

OFFICE OF THE SECRETARY OF STATE

SHEMIA FAGAN
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION

STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 414
OREGON DEPARTMENT OF EDUCATION
EARLY LEARNING DIVISION

FILED

02/27/2022 5:15 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: ELD updates policies around allergic reactions to comply with federal CCDF requirements.

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.

CONTACT: Remy Watts
971-701-1535
remy.watts@ode.oregon.gov

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: 03/15/2022

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 event no later than 5 p.m. on Tuesday, March 15. Please arrive to the event no later than 5:45 p.m.

NEED FOR THE RULE(S)

ELD must update policies around children in care who are at risk of allergic reactions to comply with federal CCDF requirements. These required changes were identified this last fall by the federal Office of Child Care as part of their review of Oregon's CCDF State Plan.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

Change in federal CCDF requirements: <https://childcareta.acf.hhs.gov/resource/ccdf-health-and-safety-requirements-brief-3-prevention-and-response-emergencies-due-food>

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

There is no anticipated negative impact to racial equity in the state as a result of this rule language update.

FISCAL AND ECONOMIC IMPACT:

There are no anticipated negative fiscal or economic impacts.

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) Changes in rule are within ELD's current capacity.

(2)(a) There are 868 Certified Family Child Care Homes and 1173 Certified Centers.

(b) There is no anticipated increase in reporting, recordkeeping, or administrative activities for facilities to comply with the rule.

(c) There is no anticipated increased cost to professional services, equipment supplies, labor or administration.

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

English and Spanish engagement sessions are scheduled with large groups of child care providers on the rule updates.

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

There are no anticipated fiscal impacts to child care providers.

RULES PROPOSED:

414-205-0100, 414-300-0220, 414-350-0180

AMEND: 414-205-0100

RULE SUMMARY: Modification to allergy care requirements in response to Child Care & Development Fund requirements.

CHANGES TO RULE:

414-205-0100

Health ¶¶

(1) All caregivers shall take appropriate precautions to prevent shaken baby syndrome and abusive head trauma.¶¶

(2) The home must be a healthy environment for children.¶¶

(a) No person shall smoke or carry any lighted smoking instrument, including an e-cigarette or vaporizer in the family child care home or within ten feet of any entrance, exit, or window that opens or any ventilation intake that serves an enclosed area, during child care hours or when child care children are present. No person shall use smokeless tobacco in the family child care home during child care hours or when child care children are present.

No person shall smoke, carry any lighted smoking instrument, including an e-cigarette, or vaporizer or use smokeless tobacco in motor vehicles while child care children are passengers.¶¶

(b) No one shall consume alcohol on the family child care home premises during child care hours or when child care children are present. No one shall be under the influence of alcohol on the family child care home premises during child care hours or when child care children are present.¶¶

(c) Notwithstanding OAR 414-205-0000(5), no one shall possess, use or store illegal controlled substances on the family child care home premises. No one shall be under the influence of illegal controlled substances on the family child care home premises.¶¶

(d) Notwithstanding OAR 414-205-0000(5), no one shall grow or distribute marijuana on the premises of the registered family child care home. No adults shall use marijuana on the registered family child care home premises during child care hours or when child care children are present.¶¶

(e) No adult under the influence of marijuana shall have contact with child care children.¶¶

(f) Notwithstanding OAR 414-205-0000(5), marijuana plants shall not be grown or kept on the registered family child care home premises.¶¶

(g) All medical marijuana must be kept in its original container if purchased from a dispensary and stored under child safety lock. All medical marijuana derivatives and associated paraphernalia must be stored under child safety lock.¶¶

