



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

Amended September 2, 2021

Contents

1. Authority, Applicability, and Definitions	2
2. Emergency Child Care Facilities	3
A. Generally	3
B. Eligibility to be Approved	3
C. Application for Approval	4
D. Limitations on Applications.....	4
E. Conditions on Approvals	4
F. Health and Safety Requirements	4
G. Complaints, Noncompliance, Investigations, Inspections, and Findings	5
H. Denial, Suspension, and Revocation of Approval	5
3. Exceptions	6
4. Emergency Background Check.....	6

I. Authority, Applicability, and Definitions

- A. As authorized by [Executive Order](#) (“EO”) 21-15 as amended by EO 21-31, 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 and requirements for temporary unlicensed emergency childcare facilities and Emergency Background Checks (“Order”).
- B. This Order supersedes the order issued June 30, 2021. For individuals or entities operating temporary sites as emergency child care facilities, referred to in EOs 21-15 and 21-31 as temporary unlicensed emergency childcare facilities, this Order continues rule changes from the June 30, 2021 Order pertaining to Emergency Child Care Facilities on various topics, updates requirements for Emergency Child Care Facilities, allows new Emergency Child Care Facility approvals if certain criteria are met, and provides that all new Emergency Child Care Facility approvals can remain effective through December 31, 2021. The Order continues the Emergency Background Check (“EBC”), allows new EBC applications to be accepted and approved if certain criteria are met, and provides that all EBC approvals can remain effective through December 31, 2021 if a federal waiver extension is approved.
- C. These temporary changes are effective immediately and expire at the time the Governor lifts the emergency declaration or as otherwise indicated in this Order, whichever comes first.
- D. The following definitions apply to this Order:
 - a. “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.
 - b. “Legal action” means an order suspending or revoking an Emergency Child Care Facility approval or the imposition of conditions on the approval.
 - c. “Temporary Unlicensed Emergency Child Care Facility” or “temporary unlicensed childcare facility” means a temporary site for Emergency Child Care approved by OCC pursuant this Order to provide child care during the COVID-19 state of emergency. It is a type of Emergency Child Care Facility.
 - d. “Hospital” has the meaning as provided in ORS 442.015(15).¹

¹ Per ORS 442.015(15) “Hospital” means:

(a) A facility with an organized medical staff and a permanent building that is capable of providing 24-hour inpatient care to two or more individuals who have an illness or injury and that provides at least the following health services:

- (A) Medical;
- (B) Nursing;
- (C) Laboratory;
- (D) Pharmacy; and
- (E) Dietary; or

(b) A special inpatient care facility as that term is defined by the authority by rule.

2. Emergency Child Care Facilities

A. Generally

- a. Pursuant to EO 21-31 which amends EO 21-15, "An entity or individual can be approved to operate a temporary unlicensed emergency childcare facility as authorized by order of the Early Learning Division if the entity or individual meets and complies with all requirements for emergency childcare as provided by the Early Learning Division, including any conditions imposed on the emergency childcare approval. The Early Learning Division may issue guidance to implement this directive."
- b. All Emergency Child Care Facility approvals are rescinded effective January 1, 2022, unless surrendered earlier, or suspended or revoked earlier pursuant to Sections 2(B)(c) F(d) and H.

B. Eligibility to be Approved

- a. An individual whose enrollment in the Central Background Registry ("CBR") 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 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. 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 or Emergency 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, emergency child care requirements, or requirements applicable to a child care license.

C. Application for Approval

- a. 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 requirements. The application to open an Emergency Child Care Facility is available [here](#).
- b. For 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, 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.
- d. 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 Facility applications will not be accepted unless OCC determines that either (i) the child care will occur on the premises of a hospital or of another health care facility providing inpatient treatment for COVID-19, or (ii) the child care will only serve employees of a hospital or of another health care facility providing inpatient treatment for COVID-19 and there a demonstrated lack of child care capacity in the proposed service area. These requests will be processed on a case-by-case basis.

