

OFFICE OF THE SECRETARY OF STATE

LAVONNE GRIFFIN-VALADE
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE
AND TRIBAL LIAISON



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
DEPARTMENT OF EARLY LEARNING AND CARE

FILED

10/26/2023 9:23 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Amending and Adopting General Rules for All Child Care Facilities

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 11/29/2023 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: Crys O'Grady
971-382-2114
Crys.OGrady@delc.oregon.gov

700 Summer Street NE
#350
Salem, OR 97301

Filed By:
Crys O'Grady
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 11/17/2023

TIME: 5:00 PM - 6:00 PM

OFFICER: Crys O'Grady

REMOTE MEETING DETAILS

MEETING URL: [Click here to join the meeting](#)

PHONE NUMBER: 1-669-254-5252

CONFERENCE ID: 1618186873

SPECIAL INSTRUCTIONS:

Join ZoomGov Meeting: <https://www.zoomgov.com/j/1618186873?pwd=QXNOWDlvTE9SZ2xRNzR6azBxL0xiUT09>

Meeting ID: 161 818 6873

Passcode: 924866

Call-in: +16692545252,,1618186873#

The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting to Crys O'Grady by email at Crys.OGrady@delc.oregon.gov.

NEED FOR THE RULE(S)

The Department of Early Learning and Care, through its Child Care Licensing Division (CCLD), is responsible for licensing and regulating child care. The proposed rules and rule amendments bring more transparency to internal licensing practices and references Oregon Revised Statutes (ORS) that govern child care licensing.

The proposed rule amendments are necessary to implement HB 3073 (2021) and HB 3558 (2023) which provided certain child care providers with the right to union representation in contested case hearings and changed certain definitions of child care. These proposed rules reflect the requirements of implementing HB 3073 (2021) that amended ORS 183.459 and HB 3558 (2023) that amended ORS 329A.250 and ORS 326.430.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

HB 3073 (2021) is available at this link:

<https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/HB3073/Enrolled>

HB3558 (2023) is available at this link:

<https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/HB3558/Enrolled>

For contested cases hearings, the Code of conduct for Non-attorney Representatives at administrative hearings was consulted. The document is available at this link: https://www.doj.state.or.us/wp-content/uploads/2017/06/code_of_conduct_oah_contested.pdf

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

No impact.

FISCAL AND ECONOMIC IMPACT:

The proposed rule amendments may have a moderate financial impact on the Department of Early Learning and Care (DELIC). Administrative costs may be incurred by DELIC if contested case hearings increase as staff work with the Department of Justice (DOJ) and appointed Assistant Attorney General (AAG). The cost will be dependent on staff time and consultation with assigned AAGs.

The proposed rule amendments on complaints, investigations, and definitions may result in additional findings reviews leading up to contested cases, which will have a minor fiscal impact on the agency.

Additionally, these proposed rules and rule amendments may have a positive impact on child care. The proposed rules may result in civil penalties for individuals providing unlawful care. Civil penalties could range from \$750 to \$1500 for each day the person is determined by final order on default or after a contested case hearing to have provided unlawful care. These penalties may encourage more individuals to operate lawful child care and result in additional child care slots for children in families, which would have a positive impact on the economic well-being of Oregon families.

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) No state agencies or local governments are likely to be economically affected by the rule(s). Child care providers and individuals providing unlawful care are likely to be economically affected by the rule(s).

(2) The rule amendments allow for union representation in contested case hearings. The small businesses likely to be impacted are certified family (CF) and registered family (RF) child care providers who are represented by AFSCME.

(a) This will likely impact 1,184 registered family child care providers and 1,037 certified family child care providers.

(b) There is no anticipated cost of compliance to small businesses with the adoption of these rules. These rules will not cause the need for new equipment, supplies, additional staff, or additional training.

(c) RF and CF providers are all eligible to be represented by the union, which is supported by the fees they pay for union participation. Contested case hearings are not required, but are optional for programs.

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

DELC convened a Rules Advisory Committee (RAC) which meet 3 times to review the rule language and fiscal/economic impact of the proposed rules. The RAC convened on 10/11/23, 10/18/23, and 10/25/23. RAC participants represented all types of child care, community representatives from a child care union, AFSCME, and representatives from culturally specific organizations.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

414-075-0000, 414-075-0010, 414-075-0130, 414-075-0230, 414-075-0250, 414-075-0300

ADOPT: 414-075-0000

RULE SUMMARY: OAR 414-075-000 is being adopted to summarize the applicability of the rules in the division pertaining to specific child care program types.