- (h) Effective July 1, 2015, all marijuana, marijuana derivatives and associated paraphernalia must be stored under child safety lock.¶
- (i) There must be at least one flush toilet and one hand-washing sink available to children. Steps or blocks must be available to ensure children can use the toilet and sink without assistance. Drinking water for preparing food, infant formula, drinking or cooking shall not be obtained from bathroom sinks or diaper changing sinks.¶
- (j) The room temperature must be at least 68°F during the hours the child care business is conducted.¶
- (k) Rooms occupied by children must have a combination of natural and artificial lighting.¶
- (l) Floors must be free of splinters, large unsealed cracks, sliding rugs and other hazards.¶
- (3) First aid supplies and a chart or handbook of first aid instructions shall be maintained in one identified place and kept out of reach of children.¶
 - (a) The first aid supplies shall include: band aids, adhesive tape, sterile gauze pads, soap or sealed antiseptic towelettes or solution to be used as a wound cleaning agent, scissors, disposable plastic gloves for handling blood spills, a solution for disinfecting after a blood spill, a sanitary temperature taking device and CPR mouth guards.¶
 - (b) A first aid kit and a copy of each child's emergency medical information including a medical release form shall be taken any time the caregiver is transporting child care children or taking child care children on field trips.¶
- (4) Infants must be laid on their backs on a flat surface for sleeping.¶
- (5) Illness:¶
 - (a) A provider shall not admit or retain in care, except with the written approval of the local health office, a child who:¶
 - (A) Is diagnosed as having or being a carrier of a child care restrictable disease, as defined in Oregon Health Authority administrative rule; or¶
 - (B) Has one of the following symptoms or combination of symptoms or illness;¶
 - (i) Fever over 100°F, taken under the arm;¶
 - (ii) Diarrhea (more than one abnormally loose, runny, watery or bloody stool);¶
 - (iii) Vomiting;¶
 - (iv) Nausea;¶
 - (v) Severe cough;¶
 - (vi) Unusual yellow color to skin or eyes;¶
 - (vii) Skin or eye lesions or rashes that are severe, weeping or pus-filled;¶
 - (viii) Stiff neck and headache with one or more of the symptoms listed above;¶
 - (ix) Difficulty breathing or abnormal wheezing;¶
 - (x) Complaints of severe pain.¶
 - (b) A child, who, after being admitted into child care, shows signs of illness, as defined in this rule, shall be separated from the other children, and the parent(s) notified and asked to remove the child from the provider's home as soon as possible.¶
- (6) If a child has mild cold symptoms that do not impair his/her normal functioning, the child may remain in the provider's home and the parent(s) notified when they pick up their child.¶
- (7) Parents must be notified if their child is exposed to an outbreak of a communicable disease.¶
- (8) Prescription and non-prescription medication shall only be given to a child if the provider has written authorization from the parent, as required in OAR 414-205-0130(2)(b).¶
- (9) Prescription and non-prescription medications must be properly labeled and stored.¶
 - (a) Non-prescription medications or topical substances must be labeled with the child's name.¶
 - (b) Prescription medications must be in the original container and labeled with the child's name, the name of the drug, dosage, directions for administering, and the physician's name.¶
 - (c) Medication requiring refrigeration must be kept in a separate, tightly covered container, marked "medication," in the refrigerator.¶
- (10) Sunscreen is considered a non-prescription medication and may be used for child care children under the following conditions:¶
 - (a) Providers must obtain written parental authorization prior to using sunscreen.¶
 - (b) One container of sunscreen may be used for child care children unless a parent supplies an individual container for their child. The sunscreen shall be applied in a manner that prevents contaminating the container.¶
 - (A) Parents must be informed of the type of product and the sun protective factor (SPF).¶
 - (B) Parents must be given the opportunity to inspect the product and active ingredients.¶
 - (c) If sunscreen is supplied for an individual child care child, the sunscreen must be labeled with the child's first and last name and must be used for only that child.¶
 - (d) Providers must reapply sunscreen every two hours while the child care children are exposed to the sun.¶
 - (e) Providers shall use a sunscreen with an SPF of 15 or higher and must be labeled as "Broad Spectrum".¶
 - (f) Providers shall not use aerosol sunscreens on child care children.¶
 - (g) Sunscreen shall not be used on child care children younger than six months.¶

(h) Child care children over six years of age may apply sunscreen to themselves under the direct supervision of the provider or staff member.¶

(11) Parents must be informed daily of any medications given to their child or any injuries their child has had.¶

(12) ~~If a child with allergies is enrolled who needs a specific plan for caring for that child, such a plan shall be developed in writing between the provider, parents, and if necessary, outside specialists.~~ A written care plan must be developed for each enrolled child with a known allergy. The plan must include instructions regarding the food(s) to which the child is allergic and steps to be taken to avoid that food; signs and symptoms of an allergic reaction; and a detailed treatment plan including the names, doses, and methods of prompt administration of any medication in response to allergic reactions.¶

(a) The parent must be notified immediately of any suspected allergic reactions or if the child consumed or came in contact with the problem food even if a reaction did not occur.¶

(b) If epinephrine is administered, emergency medical services must be contacted immediately.¶

(c) All staff who come in contact with that child shall be fully aware of the plan and staff that prepare and serve food must be fully aware of the plan.¶

