged—may not operate without applying and being approved by OCC to operate as an Emergency Child Care Facility.

- b. 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.”

B. Eligibility to be Approved

- a. 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 if the individual or entity’s child care facility license was denied, suspended, or revoked. Any individual or entity under an OCC legal order, settlement agreement, or currently in the contested case 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 OCC determines that conditions can be imposed to address OCC’s concerns and there is a need for additional child care capacity in the area.
- b. An individual or entity whose Emergency Child Care Facility application was denied, or whose approval to operate as an Emergency Child Care Facility was suspended or revoked, or who voluntarily surrendered their Emergency Child Care Facility approval while under investigation by OCC, or at any time after OCC gave notice of an administrative proceeding against the facility, may not reapply to operate an Emergency Child Care Facility at the same location, unless OCC has withdrawn, adopted a Proposed Order recommending disaffirmance of, or entered a different order after judicial review, of its order suspending or revoking Emergency Child Care Facility approval.
- c. If an individual or entity becomes ineligible to provide Emergency Child Care pursuant to this Order, OCC may revoke the individual or entity’s Emergency Child Facility approval.
- d. If a licensed child care facility is approved to operate an Emergency Child Care Facility and its license expires during the state of emergency without a timely renewal application, the Emergency Child Care Facility approval is no longer valid and is rescinded. If this same facility is reissued a child care facility license, it may reapply for approval as an Emergency Child Care Facility, as per the process described in Section 2(C) of this Order. If this same facility is not reissued a child care facility license, the owner or operator may reapply for approval as an Emergency Child Care Facility as an experienced child care provider seeking to open a temporary site for Emergency Child Care, as per the process described in Section 2(C) of this Order.

- e. If a licensed child care facility is approved to operate an Emergency Child Care Facility and its underlying license is revoked, the Emergency Child Care approval is no longer valid and is rescinded.
- f. If a licensed child care facility is approved to operate an Emergency Child Care Facility and its underlying license is suspended, the Emergency Child Care Facility Approval is not valid while the license is suspended.

C. Application for Approval

- a. A licensed child care facility or recorded program that wants to provide Emergency Child Care, or an experienced child care provider seeking to open a temporary site for Emergency Child Care, must submit an Emergency Child Care Facility application to OCC whereby the applicant agrees to follow the applicable rules including the COVID-19 Health and Safety Requirements. The application for all types of Emergency Child Care Facilities is available [here](#).
- b. For licensed child care facilities, recorded programs, and experienced child care providers seeking to open temporary sites for Emergency Child Care, OCC will review the application and determine whether to approve the request.
- c. Unless precluded as provided by Section 2(B)(b) of this Order, a licensed child care or recorded program may apply to become an Emergency Child Care Facility at any time but cannot operate until the application is approved by OCC.
- d. Unless precluded as provided by Section 2(B)(b) of this Order, an experienced child care provider seeking to open a temporary site for Emergency Child Care that provides care for only school-age children may apply to become an Emergency Child Care Facility at any time but cannot operate until the initial approval is granted by OCC.
- e. To the extent it furthers the opening of Emergency Child Care Facilities, OCC may allow child care facilities to open without seeking other approval from local jurisdictions.

D. Limitations on Applications

- a. Emergency Child Care applications from licensed child care facilities and recorded programs to operate an Emergency Child Care Facility in a location different from the licensed or recorded location, or other experienced providers who did not have a license to operate at the location before applying to provide Emergency Child Care, will no longer be accepted unless OCC determines there is a demonstrated lack of child care capacity in the proposed service area. These requests will be processed on a case-by-case basis.

- b. Recorded programs providing care within the legal parameters of a recorded program⁴ do not need to demonstrate a lack of local child care capacity in order to apply and be considered for approval as an Emergency Child Care Facility.

E. Conditions on Approvals

- a. OCC may impose conditions on the approval to provide Emergency Child Care or on the operations of a previously approved Emergency Child Care Facility when OCC has determined conditions are necessary to promote the facility's adherence with applicable requirements.
- b. Any conditions imposed on the Emergency Child Care Facility approval are effective immediately, subject to judicial review pursuant to ORS 183.184.
- c. OCC may suspend or revoke an Emergency Child Care Facility approval for any facility that does not comply with conditions imposed on such approval or that communicates an intent not to comply with such conditions.