CHANGES TO RULE:

414-075-0000

Applicability of Rules

(1) Except as otherwise specified, these rules apply to all licensed, license-exempt, exempt, and unlicensed child care providers and facilities including: ¶

(a) All licensed facilities including registered family child care homes, certified family child care homes, certified child care centers, and certified school-aged child care centers; ¶

(b) License-exempt child care and exempt care facilities that are required by statute to only employ or contain individuals who are enrolled in the Central Background Registry, including but not limited to, recorded programs and subsidized care facilities. ¶

(c) Exempt care facilities providing or claiming to be providing care defined to not be child care in ORS 329A.250(4)(b)(A) through (H); and ¶

(d) Facilities, providers, and persons providing or alleged to be providing unlawful care as defined in OAR 414-075-0230. ¶

(2) These rules supplant and do not supersede the rules contained in Chapter 414, Divisions, 61, 175, 180, 205, 305, 310, 350, 400, 425, and 450 and pertaining to specific child care program types. In the event of a conflict between such rules and these rules, these rules control. ¶

(3) If any court of law finds that any clause, phrase, or provision of these rules is unconstitutional or invalid for any reason whatsoever, this finding shall not affect the validity of the remaining portion of these rules.

Statutory/Other Authority: ORS 183.459, ORS 329A.346, ORS 329A.350, ORS 329A.360

Statutes/Other Implemented: ORS 183.459, ORS 329A.346, ORS 329A.350, ORS 329A.360

RULE SUMMARY: OAR 414- 075-0010 is being adopted to define the terms used in the division for the child care provider types and types of care subject to the rules.

CHANGES TO RULE:

414-075-0010

Definitions

The following words and terms, when used in OAR 414-075-0000 through 414-075-0300, have the following meanings:

- (1) "Certified Family Child Care Home" or "CF" means a child care facility operated in a building designed as a single family home or other dwelling that is certified to care for no more than 16 children at any one time.
- (2) "CCLD" means the Child Care Licensing Division in the Department of Early Learning and Care.
- (3) "Central Background Registry" or "CBR" means CCLD's registry of individuals who have been approved to be associated with a child care facility in Oregon pursuant to ORS 329A.030 and OAR 414-061-0000 through 414-061-0120.
- (4) "Child Care Child" means any child six weeks of age or older and under 13 years of age, or a child with special needs under the age of 18 who requires a level of care that is greater than that of their same aged peers, for whom a licensed or subsidized child care facility, or a facility for which a license is required, or a license-exempt child care facility as defined in this rule, has supervisory responsibility in the temporary absence of the parent.
- (5) "Child Care Facility" means any facility that provides child care to children, including a certified child care center, certified school-aged child care center, certified family child care home, and registered family child care home. It may include those known under a descriptive name, such as nursery school, preschool, kindergarten, child play school, before and after school care, or child development center, and does not include license-exempt child care or exempt care, as defined in this rule. This term applies to the total child care operation. It includes the physical setting, equipment, staff, provider, program, and care of children. It does not include a license-exempt child care facility as defined in this rule.
- (6) "Child Abuse or Neglect" means as defined as "abuse" in ORS 419B.005 including but not limited to physical abuse, emotional abuse, sexual abuse, negligent treatment or maltreatment, and threat of subjecting a child to a substantial risk of harm to the child's health or welfare.
- (7) "Child Protective Services" or "CPS" means the program as defined in OAR 413-015-0115.
- (8) "Civil Penalty" means a fine imposed by CCLD for violation of one or more applicable rules or statutes.
- (9) "Complaint" means written or verbal information received from any source that a facility is providing or has provided care in a manner potentially in violation of a state law or administrative rule within the authority of CCLD.
- (10) "Employee" means an individual engaged to work full or part time in a facility. This includes all caregivers and any individual who functions other than as a caregiver for children.
- (11) "Exempt Care" is care provided by a caregiver that is within an exception to the definition of "child care" in ORS 329A.250(b)(A) through (H) or as otherwise provided by rule (see OAR 414-075-0250(17)(c)) and is not described in ORS 329A.250(4)(a)(A) or (B).
- (12) "Exempt Care Facility" means a facility that provides only exempt care as defined in this rule.
- (13) "Exempt Prohibited Individual" means an individual who is by law prohibited to provide child care or exempt care, except to children related to the individual by blood or marriage within the fourth degree of sanguinity as determined by civil law, as defined in ORS 329A.252(1)(a) through (e) and described in OAR 414-075-230. An exempt prohibited individual is ineligible for enrollment in the Central Background Registry except for limited enrollment as described in 414-061-0020(27)(b).
- (14) "Facility" means an individual, group of individuals, or entity that is caring for or is alleged to be providing care for any child younger than 13 years or younger than 18 years with special needs who requires a level of care that is greater than that of their same-aged peers for whom the individual, group of individuals, or entity has responsibility in the temporary absence of the parent, legal guardian or custodian .
- (15) "Family" for purposes of determining if children are from the same family or if a child is in care by a member of the child's extended family as referred to in OAR 414-075-0250 means a group of individuals related by blood, marriage or adoption, or individuals whose functional relationships, such as residing together, are similar to those found in such associations.
- (16) "Finding" means a written determination by CCLD staff with respect to information received, a complaint, or an observed noncompliance with a requirement in ORS 329A.030 or ORS 329A.250 through 329A.500 or rules adopted by the Early Learning Council pursuant to ORS 329A.030 or ORS 329A.250 through 329A.500.
- (17) "For Cause" means that the reason for a denial or nonrenewal of a license or enrollment in the CBR or the

revocation of a license or removal from the CBR was based on a determination that:¶