(d) Specific food allergies must also be shared with all staff that prepare and serve food.¶

(e) Each child's food allergies should be easily accessible for staff but not available to those who are not parents or guardians of the enrolled child.¶

(13) The provider must provide or ensure the availability of meals and snacks appropriate for the ages and needs of the children served.¶

(a) Meals and snacks must be based on the guidelines of the USDA Child Care Food Program.¶

(b) Foods must be stored and maintained at the proper temperature.¶

(c) Foods must be prepared and served according to the minimum standards for food handler certification.¶

(d) Infants must be held or sitting up for bottle feeding. Propping bottles is prohibited.¶

(e) Children shall not be laid down with a bottle for sleeping.¶

(14) Children who cannot feed themselves shall be held or, if able to sit alone, fed in an upright position.¶

(a) Infants up to six months of age shall be held or sitting up in a caregiver's lap for bottle feeding;¶

(b) Bottles shall never be propped. The child or a caregiver shall hold the bottle.¶

(c) Infants no longer being held for feeding shall be fed in a manner that provides safety and comfort.¶

(15) Children of any age shall not be laid down with a bottle.¶

(16) Any animal at the family child care home shall be in good health and be a friendly companion for the children in care.¶

(a) Potentially aggressive animals must not be in the same physical space as the children.¶

(b) Dogs and cats must be vaccinated according to a licensed veterinarian's recommendations.¶

(c) Dogs and cats shall be kept free of fleas, ticks and worms.¶

(17) Animal litter boxes shall not be located in areas accessible to children or areas used for food storage or preparation.¶

(18) Caregivers must be physically present when children are interacting with animals.¶

(19) Exotic animals, including, but not limited to: reptiles (e.g. lizards, turtles, snakes) amphibians, monkeys, hook-beaked birds, baby chicks and ferrets are prohibited unless they are housed in and remain in a tank or other container which precludes any direct contact by children. Educational programs that include prohibited animals and are run by zoos, museums and other professional animal handlers are permitted.¶

(20) Parents must be made aware of the presence of any animals on the premises.

Statutory/Other Authority: ORS 329A.260

Statutes/Other Implemented: ORS 329A

RULE SUMMARY: Update to allergy plan requirements from Child Care & Development Fund requirements.

CHANGES TO RULE:

414-300-0220

Illness or Injury ¶

(1) Illness:¶

(a) A center shall not admit or retain in care, except with the written approval of the local health officer, a child who:¶

(A) Is diagnosed as having or being a carrier of a child care-restrictable disease, as defined in Health Division administrative rules, OAR 333-019-0010; or¶

(B) Has one of the following symptoms, or combination of symptoms, of illness:¶

(i) Fever over 100 degrees F taken under the arm;¶

(ii) Diarrhea (more than one abnormally loose, runny, watery or bloody stool);¶

(iii) Vomiting;¶

(iv) Nausea;¶

(v) Severe cough;¶

(vi) Unusual yellow color to skin or eyes;¶

(vii) Skin or eye lesions or rashes that are severe, weeping, or pus-filled;¶

(viii) Stiff neck and headache with one or more of the symptoms listed above;¶

(ix) Difficult breathing or abnormal wheezing; or¶

(x) Complaints of severe pain.¶

(b) A child who shows signs of illness, as defined in this rule, shall be isolated and the parent(s) notified and asked to remove the child from the center as soon as possible;¶

(c) If a child has mild cold symptoms that do not impair his/her functioning, the child may remain in the center and the parent(s) notified when they pick up their child;¶

(d) A specific place for isolating a child who becomes ill shall be provided. The isolation area:¶

(A) Shall be located where the child can be seen and heard by staff; and¶

(B) Shall be equipped with a cot, mat, or bed for each sick child.¶

(e) An outbreak of a child care restrictable disease, as defined in OAR 333-019-0010, or food poisoning shall be reported immediately to the local health department and posted for the parents of all children who attend the facility.¶

~~(f) If a child with allergies is enrolled who needs a specific plan for caring for that child, such a plan shall be developed in writing between center staff, parents, and if necessary, outside specialists. A written care plan must be developed for each enrolled child with a known allergy. The plan must include instructions regarding the food(s) to which the child is allergic and steps to be taken to avoid that food; signs and symptoms of an allergic reaction; and a detailed treatment plan including the names, doses, and methods of prompt administration of any medication in response to allergic reactions.¶~~