F. Health and Safety Requirements

- a. All Emergency Child Care Facilities must abide by all the requirements included in ELD and OHA's Health and Safety Guidelines for Child Care and Early Education Operating During COVID-19 dated August 14, 2020 ("COVID-19 Health and Safety Requirements"), available [here](#).
- b. Currently licensed child care facilities providing Emergency Child Care must continue to follow all applicable rules for their licensed child care type. However, the COVID-19 Health and Safety Requirements control and supersede any conflicting or inconsistent provisions in rules for the licensed child care type.
- c. Currently recorded programs must continue to follow all applicable rules for their recorded program type. However, the COVID-19 Health and Safety Requirements control and supersede any conflicting or inconsistent provisions in rules for the recorded program type.
- d. Currently licensed child care facilities and recorded programs must comply with the directive in Executive Order 20-19 to remain closed unless approved to operate an Emergency Child Care Facility as a requirement of the underlying license or record.

⁴ The recorded program is operating only as either a preschool recorded program or school-age recorded program pursuant to ORS 329A.250 through ORS 329A.460 and the regulations promulgated thereunder.

G. Additional Requirements in Baseline Phase Counties

- a. All Emergency Child Care Facilities located in counties in the baseline phase, except respite care, relief nurseries as defined in ORS 417.786, federal Head Start programs, Oregon Pre-Kindergarten (OPK) programs, and recorded programs providing care within the legal parameters of a recorded program⁵, must prioritize providing child care for individuals in the essential workforce if OCC, in consultation with OHA, decides it is necessary for that county at that time. The OCC Child Care Director or designee will communicate this decision to Emergency Child Care Facilities in the affected county. Guidance on how to determine whether a person is in the essential workforce can be found in guidance from the U.S. Department of Homeland Security (“Homeland Security Guidance”), linked [here](#). Information on each county’s phase can be found [here](#).

H. Additional Requirements Applicable to Recorded Programs and Experienced Child Care Providers Operating Temporary Sites as Emergency Child Care Facilities

- a. All staff of recorded programs and facilities approved as a temporary sites for Emergency Child Care operated by experienced child care providers must either be enrolled in the OCC Central Background Registry or have completed and cleared the OCC Emergency Background Check. All recorded programs must provide OCC a list of all their employees so that OCC can verify that each adult in the facility has an approved Emergency Background Check or is enrolled in the Central Background Registry, and must notify OCC when adding new employees while operating the Emergency Child Care Facility.
- b. Experienced child care providers approved to operate temporary sites for Emergency Child Care and recorded programs providing Emergency Child Care, must follow all the requirements in the Emergency Child Care Health and Safety Checklist, available [here](#). However, the COVID-19 Health and Safety Requirements control and supersede any conflicting or inconsistent provisions in those requirements in the Emergency Child Care Health and Safety Checklist.
- c. Recorded programs operating only as either a preschool recorded program or school-age recorded program pursuant to ORS 329A.250 through ORS 329A.460 and the regulations promulgated thereunder must complete and

⁵ The recorded program is operating only as either a preschool recorded program or school-age recorded program pursuant to ORS 329A.250 through ORS 329A.460 and the regulations promulgated thereunder.

sign a self-attestation form provided by OCC indicating their agreement to abide by certain requirements.