(a) With respect to a CBR application or enrollment, an individual was found not suitable after a review of history, including but not limited to criminal, child abuse and neglect, negative foster care certification, or negative adult protective services history, and of information related to the history; or¶

(b) With respect to a license, the licensee failed or fails to meet licensing requirements and is or has operated in a manner which is harmful to the health and safety or wellbeing to children. For purposes of this rule, "harmful" means posing a risk of or actually causing physical, emotional, or mental damage to child care children, and includes but is not limited to any violation of:¶

(A) A requirement designed to protect children from physical hazards;¶

(B) Applicable guidance and discipline rules involving inappropriate punishment;¶

(C) A requirement to exclude from the facility a person who has demonstrated behavior that may have a detrimental effect on children;¶

(D) A requirement to report suspected child abuse or neglect;¶

(E) A requirement involving safe sleep for infants; or¶

(F) Applicable supervision rules resulting in:¶

(i) A child escaping the facility;¶

(ii) A child being left behind from or on a field trip without supervision; or¶

(iii) A child being injured when the injury could have been prevented with proper supervision.¶

(18) "Investigation" means the collection and review of information received by CCLD of prompted by an allegation of a rule or statute violation including but not limited to a cross-report of a child abuse and neglect received by law enforcement or the ODHS, or other information received by CCLD. An investigation includes but is not limited to a tandem investigation as defined in this rule and includes any activities as listed in ORS 329A.390(7) or OAR 414-075-0230.¶

(19) "Licensed" means the state of having an active registration or certification issued by CCLD.¶

(20) "License" means an authorization from CCLD to operate a registered family child care home, a certified family child care home, a certified child care center, or certified school-age child care center.¶

(21) "Licensee" means an individual to whom a registration or certification has been issued by CCLD.¶

(22) "License-Exempt Child Care" means child care that is not required to be licensed because it is provided as described in ORS 329A.250(5)(a) through (i).¶

(23) "License-Exempt Child Care Facility" means a facility that provides only license-exempt child care as defined in this rule.¶

(24) "Noncompliance" means being in violation of a requirement contained in statute or rule for the applicable type of facility.¶

(25) "Observed Noncompliance" means a noncompliance observed by CCLD staff including information observed in a facility's records.¶

(26) "Occasional care" means care that is provided for no more than 70 days in any calendar year for the purpose of the supervision and guidance by a person, sponsor, or organization not ordinarily engaged in providing child care for children, as defined in this rule, for not more than 70 days, or for enrichment activities that coincide with the non-school days in the Oregon public school system.¶

(27) "ODHS" means the Oregon Department of Human Services.¶

(28) "Ordinarily engaged in providing care" means that the facility has been issued a current child care certification or registration, is a license-exempt child care facility as defined in this rule or represents or advertises to the public as available to provide care for children on an ongoing basis.¶

(29) "OTIS" means the Office of Training, Investigations and Safety in ODHS.¶

(30) "Parent" means a parent, custodian, or guardian exercising physical care and having legal custody of the child.¶

(31) "Person" means an individual human being, an entity to whom CCLD has issued a record or a license to operate a certified child care center or certified school-aged child care center, or an individual or entity operating a license-exempt child care facility.¶

(32) "Premises" means the physical location used or alleged to be used by a facility to provide care subject to regulation or investigation by CCLD, including all indoor and outdoor areas not directly used for child care.¶

(33) "Provider" means an individual in whose name a license or approval to receive payment for subsidized care is issued.¶

(34) "Recorded Program" means a facility to whom CCLD has issued a record to operate a preschool or school-aged recorded program.¶

(35) "Registered Family Child Care Home" or "RF" or "Registered Facility" means the residence of a provider to whom CCLD has issued a license to operate a facility in the family living quarters pursuant to these rules and OAR 414-205-0000 to 414-205-0170.¶

(36) "Regular operating hours" means the days and hours of operation as requested by a child care facility and

approved by CCLD, except: ¶

(a) A registered family child care facility that has not requested and obtained approval by CCLD of regular operating hours: ¶

(A) Providing night care is considered to have operating hours of 24 hours per day, seven days a week, if providing night care. ¶

(B) Not providing night care is considered to have operating hours of 5:00 am to 9:00pm, Monday through Friday. ¶

(b) Regular operating hours also include any time that a child enrolled in or regularly attending a certified or registered facility is present at the facility including before or after the approved operating hours, unless: ¶

(A) The child resides in the facility; or ¶

(B) The child is present at a registered or certified family child care home for a social event as described in OAR 414-075-0250(16)(b). ¶

(37) "Sensitive Allegations" means allegations that in the judgment of CCLD staff should not be discussed in the hearing of child care children who are present and old enough to understand a conversation that would necessarily include discussion of sexual activity or sex abuse or any individual's personal medical information or medical or disability diagnoses. ¶

(38) "Staff" means, as applicable: ¶

(a) For a facility, the provider and any other individuals employed in the facility regardless of compensation, including a volunteer who is in the facility for more than a single activity; or ¶

(b) For CCLD, any individual employed by the agency or authorized to act on behalf of the agency, including but not limited to investigators, licensing specialists, managers, or other employees. ¶