(A) The parent must be notified immediately of any suspected allergic reactions or if the child consumed or came in contact with the problem food even if a reaction did not occur.¶

(B) If epinephrine is administered, emergency medical services must be contacted immediately.¶

(C) All staff who come in contact with that child shall be fully aware of the plan and staff that prepare and serve food must be fully aware of the plan.¶

(D) Specific food allergies must also be shared with all staff that prepare and serve food.¶

(E) Each child's food allergies should be easily accessible for staff but not available to those who are not parents or guardians of the enrolled child.¶

(2) Injuries:¶

(a) All caregivers shall take appropriate precautions to prevent shaken baby syndrome and abusive head trauma.¶

(b) The operator shall have written procedures for handling injuries that shall be made known to all staff, including:¶

(A) Procedure for taking a child to emergency medical care;¶

(B) Routine for treatment of minor injuries; and¶

(C) First aid measures for serious accidents.¶

(c) First aid supplies and a chart or handbook of first aid instructions shall be maintained in one identified place away from food and food-contact surfaces and be available for staff use but kept out of reach of children:¶

(A) The first aid supplies shall include Band-Aids, adhesive tape, sterile gauze pads, soap or sealed antiseptic towelettes or solution to be used as a wound cleaning agent, scissors, disposable plastic gloves for handling blood

spills, chlorine bleach for sanitizing after a blood spill, and a sanitary temperature-taking device;¶
(B) Separate first aid supplies and a copy of each child's medical release form shall be taken on all field trips away from the immediate neighborhood.¶
(d) Injuries or accidents shall be reported to the child's parent(s) on the day of occurrence.¶
(A) A written report of the injury or accident shall be maintained on file;¶
(B) The report shall include the date, child's full name, nature of the injury, witnesses, action taken, and the signatures of reporting staff and parent(s).¶
(e) The injury to or death of ~~death of~~ a child shall be reported to OCC in accordance with OAR 414-300-0030(35)(a) and (b).¶
(3) Emergency Medical Care:¶
(a) The operator shall identify a licensed physician, hospital, or clinic to be used for emergency medical care;¶
(b) In the event of an illness or injury which requires immediate medical care, the director or the substitute director is responsible for securing such care and notifying the parent(s).
Statutory/Other Authority: ORS 657A.260
Statutes/Other Implemented: ORS 657A.260

RULE SUMMARY: Update to allergy plan requirements based on updates from Child Care & Development Fund.

CHANGES TO RULE:

414-350-0180

Illness or Injury ¶

- (1) A provider shall not admit, or retain in care, a child who:¶
 - (a) Is diagnosed as having or being a carrier of a child care-restrictable disease, as defined in Department of Human Services administrative rules, OAR 333-019-0010; or¶
 - (b) Has one of the following symptoms, or combination of symptoms, of illness:¶
 - (A) Diarrhea (more than one abnormally loose, runny, watery or bloody stool);¶
 - (B) Vomiting;¶
 - (C) Fever over 100 degrees F taken under the arm;¶
 - (D) Severe cough;¶
 - (E) Unusual yellow color to skin or eyes;¶
 - (F) Skin or eye lesions or rashes that are severe, weeping, or pus-filled;¶
 - (G) Stiff neck and headache with one or more of the symptoms listed above;¶
 - (H) Difficult breathing or abnormal wheezing; or¶
 - (I) Complaints of severe pain.¶
- (2) A child who, after being admitted, shows signs of illness, as defined in subsection (1) of this rule, shall be isolated and the parent(s) notified and asked to remove the child from the home as soon as possible.¶
- (3) If a child has mild cold symptoms that do not impair his/her functioning, the child may remain in the home and the parent(s) notified when they pick up the child.¶
- (4) A specific place for isolating a child who becomes ill shall be provided. The isolation area shall be:¶
 - (a) Located where the child can be seen and heard by a caregiver; and¶
 - (b) Equipped with a cot, mat, or bed for each sick child.¶
- (5) All caregivers shall take appropriate precautions to prevent shaken baby syndrome and abusive head trauma.¶
- (6) The provider shall identify a licensed physician, hospital, or clinic to be used for emergency medical care:¶
 - (a) The provider shall have written procedures for taking a child to emergency medical care;¶
 - (b) In the event of an illness or injury which requires immediate medical care, the provider is responsible for securing such care and notifying the parent(s).¶
- (7) First aid supplies and a chart or handbook of first aid instructions shall be maintained in one identified place but kept out of reach of children:¶
 - (a) The first aid supplies shall include bandaids, adhesive tape, sterile gauze pads, soap or sealed antiseptic towelettes or solution to be used as a wound cleaning agent, scissors, disposable plastic gloves for handling blood spills, chlorine bleach for sanitizing after a blood spill, a sanitary temperature taking device, and CPR mouthgards; and¶
 - (b) First aid supplies shall be taken on all field trips.¶
- (8) Injuries or accidents shall be reported to the child's parent(s) on the day of occurrence:¶
 - (a) A written report of the injury or accident shall be maintained on file;¶
 - (b) The report shall include the date, child's full name, nature of the injury, witnesses, action taken, and the signatures of the provider and parent(s); and¶
 - (c) The injury to or death of a child shall be reported to OCC in accordance with OAR 414-350-0050(~~911~~)(a) and (c).¶
- (9) No prescription or non-prescription medication, including, but not limited to, pain relievers, sunscreen, cough syrup, diapering and first aid ointments or nose drops, shall be given to a child except under the following conditions:¶
 - (a) A signed, dated, written authorization from the parent(s) is on file;¶
 - (b) Prescription medication is in the original container and labeled with the child's name, the name of the drug, dosage, directions for administering, date and physician's name;¶
 - (c) Non-prescription medication is in the original container, labeled with the child's name, the dosage, and directions for administering;¶
 - (d) A written record of all medications administered, listing, as a minimum, the name of the child, type of medication, the signature of the caregiver administering the medication, date, time, and dosage given, shall be kept;¶
 - (e) All medications shall be secured in a tightly-covered container with a child-proof lock or latch and stored so that they are not accessible to children;¶

