



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

Amended March 8, 2021

### Contents

- 1. Authority, Applicability, and Definitions ..... 2
- 2. Emergency Child Care Facilities ..... 3
  - A. Requirement to be Approved or Close ..... 3
  - B. Eligibility to be Approved ..... 3
  - C. Application for Approval ..... 5
  - D. Limitations on Applications..... 5
  - E. Conditions on Approvals ..... 6
  - F. Health and Safety Requirements ..... 6
  - G. [Deleted] ..... 7
  - H. Additional Requirements Applicable to Recorded Programs and Experienced Child Care Providers Operating Temporary Sites as Emergency Child Care Facilities..... 7
  - I. Complaints, Noncompliance, Investigations, Inspections, and Findings ..... 8
  - J. Denial, Suspension, and Revocation of Approval ..... 8
- 3. Requirements Applicable to Publicly Operated Child Care and Preschool..... 9
- 4. Requirements for License-Exempt and Drop-In Child Care ..... 10
- 5. Exceptions ..... 10
- 6. CPR Training Requirements ..... 10
- 7. Emergency Background Check..... 10

## I. Authority, Applicability, and Definitions

- A. As authorized by [Executive Orders](#) 20-03, 20-08, 20-19, 20-20, 20-25, 20-66, and 20-67 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 January 12, 2021. This Order continues rule changes from the prior order pertaining to various topics but (i) further clarifies the operational requirements for Emergency Child Care Facilities as authorized by Executive Order 20-19, and (ii) and updates the sections on exceptions and training requirements.
- C. These temporary changes are effective immediately and expire after the Governor lifts the emergency declaration.
- D. The following definitions apply to this Order:
  - a. “Child care license” means a certificate issued by the Office of Child Care (OCC) to operate a Registered Family Child Care Home, a Certified Family Child Care Home, or a Certified Child Care Center pursuant to ORS 329A.250 to 329A.450.
  - b. “Close contact” means contact within 6 feet for a total of 15 or more minutes in a 24-hour period.
  - c. “Experienced child care provider” means an individual who has the equivalent of 12 months fulltime experience providing child care in any of or a combination of the following or substantially similar setting: (i) a licensed or recorded child care program; (ii) an all-day summer camp; (iii) a public or private school (including work as a teacher); or (iv) another type of program that provided all-day care to child care age children.
  - d. “Legal action” means any of the following issued by OCC: (i) notice of intent to deny or revoke a child care registration or certification; (ii) notice of intent to remove from enrollment in the Central Background Registry; (iii) emergency order of suspension of a child care registration or certification or enrollment in the Central Background Registry; (iv) order denying, suspending, or revoking an Emergency Child Care Facility approval; (v) notice of intent to impose conditions on or order imposing emergency conditions on a child care registration or certification; (vi) notice of intent to impose a civil penalty; or (vii) a cease and desist order.
  - e. “License-exempt” means the status of not being required to have a child care license, as defined in this Order and refers to both to individuals providing care excepted in ORS 329A.250 (4) from the definition of “child care” and to facilities excepted in ORS 329A.250 (5) from the definition of “child care facility”.

## 2. Emergency Child Care Facilities

### A. Requirement to be Approved or Close

- a. Pursuant to Executive Order 20-19<sup>1</sup>, any licensed child care facility or recorded program<sup>2</sup> 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.
- 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’s whose enrollment in the Central Background Registry was denied, is suspended, or has been removed; or an individual or entity whose child care facility license was denied, is suspended, or has been revoked; or an individual or entity that has been issued an OCC legal order, is subject to a settlement agreement with OCC executed within the last three years, or is currently in the contested case process with OCC with respect to legal action as defined in this Order 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, including with respect to individuals or entities whose application to provide Emergency Child Care was previously denied or revoked.
- b. Except as otherwise provided in this Order, an individual or entity whose Emergency Child Care Facility application was denied, or whose approval to

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<sup>1</sup> 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 child care facility can be approved or remain approved to operate as an emergency child care facility if it meets and complies with all requirements for emergency child care as provided by the ELD, including any conditions imposed on a child care facility’s approval.

<sup>2</sup> 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.

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 denying, suspending or revoking Emergency Child Care Facility approval.

