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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 414
OREGON DEPARTMENT OF EDUCATION
EARLY LEARNING DIVISION

FILED
03/23/2021 1:43 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Regulated Subsidy Child Care definition update to align with ODHS definition.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 05/05/2021 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.

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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: 04/26/2021

TIME: 5:30 PM - 6:30 PM

OFFICER: Remy Watts

ADDRESS: Hearing will be virtual

700 Summer Street NE

Suite 350

Salem, OR 97301

SPECIAL INSTRUCTIONS:

Due to COVID-19, this hearing will be virtual. Please see the Early Learning Division website for information on how to attend.

<https://oregonearlylearning.com/meeting/april-2021-rules-public-hearing>

NEED FOR THE RULE(S):

Current ELD-OCC definition does not allow for children under 6 weeks of age to be in care and also cuts off children at age 12. ODHS-SSP rules allow payment for children under age of 6 weeks as well as children who turn 13 during the certification year. ELD-OCC definition needs to support this.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Statutory Authority:
329A.500, 505

FISCAL AND ECONOMIC IMPACT:

No fiscal impact anticipated, continues to support payments to ODHS-SSP for Employment-Related Day Care (ERDC) at Regulated Subsidy child care providers.

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) ODHS-SSP ERDC analysts recommended this alignment and are aware of the rule change. Supports continued ERDC payments.

(2) (a) All Regulated Subsidy child care facilities, which are tracked by ODHS-SSP and paid through ERDC.

(b) There is no anticipated increase in reporting, recordkeeping, or administrative activities for facilities to comply with the rule, as it is already enforced by ODHS-SSP and a broader definition than currently held by ELD-OCC.

(c) There is no anticipated increased cost to Regulated Subsidy child care providers to comply with this rule, as it is already enforced by ODHS-SSP and broader than currently held by ELD-OCC.

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

As this is a minor edit to align rules with standard practice of ODHS-SSP, providers were not engaged in the rule update.

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

As there are no anticipated fiscal impacts to providers, there was no Rule Advisory Committee convened.

RULES PROPOSED:

414-180-0010, 414-180-0025

AMEND: 414-180-0010

RULE SUMMARY: Updated definitions to align with ODHS.

CHANGES TO RULE:

414-180-0010

Definitions ¶¶

The following definitions apply to Oregon Administrative Rules 414-180-0015 through 414-180-0100.¶¶

(1) "Caregiver" means any person, including the provider, who cares for the children in Regulated Subsidy child care and works directly with the children, providing care, supervision and guidance.¶¶

(2) "Child Care" means the care, supervision and guidance on a regular basis of a child, unaccompanied by a parent, legal guardian or custodian, during a part of the 24 hours of the day, with or without compensation.¶¶

(3) "Child Care Child" means a child ~~at least six weeks of age and~~ under 13 years of age, or a child under 18 years of age with special needs. Children who turn age 13 or age 18 with special needs remain an eligible child care child based on age through their current certification period. The provider has supervisory responsibility for the child in the temporary absence of the parent.¶¶

(4) "Child Care Facility" means the location where child care is being conducted. This can be either a private residence or commercially zoned building.¶¶

(5) "Child with Special Needs" means a child under 18 years of age who requires a level of care over and above the norm for their age due to a physical, developmental, behavioral, mental or medical disability.¶¶

(6) "Communicable Disease" means an illness caused by an infectious agent or its toxins.¶¶

(7) "Disinfecting" means using a process for destroying or irreversibly inactivating harmful organisms, including

bacteria, viruses, germs and fungi.¶

(8) "Family" means a group of individuals related by blood, marriage or adoption, or individuals whose functional relationships are similar to those found in such associations.¶

(9) "Infant" means a child ~~who is at least six weeks of age~~ from birth up to 12 months of age.¶

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

(11) "Outbreak of Communicable Disease" means two cases from separate households associated with a suspected common source.¶

(12) "Premises" means the structure where child care is conducted that is identified on the application or listed with the Department of Human Services, including indoors and outdoors and space not directly used for child care.¶

(13) "Preschool-Age Child" means a child who is 36 months of age up to eligible to attend kindergarten in a public school.¶

(14) "Provider" means the person or facility who is responsible for the children in care; is the children's primary caregiver; and who is listed with the Department of Human Services as the provider.¶