(39) "Subsidized Care" means the care, supervision and guidance on a regular basis of a child, unaccompanied by a parent, guardian or custodian, provided during a part of the 24 hours of a day, paid for in whole or in part by public funds administered by the Department of Early Learning and Care. ¶

(40) "Subsidized Care Facility" means any facility that provides subsidized care to children, including a day nursery, nursery school, child care center, certified, registered or exempt family child care home or similar unit operating under any name, for which payment for child care is made by the Department of Early Learning and Care. ¶

(41) "Superseding Finding" means a finding in a findings letter that replaces a finding included in a previously issued letter. ¶

(42) "Tandem Investigation" means an investigation conducted by CCLD jointly with representatives from partner agencies, including but not limited to ODHS and its divisions or units. ¶

(43) "Unlawful Care" means care provided by a person or entity who is not licensed or recorded when a license or record is required pursuant to ORS 329A.255, ORS 329A.280 or ORS 329A.330, and as described in OAR 414-075-0230. ¶

(44) "Unlicensed" means the status of providing care without an active license issued by CCLD including while providing license-exempt child care or exempt care.

Statutory/Other Authority: ORS 183.459, ORS 329A.260, ORS 329A.350, ORS 329A.360

Statutes/Other Implemented: ORS 183.459, ORS 329A.260, ORS 329A.350, ORS 329A.360

RULE SUMMARY: OAR 414-075-0130 outlines how CCLD will receive, process, and investigate complaints regarding child care providers.

CHANGES TO RULE:

414-075-0130

Complaints and Investigations

(1) Unless already open regarding the same allegations, a complaint will be opened based on CCLD's receipt of any of the following concerning licensed facilities, recorded programs, or unlicensed facilities alleged to be providing care for which a license or record is required: ¶

(a) A cross-report of child abuse or neglect from law enforcement agencies, ODHS, or OTIS, including a report that was closed at screening; ¶

(b) A report or information from or forwarded by another state or local agency or governmental unit; ¶

(c) A report or information from facility staff; or ¶

(d) Information received from the general public. ¶

(2) CCLD will encourage an individual or entity making a complaint to provide CCLD with their identity and contact information, subject to ORS 329A.390(4) prohibiting CCLD from disclosing the name, address, or other identifying information about the individual or entity that made the complaint, except as follows: ¶

(a) CCLD may share contact information for the individual or entity that made a complaint within the CCLD or with any agency or individual performing a tandem investigation with CCLD related to the complaint for purposes of confirming factual information or obtaining additional information; and ¶

(b) CCLD may disclose to an individual that it received a cross-report from law enforcement agencies, ODHS, or OTIS when such cross report is the child abuse or neglect history that has triggered a review of the individual's suitability for enrollment in the Central Background Registry, but may not disclose the name, address or other identifying information about the individual or entity that made the report to law enforcement, ODHS, or OTIS. ¶

(3) CCLD may investigate any complaint that alleges a violation of a health and safety requirement received regarding any facility, including licensed facilities, recorded programs, and subsidized care facilities, as provided by these rules when the allegations indicate noncompliance with a provision in ORS 329A.250 to 329A.500 or a provision in Oregon Administrative Rules Chapter 414, Divisions, 175, 180, 205, 305, 310, 350, 400, 425 or 450. ¶

(4) CCLD may investigate any complaint that a facility as defined by these rules and including but not limited to individuals providing or claiming to be providing exempt care, is providing unlawful care as described in OAR 414-075-0230. ¶

(5) CCLD may investigate any facility for which CCLD has reason to believe or has received information that child care is being provided without a required certification, registration, or record. ¶

(a) For purposes of determining if the child care requires a certification, registration, or record, CCLD may request the facility to provide information concerning the identities of the children in care and how they are related to the caregiver and to each other. ¶

(b) If the facility does not provide CCLD with the information concerning the identities and relationships of the children in care as requested, CCLD may assume that care for a group of more than three children requires a certification, registration, or record from CCLD. ¶

(6) CCLD may conduct an in-person visit at any reasonable time of any facility to investigate a complaint. ¶

(a) An in-person visit is at a reasonable time at any time at least one child care child is in care at a licensed facility or is alleged to be in care at the facility. ¶

(b) An in-person visit is at a reasonable time at any time CCLD reasonably believes a child may be in care at an unlicensed facility. ¶

(7) CCLD staff may, but is not required to, use any method of investigation authorized by ¶
ORS 329A.390(7). In conducting an investigation CCLD staff may: ¶

(a) Make one or more visits to the facility under investigation to inspect the premises. ¶

(b) Receive, take, record, document, and review evidence. ¶

(c) Interview staff, volunteers, parents of child care children, or other individuals who have ¶
relevant information. ¶

(d) Request documents related to the matter under investigation. ¶

(e) Inspect and observe the operations of the facility. ¶

(f) Investigate collaboratively with partners. ¶

(g) Take the depositions of witnesses, including the person under investigation, in the manner prescribed by law for depositions in civil actions; ¶

(h) Compel the appearance of witnesses, including the person under investigation, in the manner prescribed by law for appearances in civil actions; ¶

