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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 414
OREGON DEPARTMENT OF EDUCATION
EARLY LEARNING DIVISION

FILED

02/27/2022 4:29 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Rules for Baby Promise program, established in HB 2024 of the 2019 Oregon Legislative Session.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 03/23/2022 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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700 Summer St. NE
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: 03/16/2022

TIME: 5:30 PM - 6:30 PM

OFFICER: Remy Watts

ADDRESS: Virtual access only

700 Summer St. NE

Salem, OR 97301

SPECIAL INSTRUCTIONS:

Please register for the meeting by 5 p.m. on March 16, 2022. Please arrive to the meeting no later than 5:45 p.m.

NEED FOR THE RULE(S)

HB 2024 of the 2019 Oregon Legislative Session requires the Early Learning Division to stand up a high-quality infant and toddler care program established under the bill. These new rules set up the new Baby Promise Program.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

ORS 414.714, https://www.oregonlegislature.gov/bills_laws/ors/ors417.html

HB 2024 of 2019 Oregon Legislative Session,

<https://olis.oregonlegislature.gov/liz/2019R1/Measures/Overview/HB2024>

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

Baby Promise provides free or low-cost, high-quality daycare to low-income families. Rule language has been evaluated by a Rulemaking Advisory Committee and internal Equity Advisory Committee for equity impacts to providers, early care educators, and families.

FISCAL AND ECONOMIC IMPACT:

Organizations that apply and are approved to administer Baby Promise programs will receive state monies to move forward with approved programming. There is no anticipated adverse impact on organizations whose programs are denied funding or do not apply for funding.

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) There are no anticipated adverse impacts for units of local governments, and members of the public are not likely to be economically affected by the rule(s). If local child care system entities (Child Care Resource & Referral Agencies) apply and are funded, they will be economically bolstered to serve local populations.

(2)(a) As a new pilot program, the number of small businesses subject to the rules is unknown; the types of small businesses will be child care providers providing high-quality, culturally & linguistically responsive infant and toddler care.

(b) There would be a minimal cost to a small business to apply to the Baby Promise program through their local CCR&R entity, who will provide technical assistance in applications. Reporting, recordkeeping, and other administrative costs would be reimbursable expenses for awarded Baby Promise Provider dollars.

(c) There are no anticipated costs to small businesses for professional services, equipment supplies, labor and increased administration to comply with the rules. Any small business (child care provider) accepted as a Baby Promise Provider will receive funding to expand services.

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

The Early Learning Division has formed a Rules Advisory Committees with stakeholders from across the state, including organizations serving populations representing racial, ethnic, geographic, socioeconomic, and linguistic diversity, to inform the development of the administrative rules. The Early Learning Division will seek additional public comments by posting drafts of the administrative rules on its website and seeking comments both in writing and through a public hearing in March.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

414-480-0000, 414-480-0005, 414-480-0010, 414-480-0015, 414-480-0020, 414-480-0025, 414-480-0030, 414-480-0035, 414-480-0040, 414-480-0045

ADOPT: 414-480-0000

RULE SUMMARY: Adds further detail to purpose of program.

CHANGES TO RULE:

414-480-0000

Purpose

The purpose of the Baby Promise Program is to increase and sustain the supply and availability of high-quality infant and toddler care for marginalized families furthest from opportunity.

Statutory/Other Authority: 417.784

Statutes/Other Implemented: 417.784

RULE SUMMARY: Necessary definitions for the rule set with appropriate statute references.

CHANGES TO RULE:

414-480-0005

Definitions

The following definitions apply to Oregon Administrative Rules 414-480-0000 through 414-480-0060.