- (f) Medications requiring refrigeration shall be kept in the refrigerator in a separate, tightly-covered container, with a child-proof lock or latch, clearly marked "medication"; and¶¶
- (g) Parent(s) shall be informed daily of medication administered to their child.¶¶
- (10) Sunscreen is considered a non-prescription medication and may be used for child care children under the following conditions:¶¶
- (a) Providers must obtain written parental authorization prior to using sunscreen.¶¶
- (b) One container of sunscreen may be used for child care children unless a parent supplies an individual container for their child. The sunscreen shall be applied in a manner that prevents contaminating the container.¶¶
- (A) Parents must be informed of the type of product and the sun protective factor (SPF).¶¶
- (B) Parents must be given the opportunity to inspect the product and active ingredients.¶¶
- (c) If sunscreen is supplied for an individual child care child, the sunscreen must be labeled with the child's first and last name and must be used for only that child.¶¶
- (d) Providers must reapply sunscreen every two hours while the child care children are exposed to the sun.¶¶
- (e) Providers shall use a sunscreen with an SPF of 15 or higher and must be labeled as "Broad Spectrum".¶¶
- (f) Providers shall not use aerosol sunscreens on child care children.¶¶
- (g) Sunscreen shall not be used on child care children younger than six months.¶¶
- (h) Child care children over six years of age may apply sunscreen to themselves under the direct supervision of the provider or staff member.¶¶
- (11) Parents of all children enrolled in the certified family child care home shall be informed of any outbreak of communicable disease within the facility.¶¶
- (12) ~~If a child with allergies is enrolled who needs a specific plan for caring for that child, such a plan shall be developed in writing between the provider, parents, and if necessary, outside specialists. A written care plan must be developed for each enrolled child with a known allergy. The plan must include instructions regarding the food(s) to which the child is allergic and steps to be taken to avoid that food; signs and symptoms of an allergic reaction; and a detailed treatment plan including the names, doses, and methods of prompt administration of any medication in response to allergic reactions.¶¶~~
- (a) The parent must be notified immediately of any suspected allergic reactions or if the child consumed or came in contact with the problem food even if a reaction did not occur.¶¶
- (b) If epinephrine is administered, emergency medical services must be contacted immediately.¶¶
- (c) All staff who come in contact with that child shall be fully aware of the plan and staff that prepare and serve food must be fully aware of the plan.¶¶
- (d) Specific food allergies must also be shared with all staff that prepare and serve food.¶¶
- (e) Each child's food allergies should be easily accessible for staff but not available to those who are not parents or guardians of the enrolled child.

Statutory/Other Authority: ORS 657A.260

Statutes/Other Implemented: ORS 657A.260, 657A.280, 657A.290