- (i) Require answers to interrogatories; ¶
- (j) Compel the production of books, papers, accounts, documents or testimony that pertains to the matter under investigation; and¶
- (k) Issue subpoenas.¶
- (8) A registered, certified, recorded, or subsidized care facility must provide records or other ¶ documentation, and allow CCLD access to the facility for the purpose of conducting an investigation as required or permitted by ORS 329A.390 or these rules. CCLD or DELC as applicable: ¶
- (a) May revoke for cause or deny for cause renewal of a registration, certification, record, or approval of subsidized care facility if access to the facility or its records has not been permitted. ¶
- (b) May obtain a search warrant to obtain access to a facility as provided by ORS 329A.410 when access has not been permitted. ¶
- (c) May revoke for cause or deny for cause renewal of a registration, certification, record, or approval of subsidized care facility when access was denied and later permitted only pursuant to a search warrant.¶
- (9) If the provider denies CCLD access to the premises or to facility staff for purposes of conducting an investigation of a complaint, CCLD may reach a valid finding based solely on other evidence independently obtained and that reasonably could have been corroborated or contradicted by information from the visit or interviews that the provider did not allow.¶
- (10) A provider or licensee must provide truthful, complete, and accurate information to CCLD staff in connection with any application, records or reports including attendance records, written or ¶ verbal communication, inspection, visit, or investigation.¶
- (a) When an applicable rule requires information to be provided immediately, it must be provided during the visit or if not in connection with a visit within 24 hours of CCLD's request. ¶
- (b) Information not required by rule to be provided immediately must be provided within 48 hours of CCLD's request for it to be considered in the investigation. CCLD may issue a finding without reviewing information provided more than 48 hours after CCLD's request. ¶
- (11) An individual who is questioned by CCLD in connection with an investigation of a complaint may refuse to answer specific questions or provide documents by stating that the ¶ refusal is based on the privilege against self-incrimination, including when the answer to the question or the documents, if produced by the individual, would furnish a link in the chain of ¶ evidence needed for a criminal prosecution. CCLD is not required to inform an individual of this rule prior to questioning the individual. ¶
- (12) Any person recording any interview conducted as part of an CCLD investigation, including the individual being questioned, must inform all participants in the interview that their conversation is being recorded and provide CCLD with a copy of the recording if requested.¶
- (13) CCLD may conduct compliance verification visits to a facility for the purposes of confirming compliance or continued compliance.¶
- (14) CCLD may conduct an unannounced complaint or compliance verification visit at any reasonable time. When deemed appropriate in the judgment of CCLD staff, including when the complaint contains sensitive allegations as defined in these rules, CCLD may choose to conduct interviews or portions of interviews during the complaint or compliance verification process by telephone, video-conference, or email in addition to an in-person visit. ¶
- (15) The facility must prioritize children's needs during any in-person visit and may not rely on the presence of CCLD staff at the facility to justify noncompliance with any requirement. ¶
- (16) CCLD staff are not required to assist the facility in achieving compliance in response to an observed non-compliance and CCLD staff:¶
- (a) May not be counted by the facility for purposes of meeting ratio requirements.¶
- (b) May not contact parents to pick up children for purposes of achieving compliance with capacity, ratio, or group size or composition requirements. ¶
- (c) May suggest to the facility specific actions to achieve compliance, including sending children home to achieve compliance with capacity, ratio, or group size or composition requirements. ¶
- (d) May document whether a facility took immediate steps to achieve compliance or refused to do so. ¶
- (17) The CCLD staff assigned to investigate a complaint must review and consider all evidence and documentation timely submitted by the facility as required by 414-075-0130(10) prior to issuing findings.¶
- (18) When the requirements for issuance of an emergency order of suspension or conditions are met, CCLD may take action prior to completion of an investigation based on facts confirmed in the pending investigation. ¶
- (19) A CCLD investigation of a complaint is ongoing until CCLD staff has issued findings with respect to all potential non-compliances alleged in the complaint or identified in the investigation. ¶
- (20) Unless the facility has closed before CCLD issues a finding on a complaint, CCLD staff may issue ¶ one of the following findings with respect to each complaint investigated by CCLD, and may issue separate findings with respect to each potential regulatory or statutory violation based on the fact(s) confirmed in the

investigation: ¶

(a) Valid, when a reasonable person could conclude the noncompliance occurred based on the evidence; or ¶

(b) Invalid, when a reasonable person could not conclude that the noncompliance occurred based on the evidence; or ¶

(c) Unable to Substantiate, when a reasonable person could not decide whether the noncompliance occurred because of conflicting evidence or because information is not available. ¶

(21) An individual may become an exempt prohibited individual if they surrender their registration, certification or CBR enrollment during a CCLD investigation. See OAR 414-075-0230. ¶

(22) If a facility has closed before CCLD has issued a finding on a complaint because of a voluntary surrender or lapse of the license including because a timely renewal application was withdrawn, CCLD may complete the investigation and issue findings or may close the investigation as incomplete. If CCLD has closed an investigation as incomplete, CCLD may resume the investigation at any time including if the licensee applies to reopen the license or for another license. ¶