- (1) "Baby Promise Program" means the infant and toddler care program described in ORS 417.784.
 - (2) "Baby Promise Provider" or "Provider" means a local entity as defined in ORS 417.784 that receives funding to provide infant and toddler services under the Baby Promise Program.
 - (3) "Operations Manual" refers to the document supplied by the Early Learning Division, which outlines how to implement the Baby Promise Program for Child Care Resource and Referral Agencies and Baby Promise Providers.
 - (4) "Early Care Educator" means a person or entity that provides care, supervision, and guidance, on a regular basis, of a child who is unaccompanied by a parent, guardian, or custodian, during a part of the 24 hours in a day.
 - (5) "Child Care Resource and Referral Agency" or "CCR&R" means an entity established under ORS 329A.100 to 329A.135.
 - (6) "Culturally Specific Organization" means an organization that serves a particular cultural community and is primarily staffed and led by members of that community; these organizations demonstrate intimate knowledge of lived experience of the community, including but not limited to the impact of structural and individual racism or discrimination on the community; knowledge of specific disparities documented in the community and how that influences the structure of their program or service; ability to describe the community's cultural practices, health and safety beliefs and practices, positive cultural identity/pride/resilience, immigration dynamics, religious beliefs, etc., and how their services have been adapted to those cultural norms.
 - (7) "Division" means the Early Learning Division of the Oregon Department of Education.
 - (8) "Early Learning Council" or "Council" refers to the governing body of the Early Learning Division as established by ORS 326.425.
 - (9) "Early Learning Hub" or "Hub" means an entity designated by regional partners to coordinate early learning services under ORS 417.827.
 - (10) "Employment-Related Day Care (ERDC)" means the subsidy program to benefit families with low income as described in ORS 329A.500.
 - (11) "Full-Day Services" means the hours of care provided to families by Baby Promise Providers as determined by community need and established in agreements between Baby Promise Providers and CCR&Rs. Guidance to determine length of full-day services will be provided to CCR&Rs in the Baby Promise Operations Manual.
 - (12) "Oregon Registry" means the voluntary registry at the Oregon Center for Career Development in Childhood Care and Education at Portland State University that documents the training, education and experience of individuals who work in childhood care and education.
 - (13) "Continuity of Care" means that children and their primary early care educator(s) remain together for more than one year, often for the first three years of a child's life.
 - (14) "Responsive Caregiving" means that at all times early care educators must be actively anticipating and be responsive to the cues and needs of each child while interacting in a sensitive, caring, and dependable manner.
 - (15) "Culturally Responsive Caregiving" means care provided by an early care educator that serves a particular cultural community; the early care educator demonstrates intimate knowledge of lived experience of the community, including but not limited to the impact of structural and individual racism or discrimination on the community; knowledge of specific disparities documented in the community and how that influences the structure of their program or service; ability to describe the community's cultural practices, health and safety beliefs and practices, positive cultural identity/pride/resilience, immigration dynamics, religious beliefs, etc., and how their services have been adapted to those cultural norms.
 - (16) "Spark Quality Rating and Improvement System" means the system established through ORS 329A.261 which establishes a set of progressively higher standards used to evaluate the quality of an early learning and development program and to support program improvement.
 - (17) "Early Care & Education Sector Plan" or "ECE Sector Plan" means the regional plan that each Early Learning Hub is tasked with creating under ORS 329.172. Each ECE Sector Plan outlines a vision and roadmap for ECE Services in the region, and identifies specific priority populations for publicly funded ECE Services.
 - (18) "State" means the state of Oregon.
- Statutory/Other Authority: 417.784
Statutes/Other Implemented: 417.784

ADOPT: 414-480-0010

RULE SUMMARY: Criteria for applying for services underneath the Baby Promise program.

CHANGES TO RULE:

414-480-0010

Child and Family Eligibility Criteria

Child and family eligibility criteria will be outlined in the Operations Manual distributed to CCR&Rs.

Statutory/Other Authority: 417.784

Statutes/Other Implemented: 417.784

ADOPT: 414-480-0015

RULE SUMMARY: Outlining categories of organizations that can apply to be a Baby Promise provider.

CHANGES TO RULE:

414-480-0015

Baby Promise Provider Eligibility

The following types of entities are eligible to apply to Child Care Resource & Referral Agencies to be a Baby Promise Provider:¶

(1) Child Care Providers:¶

(2) Community-based organizations:¶

(3) Culturally Specific Organizations:¶

(4) Early Learning Hubs as designated in ORS 417.827:¶

(5) Education service districts:¶

(6) Federal Head Start programs:¶

(7) Federally recognized Oregon Tribal Nations:¶

(8) Oregon Pre-Kindergarten grantees:¶

(9) Private preschools:¶

(10) Public schools:¶

(11) Public charter schools; and¶

(12) Relief Nurseries as defined in ORS 417.786.

Statutory/Other Authority: 417.784

Statutes/Other Implemented: 417.784

ADOPT: 414-480-0020

RULE SUMMARY: Requirements that a Baby Promise provider must adhere to in order to continue with the Baby Promise program.