(15) "Regulated Subsidy Child Care" means care that is provided to children whose families access federal child care subsidy funds through the state.¶

(16) "Restrictable Disease" means an illness or infection that would prohibit the child from attending child care.¶

(17) "Sanitizing" means using a treatment that provides enough heat or concentration of chemicals for enough time to reduce the bacterial count, including disease producing organisms, to a safe level on utensils, equipment and toys.¶

(18) "Serious Injury or Incident" means any of the following: ¶

(a) Injury requiring surgery;¶

(b) Injury requiring admission to a hospital;¶

(c) Injury requiring emergency medical attention;¶

(d) Choking and unexpected breathing problems;¶

(e) Unconsciousness;¶

(f) Concussion;¶

(g) Poisoning;¶

(h) Medication overdose;¶

(i) Broken bone;¶

(j) Severe head or neck injury;¶

(k) Chemical contact in eyes, mouth, skin, inhalation or ingestion;¶

(l) All burns;¶

(m) Allergic reaction requiring administration of Epi-Pen;¶

(n) Severe bleeding or stitches;¶

(o) Shock or confused state;¶

(p) Near-drowning.¶

(19) "Substitute Provider" means a person who acts as the child's primary caregiver in the temporary absence of the provider.¶

(20) "Toddler" means a child who is at least 12 months of age but is not preschool-age.¶

(21) "Unsupervised Access to 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.¶

(22) "Useable Exit" means an unobstructed door or window through which the provider and the children can evacuate the child care facility in case of a fire or emergency. Doors must be able to be opened from the inside without a key.¶

(a) For buildings built before July 1, 2010, window openings must be at least 20 inches wide and at least 22 inches in height, with a net clear opening of five square feet (at least 720 square inches) and a sill no more than 48 inches above the floor.¶

(b) For buildings built after July 1, 2010, window openings must be at least 20 inches wide and at least 24 inches in height, with a net clear opening of five square feet (at least 720 square inches) and a sill no more than 44 inches above the floor.

Statutory/Other Authority: ORS 326.425(7)

Statutes/Other Implemented: ORS 329A.505

AMEND: 414-180-0025

RULE SUMMARY: Updates definition of infant in Table A (from "6 weeks of age" to "birth") to align with ODHS definition.

CHANGES TO RULE:

414-180-0025

Safety ¶

- (1) The room temperature must be at least 68°F during the hours which child care children are in care.¶
- (2) Rooms child care children are predominantly occupying must have a combination of natural and artificial lighting.¶
- (3) Floors must be free of splinters, large unsealed cracks, sliding rugs and other hazards.¶
- (4) Potentially aggressive animals must not be in the same physical space as the children.¶
- (5) Children shall be protected from fire and safety hazards. Providers must have the following protections in place:¶
 - (a) All exposed electrical outlets in rooms used by preschool or younger children must have hard-to-remove protective caps or safety devices installed when the outlet is not in use.¶
 - (b) Extension cords shall not be used as permanent wiring;¶
 - (c) All appliance cords must be in good condition;¶
 - (d) Multiple connectors for cords shall not be used;¶
 - (e) A grounded power strip outlet with a built-in over-current protection may be used;¶
 - (f) A stable barrier shall be installed to prevent children from falling into hazards, including, but not limited to: fireplaces, heaters and woodstoves that are in use when child care children are present;¶
 - (g) A secure barrier shall be placed at the top and/or bottom of all stairways accessible to infants and toddlers;¶
- (6) The child care facility has a working smoke detector on each floor level and in any area where a child naps.¶
- (7) Cleaning supplies, paints, matches, lighters, and any plastic bags large enough to fit over a child's head kept under child-safety lock.¶
- (8) Other potentially dangerous items, such as medicine, drugs, sharp knives and poisonous and toxic materials kept under child-safety lock.¶
- (9) Firearms, BB guns, pellet guns and ammunition kept under lock, with ammunition stored and locked separately. Firearms, BB guns and pellet guns must remain unloaded;¶
- (10) If any preschool age or younger children are in care, poisonous plants must be kept out of the reach of children;¶
- (11) All clear glass panels in doors clearly marked at child level.¶
- (12) Each provider must ensure that the child care facility where care is provided meets all of the following standards:¶
 - (a) Each floor level used by a child has two useable exits to the outdoors (a sliding door or window that can be used to evacuate a child is considered a useable exit). If a second floor is used for child care, the provider must have a written plan for evacuating occupants in the event of an emergency.¶
 - (b) The child care facility has a working telephone or telephone service in operating condition.¶
 - (c) Emergency telephone numbers for fire, ambulance, police and poison control and the child care facility address must be posted in a visible location.¶
 - (d) The building, grounds, water supply, and toys, equipment and furniture used by children must be maintained in a hazard-free condition.¶
 - (e) Broken toys, furniture and equipment must be removed from areas accessible to children.¶
- (13) Wading pools are prohibited for wading.¶
- (14) The provider is responsible for the children in care. At all times the provider must:¶
 - (a) Be within sight or sound of all children;¶
 - (b) Be aware of what each child is doing;¶