(23) A CCLD investigation for which findings on all allegations have been issued to the facility will be reopened only as follows: ¶

(a) CCLD will reopen an investigation if it has information that was not considered in the initial investigation that if confirmed could change the outcome, and CCLD has determined that reopening the investigation is necessary. ¶

(b) CCLD must notify the facility when it has reopened an investigation. ¶

(c) CCLD staff conducting the reopened investigation must issue superseding findings ¶

following the investigation that is reopened whether or not the outcome of the original finding is changed. ¶

(24) A child care facility may not interfere, discourage, or attempt to prevent a parent, legal guardian, current or former employee or volunteer from disclosing information to CCLD, law enforcement, any other entity with legal or regulatory authority over the facility, or to a child's parent concerning allegations of any of the following as provided by ORS 329A.348: ¶

(a) Abuse or mistreatment of a child in the child care facility; ¶

(b) Violations of licensing requirements; ¶

(c) Criminal activity at the facility; ¶

(d) Violations of state or federal laws, or ¶

(e) Any practice that threatens the health and safety of a child in the child care facility. ¶

(25) Interference with good faith disclosures as described in section (23) of this rule includes: ¶

(a) Terminating or threatening to terminate care of a child if the parent or legal guardian of child discloses the information; or ¶

(b) Asking a parent or legal guardian of a child or, employee or volunteer to sign a nondisclosure or similar agreement prohibiting the disclosure of the information; or ¶

(c) Communicating to or training a current or former staff, volunteer, parent, or legal guardian that they may not or should not disclose information.

Statutory/Other Authority: ORS 326.430, ORS 329A.390

Statutes/Other Implemented: ORS 329A.390

RULE SUMMARY: OAR 414-075-0230 defines the terms of being an individual who is exempt prohibited from working in child care and unlawful care. Additionally, OAR 414-075-0230 defines the civil penalties against a person determined to have provided unlawful care by the agency.

CHANGES TO RULE:

414-075-0230

Exempt Prohibition, Unlawful Care, Civil Penalties

(1) An individual is an exempt prohibited individual as a result of any of the following circumstances as provided by ORS 329A.252:¶

(a) The individual has had their registration, certification, or record denied for cause or revoked for cause. ¶

(b) The individual is not enrolled in the Central Background Registry because of removal for cause or denial for cause. ¶

(c) The individual voluntarily surrendered their child care license or enrollment in the Central Background Registry during a CCLD investigation or after CCLD has given the individual notice of an administrative action against the individual or the individual's facility. ¶

(d) The individual is suspended from the Central Background Registry. ¶

(e) The individual is licensee of a license that is suspended. ¶

(f) The individual has been issued a final order to cease and desist by CCLD after a contested proceeding or that has become effective because the individual did not request a hearing. ¶

(2) An exempt prohibited individual may not provide child care or exempt care as defined in these rules except for their own children or children related to them within the fourth degree of sanguinity as determined by civil law. ¶

(3) An exempt prohibited individual: ¶

(a) Remains an exempt prohibited individual for five years after the most recent dates of a circumstance resulting in the status as described in section (1) (a) through (c) and (f) of this rule and continues to be an exempt prohibited individual unless and until re-enrolled in the Central Background Registry. ¶

(b) Is no longer an exempt prohibited individual if the sole basis for the status is a suspension as described in section (1) (d) or (e) of this rule and CCLD has withdrawn the suspension by final order. ¶

(c) May be enrolled in the Central Background Registry with a limited enrollment as defined by OAR 414-061-0020(27)(b) if meeting all requirements for a limited enrollment. ¶

(4) "Unlawful Care" means care provided by the following to a child not related to the person within the fourth degree of sanguinity as determined by civil law: ¶

(a) By a person who is not licensed or recorded when a license or record is required pursuant to ORS 320A.255, ORS 329A.280 or ORS 329A.330. ¶

(b) By an exempt prohibited individual as provided by ORS 329A.252(2)(b). ¶

(c) By a person who is not licensed or recorded when a license or record is required pursuant to ORS 320A.255, ORS 329A.280 or ORS 329A.330. ¶

(d) By a person enrolled in the CBR under a limited enrollment: ¶

(A) As defined in OAR 414-061-0020(25)(a) when the care violates a restriction or condition agreed to by the person; or ¶

(B) As defined in OAR 414-061-0020(25)(b) when providing care while having unsupervised access to a child care child who is not the child of the person. ¶

(e) In the home of a child, to children all from only one family in addition to children who reside with the person, or to no more than three children in addition to children who reside with the person, by an individual who is not enrolled in the CBR and was issued a founded or substantiated disposition for child abuse: ¶

(A) On or after January 1, 2017 involving a child who died or suffered serious injury as defined in ORS 161.015. ¶

(B) On or after September 1, 2019 and in the last seven years, when the founded or substantiated disposition of a child abuse or neglect report involved any child for whom the individual was providing care in the following settings: ¶

(i) In a licensed or license-exempt child care facility as defined in these rules; ¶

(ii) By a babysitter or other person in the home of the child; ¶

(iii) By a person related to the child within the fourth degree of sanguinity as determined by civil law; ¶