CHANGES TO RULE:

414-480-0020

Minimum Program Requirements

(1) Baby Promise Providers must demonstrate a commitment and ability to:

(a) Meet the needs and preferences of identified priority population families in the Early Care & Education Sector Plans approved by the Division; and

(b) Provide full-day, full-year services for eligible infants and toddlers; and

(c) Follow all requirements within contracts with the CCR&Rs and as outlined in the Operations Manual; and

(d) Provide services that are inclusive of all children and families, regardless of race/ethnicity, socioeconomic status, geographic location, religion, gender or sexual orientation, marital status, national origin, ancestry, age, political beliefs, or disability.

(2) Child Care Resource & Referral Agencies will provide monitoring of these Baby Promise Program requirements.

(3) A Baby Promise Provider may engage one or more subcontractors to provide one or more services in connection with the care offered by the early care educator, including but not limited to services such as transportation, food preparation, janitorial services, bookkeeping, staff training, or teaching. CCR&Rs may require in agreements that any subcontractors hired by the Provider or subcontracts entered into by the Provider are subject to review and approval by the CCR&R. A Provider may not subcontract the performance of its entire care operation to another entity, nor may the caregiver negate or transfer obligation under an agreement with the CCR&R to provide the care described in the agreement. The Provider, not its contractor, must engage or contract directly with the parent, guardian or similar authorized representative of any child enrolled in the Provider's program and the early care educator must remain responsible for the provision of care to such parent, guardian or authorized representative, despite the use of one or more subcontractors to fulfill the early care educator's contractual obligations.

Statutory/Other Authority: 417.784

Statutes/Other Implemented: 417.784

ADOPT: 414-480-0025

RULE SUMMARY: Outlining qualifications for individual early care educators who work in the Baby Promise programs.

CHANGES TO RULE:

414-480-0025

Minimum Qualifications for Early Care Educators

There is more than one pathway to become a highly qualified early care educator. Qualifications for early care educators are outlined in the Operations Manual. Programs with early care educators who do not meet qualification requirements must work with their CCR&R Agency to create a professional development plan and timeline for the early care educator to meet the minimum requirements.

Statutory/Other Authority: 417.784

Statutes/Other Implemented: 417.784

ADOPT: 414-480-0030

RULE SUMMARY: Reflecting Preschool Promise, the Early Learning Council will determine minimum and target salaries for any early care educators working within the Baby Promise programs.

CHANGES TO RULE:

414-480-0030

Minimum Salary Requirements

The Early Learning Council shall establish a methodology to determine a target and minimum salary for early care educators and early care educator assistants in Baby Promise.

Statutory/Other Authority: 417.784

Statutes/Other Implemented: 417.784

ADOPT: 414-480-0035

RULE SUMMARY: Outlining how the ELD will administer funding for Baby Promise programs to CCR&Rs.

CHANGES TO RULE:

414-480-0035

Administration

(1) The Division will administer agreements with Child Care Resource and Referral Agencies that provide program guidelines.¶

(2) The Division will provide technical assistance to Child Care Resource and Referral Agencies.¶

(3) Child Care Resource and Referral Agencies must monitor compliance with Baby Promise Program requirements of subcontracted providers. ¶

(4) Child Care Resource and Referral Agencies must provide data and information as requested by the Division.

Statutory/Other Authority: 417.784

Statutes/Other Implemented: 417.784

ADOPT: 414-480-0040

RULE SUMMARY: Giving ELD authority to develop monitoring processes for the Baby Promise program.

CHANGES TO RULE:

414-480-0040

Program Monitoring and Evaluation

Child Care Resource and Referral Agencies and Baby Promise Providers will be monitored and evaluated on program quality and outcomes using a process established by the Division.

Statutory/Other Authority: 417.784

Statutes/Other Implemented: 417.784

ADOPT: 414-480-0045

RULE SUMMARY: Allows ELD to collect information from Baby Promise providers for monitoring and evaluation.

CHANGES TO RULE:

414-480-0045

Reporting

Upon request by the Division, Child Care Resource and Referral Agencies and Baby Promise Providers must make available to the Division information and data that the Division determines is necessary to monitor and evaluate the Baby Promise program.

Statutory/Other Authority: 417.784

Statutes/Other Implemented: 417.784