E. Conditions on Approvals

- a. OCC may impose conditions 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 staff of facilities approved as a Temporary Unlicensed Emergency Child Care Facility must either be enrolled in the OCC Central Background Registry or have completed and cleared the OCC Emergency Background Check. A facility approved as a Temporary Unlicensed Emergency Child Care Facility 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. Operators of Temporary Unlicensed Emergency Child Care Facilities, must follow all the requirements in the Emergency Child Care Health and Safety Checklist, available [here](#).
- c. The experienced child care provider that applied for and was approved to open a Temporary Unlicensed Emergency Child Care Facility must be in the Emergency Child Care Facility at least half of the hours that the facility is in operation; however, another person qualified as an experienced child care provider and approved by OCC may substitute for the approved experienced child care provider for some or all of required number of hours. The hours shall be calculated on a weekly basis, except for emergency absences. The time on-site must include time spent directly observing staff and children.
- d. Emergency Child Care Facilities must also follow all other state rules applicable to child care facilities. OCC may suspend or revoke the Emergency Child Care Facility approval if a Temporary Unlicensed Emergency Child Care Facility is determined by the issuing agency to have violated such other state rules and OCC has determined that such violation endangers child care children.

G. 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. Temporary Unlicensed Emergency Child Care Centers must post all findings letters issued by OCC near the entrance, or in some other area of the facility, where the findings letters may be clearly viewed by the parent(s) of the children in care.
- e. Any finding against a Temporary Unlicensed Emergency Child Care Facility 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.

H. Denial, Suspension, and Revocation of Approval

- a. OCC may 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 Emergency Child Care Facility.
 - 2. The Emergency Child Care Facility has not maintained compliance with the applicable requirements.

3. OCC is unable to ensure compliance by the Emergency Child Care Facility without 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. Exceptions

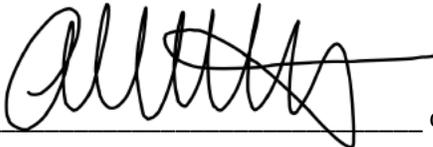
- A. OCC may grant exceptions to the Emergency Child Care Health and Safety Checklist on a case-by-case or program-type basis.
- B. Approval of an exception may be based on the size of facility, staffing, compliance history, and the impact of the proposed exception on the ability of the facility to comply with the intent of the Emergency Child Care Health and Safety Checklist.

4. 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 LEDS (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 may deny, cancel, or revoke an Emergency Background Check approval at any time if OCC has received information indicating that the person poses a risk to children. An order to suspend or revoke an Emergency Background Check approval shall take effect immediately upon email, mail, or personal delivery notice to the individual. The individual 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. An individual whose Emergency Background Check approval is denied, canceled, or revoked may not provide child care in an Emergency Child Care Facility unless enrolled in the Central Background Registry.
- C. For licensed child care facilities, an Emergency Background Check approval allows the following:
 - a. In a Certified Child Care Center, the approval permits an individual to serve as an Aide 1. The individual must be supervised at all times by Teacher or Aide 2 qualified staff.

- b. In a Certified Family Child Care Home, the approval permits an individual to serve as an Assistant 1. The individual must be supervised at all times by the Provider or an Assistant 2.
- D. Applications for new Emergency Background Check approvals will be accepted only from individuals currently volunteering, employed, or associated with an Emergency Child Care Facility or individuals seeking to volunteer or be employed or associated with an Emergency Child Care Facility.
- E. Pursuant to EO 21-31 which amends EO 21-15, all Emergency Background Check approvals can remain effective through December 31, 2021, subject to the processes detailed in Section 4(B) above. However, if Oregon's request to the Office of Child Care of the U.S. Department of Health & Human Services for an extension of the waiver of Child Care and Development Fund requirements that allows Oregon to offer the Emergency Background Check is not granted, Emergency Background Check approvals will remain effective only through September 30, 2021.

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

So ordered by  on September 2, 2021.
Alyssa Chatterjee, Acting Early Learning System Director