(iv) By a person who cares for children from only one family in addition to children who reside with the person; ¶

(v) By a person who cares for no more than three children in addition to any children who reside with the person; or ¶

(vi) By a person who is a member of the child's extended family, as determined by CCLD on a case-by-case basis. ¶

(5) A person who has provided unlawful care as defined in these rules, including but not limited to unlawful care by

an exempt prohibited individual, may be subject to a civil penalty of not more than \$1,500 per violation. ¶

(a) CCLD may provide a warning rather than assess a civil penalty for a person's first instance of providing unlawful care if CCLD determines the person was not aware that the care was unlawful care as described in section (4) of this rule or that a license was required. ¶

(b) The civil penalty assessed against a person determined by final order to have provided unlawful care on a single day will be \$750 for the first instance of unlawful care for which a penalty is assessed. ¶

(c) Each additional day that person provides unlawful care is a separate violation for which CCLD may assess a civil penalty of not more than \$1,500 for each day the person is determined by final order on default or after a contested case hearing to have provided unlawful care.

Statutory/Other Authority: ORS 326.430, 329A.992, 329A.994

Statutes/Other Implemented: ORS 329A.390, 329A.992, 329A.994

RULE SUMMARY: OAR 414-075-0250 outlines the the operating hours for care that does not require a license.

CHANGES TO RULE:

414-075-0250

Operating Hours and Care Not Requiring a License

(1) A facility may provide care without a license if the facility: ¶

(a) Provides care in the home of the child by a babysitter or other person; ¶

(b) Is the child's parent, legal guardian or custodian; ¶

(c) Is related to the child by blood or marriage within the fourth degree; ¶

(d) Is a member of the child's extended family unit, as determined by CCLD on a case-by case basis; ¶

(e) Provides only occasional care as defined in these rules; ¶

(f) Is a provider of medical services; ¶

(g) Provides care for children from only one family, in addition to any children who reside with the person; ¶

(h) Provides care for three or fewer children, in addition to any children who reside with the person; ¶

(i) Provides care for preschool-age children that is primarily educational for 4 hours or less per day and where no preschool-age child is present at the center for more than 4 hours per day; ¶

(j) Provides care for school-age children that is not intended for child care purposes and is primarily a single enrichment activity, such as swimming lessons, dance lessons, tutoring, music lessons, sports practice, or any single class in any subject, where no child attends for more than 8 hours per week; ¶

(k) Provides group athletic or social activities sponsored by or under the supervision of an organized club or hobby group. This exclusion applies only to the time engaged in the group athletic or social activities; ¶

(l) Is operated by a school district, charter school, political subdivision of this state, or a government agency; ¶

(m) Operates as a parent cooperative for no more than 4 hours a day and: ¶

(A) Care is provided on a rotating basis by parents that are members of the cooperative; and ¶

(B) Are overseen by a board of directors responsible for developing written program policies and procedures that are shared with all members. ¶

(n) Provides care while the child's parent for the child remains on the premises and is engaged in an activity on-site, and: ¶

(A) The facility informs the parent that the facility's program is not licensed by the state; ¶

(B) Activities in which the parent is engaged do not include work; and ¶

(C) Caregivers are always able to contact the parent. ¶

(o) Provide youth development activities, as defined in ORS 329A.250(14), to school-age children during hours that school is not in session and which does not take the place of a parent's care. ¶

(2) Care provided to children who do not reside in a licensed facility requires a license if provided by a licensed facility during the licensed facility's regular operating hours, as defined in these rules. ¶

(a) Care provided to a child who is enrolled in a licensed facility who arrives before or remains after the facility's regular operating hours and is in care for any part of the facility's regular operating hours requires and is subject to all requirements of the facility's license. ¶

(b) A child who ordinarily receives care at a registered or certified child care home facility and is present at the facility outside of the facility's regular operative hours for a social event is not subject to the requirements of the facility's license only if the facility has informed the parent that that the facility is not providing child care and that the care is not subject to license requirements. ¶

(A) Care described in paragraph (2)(b) of this rule is not eligible for payment from the Employment Related Day Care program. ¶

(B) Care for a child who is enrolled in a licensed child care is subject to all requirements of the facility's license if any of following exist regardless of whether the facility has informed the parent that the care is not subject to license requirements: ¶

(i) The parent pays the facility for the care; ¶

(ii) The child is in care for the purpose of providing care, supervision and guidance while the child's parent is unavailable due to work, school, or another activity; or ¶

(iii) The child is in care outside the facility's regular operating hours on a regular basis. A facility regularly providing care outside its regular operating hours must notify CCLD and request approval to change the operating hours to include the days and hours that care is regularly provided. ¶

(3) Care may be provided without a license: ¶

(a) At the location of a license-exempt child care facility, as defined in these rules, by a caregiver operating or employed by a license-exempt child care facility, for their own child or any child who resides with the caregiver before, during, or after their hours of employment at the license-exempt child care facility, as allowed by the

license-exempt child care facility. ¶

(b) By a person, including a person who operates an exempt care or license-exempt child care facility, providing occasional care as defined in these rules during summer, winter and spring school breaks if the facility is ordinarily closed during such breaks. A licensed facility may not provide occasional care during periods that the facility is closed unless the license has been surrendered or has expired. ¶

(c) In the following combinations of exempt care: ¶

(A) Care by a babysitter or other person in the home of the child, in addition to one or more children who reside with the babysitter or other person. ¶

(B) Care by a child's parent, legal guardian, or custodian, in addition to children who are related to the child's parent, legal guardian, or custodian by blood or marriage within the fourth degree as determined by civil law.