I. Complaints, Noncompliance, Investigations, Inspections, and Findings

- a. OCC accepts complaints from parents/caregivers or others who report concerns.
- b. OCC may conduct investigations of Emergency Child Care Facilities.
- c. OCC may inspect, or require a virtual inspection of an Emergency Child Care Facility at any time children are in care or during approved operating hours. A virtual inspection includes both audio and video transmission using a smart phone, tablet, or portable computer.
- d. OCC may issue findings against Emergency Child Care Facilities for violations of any applicable requirements. OCC may also issue findings against licensed child care providers and recorded programs operating without an Emergency Child Care Facility approval in violation of Executive Order 20-19.
- e. Any finding against a licensed child care provider, whether or not approved to operate an Emergency Child Care Facility, will attach to both the Emergency Child Care Facility approval, if any, and the facility's underlying license in the same ways as a finding on the underlying license, and may be relied upon to support legal action against a facility's Emergency Child Care Facility approval, its underlying license, or both.
- f. Any finding against an experienced child care provider operating as temporary site for Emergency Child Care will attach to the provider's Emergency Child Care Facility approval and may be relied upon to support legal action against the provider's Emergency Child Care Facility approval.
- g. Any finding against a recorded program, whether or not approved to operate an Emergency Child Care Facility, will attach to both the Emergency Child Care Facility approval, if any, and be included in the recorded program's record, and may be relied upon to support legal action against the recorded program's Emergency Child Care Facility approval, its underlying record, or both.

J. Denial, Suspension, and Revocation of Approval

- a. OCC may deny approval to, or suspend or revoke its approval for, an individual or entity to provide Emergency Child Care at any time based on OCC's determination of any of the following:
 1. There is a danger to children at the licensed child care facility or Emergency Child Care Facility.
 2. The Emergency Child Care Facility has not maintained compliance with the applicable requirements.

3. A licensed child care facility did not maintain compliance with applicable requirements prior to or during the pendency of its application for Emergency Child Care Facility approval.
4. OCC is unable to ensure compliance by the licensed child care facility or Emergency Child Care Facility without in-person monitoring (physical distancing during the state of emergency counsels against most in-person monitoring).

3. Requirements Applicable to Public Schools Conducting Child Care and Preschool

- A. The COVID-19 Health and Safety Requirements apply to all child care and preschool provided in public school settings during the state of emergency, regardless of who is conducting the care.
- B. Public schools providing child care that is staffed by only school district employees and operated by the school district do not have to apply or be approved as an Emergency Child Care Facility in order to operate.

4. Drop-In Child Care Prohibited

- A. Any individual or entity conducting child care that is not required to be approved as an Emergency Child Care Facility before providing care because they are license-exempt must still adhere to all applicable requirements, including but not limited to physical distancing, face covering, and quarantining requirements. An example of this type of child care is drop-in care, such as that offered at retail stores or gyms where the parents remain on site. Drop-in child care is license-exempt, but may be specifically prohibited by applicable guidance, such as the [OHA Specific Guidance for Fitness-related Organizations](#).

5. Licensed Child Care Exceptions on a Case-by-Case Basis

- A. OCC will consider case-by-case exceptions to current licensing requirements, as is already provided for in law.
- B. Approval of an exception will be based on the size of facility, staffing, compliance history, and the impact of the proposed exception on the ability of the facility to comply with the intent of the COVID-19 Health and Safety Requirements.
- C. OCC will not grant exceptions to exceed the group sizes detailed in the COVID-19 Health and Safety Requirements.

6. CPR Training Requirements

- A. OCC will accept online-only CPR training for providers and all necessary staff, including new staff and new providers, until July 1, 2021.
- B. If there is no online CPR training available in the preferred language, providers and staff are not required to renew CPR certifications for license renewal. Providers and staff will have 60 days from when the state of emergency is lifted to complete the CPR certification.

7. Emergency Background Check

- A. To expedite filling the child care needs of the essential workforce during this declared emergency, and due to the significant time required to achieve enrollment in the Central Background Registry (CBR), OCC established an Emergency Background Check process for those not currently enrolled in the CBR. Emergency Background Check applicants are subject to a LEADS (Law Enforcement Data System) check for Oregon criminal and sex offender registry, a Child Protective Services check for child abuse, a National Sex Offender Registry Public website check, and run against the CBR.
- B. 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.
- C. OCC may deny, cancel, or revoke an Emergency Background Check authorization at any time, due to any concern that the person poses a risk to children.
- D. Once the emergency declaration is lifted, the authorization provided by this Emergency Background Check is canceled. Any person with an Emergency Background Check will need to be enrolled in the CBR in order to continue working in child care.

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

So ordered by  on September 2, 2020.
Miriam Calderon, Early Learning System Director