- c. If an individual or entity previously approved to provide Emergency Child Care is or becomes ineligible to provide Emergency Child Care pursuant to this Order, OCC may revoke the individual or entity's Emergency Child Facility approval or may impose conditions or additional conditions on the 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 or is surrendered, 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. In connection with any application for approval to operate an Emergency Child Care Facility, OCC may consider the compliance history of the individual or facility, including in connection with a previously licensed child care facility at the same or different location, in determining whether to approve the application for approval to open a temporary site for Emergency Child Care. OCC may deny the application if the compliance history indicates that the applicant is unlikely to be willing or unlikely to be able to comply with the requirements for Emergency Child Care because they did not comply with child care licensure requirements or requirements applicable to a child care license.
- f. 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.
- g. 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 may apply to become an Emergency Child Care Facility at any time but cannot operate until the application is approved 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 program<sup>3</sup> 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.

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<sup>3</sup> 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.

## **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.

## **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 Version 1.1 dated January 12, 2021 ("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, unless OCC has granted a specific exception applicable to the child care facility as provided by section 5 of this Order.
- 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, unless OCC has granted a specific exception applicable to the program as provided by section 5 of this Order.
- 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.
- e. All Emergency Child Care Facilities must maintain and immediately provide to OCC on request the following: (i) enrollment records, daily logs, and parent contact information for all children in attendance; (ii) records and information sufficient to identify the staff and children in each stable group; and (iii) attendance records sufficient to determine which children and staff have had close contact as defined in this Order with other children or staff for any time period.

## **G. [Deleted]**

[The prior contents of this section, entitled “Additional Requirements in Baseline Phase Counties” were deleted as Oregon is no longer designating counties by phase.]

## **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 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 and facilities approved as temporary sites for Emergency Child Care operated by experienced child care providers 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 or when changing the director, experienced child care provider operator, or facility contact person, and must obtain OCC verification of any new employee’s enrollment in the CBR or Emergency Background Check completion before allowing the new employee to begin work in 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 sign a self-attestation form provided by OCC indicating their agreement to abide by certain requirements.
- d. The experienced child care provider that applied for and was approved to open a temporary site for Emergency Child Care must be in the Emergency Child Care Facility at least half of the hours that the facility is in operation unless another person qualified as an experienced child care provider and approved by OCC will

be on site for the required number of hours. The hours shall be calculated on a weekly basis, except for planned vacations and emergency absences. The time on-site must include time spent directly observing staff and children.

**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 or conditions imposed on 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 or conditions imposed on 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 or conditions imposed on 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).
- b. OCC may suspend or revoke an Emergency Child Care Facility approval for any facility that does not comply with conditions on such approval or that communicates an intent not to comply with such conditions.
  - c. An order to suspend or revoke approval to operate an Emergency Child Care Facility shall take effect immediately upon email, mail, or personal delivery notice to the individual or entity operating the facility or to the director of any such facility. The individual or entity may request a contested case hearing with respect to any such order to occur as soon as reasonably practicable, taking into consideration the availability of OCC staff, OCC's legal representatives, and Office of Administrative Hearings resources in light of competing priorities including work related to the COVID-19 pandemic response.

### **3. Requirements Applicable to Publicly Operated Child Care and Preschool**

- A. During the state of emergency, and regardless of who is conducting the care, the COVID-19 Health and Safety Requirements apply to all child care and preschool provided in public school settings and, if directed by Governor Kate Brown or any agency, including the Oregon Health Authority, to whom Governor Brown has conferred authority to determine requirements for them, to all child care and preschool provided in other license-exempt facilities including those operated by local governmental units or agencies.
- 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. Requirements for License-Exempt and Drop-In Child Care

- 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 otherwise 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 Sector Guidance for Indoor Recreation and Indoor Fitness Establishments](#).

## 5. Exceptions

- A. OCC may grant exceptions to current licensing and COVID-19 Health and Safety requirements on a case-by-case, license-type, or program-type basis.
- B. Approval of an exception may 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 licensing or COVID-19 Health and Safety Requirements.

## 6. Training Requirements


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

## 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 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 if OCC has received information indicating that the person poses a risk to children. An individual whose Emergency Background Check authorization is denied, canceled, or revoked may not provide child care in an Emergency Child Care Facility unless enrolled in the Central Background Registry.
- 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 March 8, 2021.  
Miriam Calderon, Early Learning System Director