Statutory/Other Authority: ORS 329A.260

Statutes/Other Implemented: ORS 329A.135, ORS 329A.280

RULE SUMMARY: OAR 414-075-0300 is being adopted as required by House Bill 3073 (2021 regular session) to reflect an amendment to ORS 183.459 to allow union representation in contested case hearings. This rule outlines when a labor union representative may represent a provider in a contested case hearing conducted by the agency and what that representative may present.

CHANGES TO RULE:

414-075-0300

Union Representation in Contested Case Hearings

(1) A labor union representative may represent the following providers in a contested case hearing conducted by the CCLD:¶

(a) The licensee under a registered or certified family child care home license; or ¶

(b) An individual who provides subsidized care in the home of the individual or the home of the child that is not required to be licensed.¶

(2) When representing a provider, a labor union representative may present evidence, examine and cross-examine witnesses and make arguments relating to the:¶

(a) Application of statutes and rules to the facts in the contested case;¶

(b) Actions taken by CCLD in the past in similar situations;¶

(c) Literal meaning of the statutes or rules at issue in the contested case;¶

(d) Admissibility of evidence; and¶

(e) Proper procedures to be used in the contested case hearing.¶

(3) A labor union representative may not make legal argument on behalf of the provider. ¶

(a) "Legal argument" does not include arguments listed in section (2)(a) through (e) of this rule. ¶

(b) "Legal argument" includes arguments on:¶

(A) The jurisdiction of CCLD to hear the contested case;¶

(B) The constitutionality of a statute or rule or the application of a constitutional requirement to¶ the CCLD; and¶

(C) The application of court precedent to the facts of the particular contested case proceeding.¶

(4) Union representatives must read and be familiar with the Code of Conduct for Non-Attorney Representatives at Administrative Hearings, which is maintained by the Oregon Department of Justice and available on its website at: https://www.doj.state.or.us/wp-content/uploads/2017/06/code_of_conduct_oah_contested.pdf (2023). ¶

(5) If the administrative law judge determines that statements or objections made by the labor union representative appearing under section (1) of this rule involve legal argument as defined in this rule, the administrative law judge shall provide reasonable opportunity for the provider to retain counsel to present argument at the hearing or to file written legal argument within a reasonable time after¶ conclusion of the hearing.¶

(6) A labor union representative must obtain and provide to CCLD and to the Office of Administrative Hearings (OAH) the written authorization of the provider to being represented by the labor union representative prior to beginning representation or communicating with CCLD or the OAH on behalf of the provider regarding the contested case. ¶

(7) An authorized labor union's representation of a provider in a hearing may include the activities described in section (3) of this rule and: ¶

(a) Communicating with CCLD without the presence of the provider regarding procedural matters including but not limited to scheduling; ¶

(b) Assisting the provider in preparing and filing proposed exhibits and witness list; ¶

(c) Making stipulations of fact;¶

(d) Agreeing or objecting to the admissibility of evidence based on relevance; or¶

(e) Being with the provider during any settlement negotiations including by telephone or video-conference. ¶

(8) An authorized labor union's representation of a provider in a hearing may not include: ¶

(a) Entering into binding settlement agreements on behalf of the provider; ¶

(b) Issuing subpoenas for witness attendance at the hearing. ¶

(A) If a provider determines that a necessary witness is unwilling to testify, the provider or an authorized labor union representative may request that CCLD subpoena the witness by submitting a written request including the name, phone number, physical address, and description of anticipated testimony to CCLD no less than 30 calendar days before the date scheduled for hearing. ¶

(B) CCLD is not required to subpoena witnesses on behalf of the provider unless CCLD agrees that the testimony of the witness is necessary for a full and fair hearing. ¶

(C) CCLD is not required to subpoena witnesses on behalf of the provider for a hearing on an emergency order suspending a license or Central Background Registry enrollment or imposing a condition on a license. ¶

(D) CCLD will notify the provider or authorized labor union representative of whether it will issue a subpoena pursuant to the request within 10 business days of receipt of the request. ¶

(E) If CCLD does not agree to subpoena the witness as requested pursuant to this subparagraph, the provider may retain counsel to represent them in the hearing and issue the subpoena. ¶

(9) A provider who is or becomes represented by an attorney in a contested case hearing may not be simultaneously represented by an authorized labor union representative, and the notification of representation by an attorney shall operate to rescind any prior authorization for a labor union representative to represent the provider.

Statutory/Other Authority: ORS 183.459, ORS 329A.260, ORS 329A.350, ORS 329A.360

Statutes/Other Implemented: ORS 183.459, ORS 329A.260, ORS 329A.350, ORS 329A.360