- (c) Be near enough to children to respond when needed.¶¶
 - (15) A center-based child care facility may not exceed the ratios and group sizes in Table A.¶¶
 - (16) In a mixed-age group of children, the number of caregivers and group size shall be determined by the age of the youngest child in the group.¶¶
 - (17) 414-180-0025(15) and 414-180-0025(16) apply to center-based child care defined as a child care facility located in a building constructed as other than a single-family dwelling.¶¶
 - (18) The provider must have a written plan for evacuating and removing children to a safe location in an emergency. The plan must be posted in the child care facility, familiar to the children and the caregivers, and practiced at least every other month and must include:¶¶
 - (a) Procedures for notifying parents or other adults responsible for the children, of the relocation and how children will be reunited with their families;¶¶
 - (b) Procedures to address the needs of individual children, including infants and toddlers, children with special needs and children with chronic medical conditions;¶¶
 - (c) An acceptable method to ensure that all children in attendance are accounted for;¶¶
 - (d) Procedures for handling natural disasters (e.g. fire, earthquake, etc.) and man-caused events, such as violence at a child-care facility;¶¶
 - (e) Procedures in the event that children must shelter-in-place or if the child-care facility must be locked-down so that no one can enter or leave; and¶¶
 - (f) Procedures for maintaining continuity of child care operations.¶¶
 - (19) If a caregiver is transporting children, the caregiver must have a valid driver's license and proof of appropriate insurance.¶¶
 - (20) The number of children transported shall not exceed the number of seat belts or child safety systems available in the vehicle.¶¶
 - (21) The provider must take precautions to protect children from vehicular traffic. The provider shall:¶¶
 - (a) Require drop off and pick up only at the curb or at an off-street location protected from traffic.¶¶
 - (b) Assure that any adult who supervises drop-off and loading can see and assure that children are clear of the perimeter of all vehicles before any vehicle moves.¶¶
 - (22) The following vehicles may be used to transport child care children:¶¶
 - (a) A vehicle manufactured to carry fewer than ten passengers;¶¶
 - (b) A school bus or a multi-function school activity bus;¶¶
 - (c) A vehicle manufactured to carry ten or more passengers that was manufactured in 2010 or after; or¶¶
 - (d) A vehicle manufactured to carry ten or more passengers that was manufactured before 2010, with the following conditions:¶¶
 - (A) Travel speed may not exceed 50 mph; and¶¶
 - (B) The vehicle must have an annual safety inspection by a garage, dealership or auto repair shop. Proof of inspection must be on the form provided by the Early Learning Division or on a form provided by the inspector which contains the same information.¶¶
 - (23) The provider must have a written statement from the parent(s) regarding whether or not the provider is authorized to:¶¶
 - (a) Take a child on a field trip or other activity outside the child care facility or participate in any water activity; and¶¶
 - (b) Transport a child to or from school or allow a child to bus or walk to or from school or child care facility.
- Statutory/Other Authority: ORS 326.425(7)
 Statutes/Other Implemented: ORS 329A.505

RULE ATTACHMENTS DO NOT SHOW CHANGES. PLEASE CONTACT AGENCY REGARDING CHANGES.

OAR 414-180-0025(15) Table A

Age of Children	Minimum Number of Caregivers to Children	Maximum Number of Children in a Group
Birth through 23 Months	1:4	8
24 Months of Age through 35 Months	1:5	10
36 Months of Age to Attending Kindergarten	1:10	20
Attending Kindergarten and Older	1:15	30