

Secretary of State  
Certificate and Order for Filing  
**TEMPORARY ADMINISTRATIVE RULES**

A Statement of Need and Justification must accompany this form.

I certify that the attached copies are true, full and correct copies of the TEMPORARY Rule(s) adopted on

January 1, 2016 by the

Department of Human Services, Office of Self-Sufficiency Programs

461

**Agency and Division**

**Chapter Number**

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to become effective January 1, 2016 through June 28, 2016.\*

*\*Temporary rules are effective for a maximum of 180 days including the effective date.*

**Rule Caption:**        *Increasing rates for some child care providers*

**AMEND:**            461-155-0150

ORS 409.050, 411.060, 411.070

**Stat. Auth.**

None.

**Other Auth.**

ORS 409.050, 409.610, 411.060, 411.070, 411.122, 411.141, Or Laws 2015, ch 760

**Stats. Implemented**

## Rule Summary

OAR 461-155-0150 about child care eligibility standard, payment rates, and copayments is being amended to implement rate increases negotiated between the Department and child care providers and child care centers and funded in [HB 5026](#) (Oregon Laws 2015, chapter 760). See amended rule text to see specific rate changes based on location of the provider, age of the child, and type of billing.

Secretary of State

# STATEMENT OF NEED AND JUSTIFICATION

A Certificate and Order for Filing Temporary Administrative Rules must accompany this form.

Department of Human Service, Office of Self-Sufficiency Programs

461

**Agency and Division**

**Chapter Number**

**In the Matter of:** *Temporary amendment of OAR 461-155-0150*

**Rule Caption:** *Increasing rates to some child care providers*

## Need for the Rules

OAR 461-155-0150 needs to be amended because the current rule does not reflect the increased rates that have been negotiated with providers and child care centers and approved in HB 5026 (2015). The amendments ensure the rule accurately reflects the negotiated rates.

## Documents Relied Upon

Legislative fiscal analysis of HB 5026:

<https://olis.leg.state.or.us/liz/2015R1/Downloads/MeasureAnalysisDocument/32472>

## Justification of Temporary Rules

The Department finds that failure to act promptly by amending OAR 461-155-0150 will result in serious prejudice to the public interest, the Department, and ERDC clients and providers. The Department needs to proceed by temporary rule because the increased rates have been negotiated with providers and approved by the Legislature in HB 5026 (2015). The public, the Department, and ERDC clients and providers will immediately benefit because the increased rates are intended to support quality child care providers and improve provider stability for families in the ERDC program.

## Child Care Eligibility Standard, Payment Rates, and Copayments

The following provisions apply to child care in the ERDC, JOBS, JOBS Plus, and TANF programs:

- (1) The following definitions apply to the rules governing child care rates:
  - (a) **Infant:** For all providers other than licensed (registered or certified) care, a child aged newborn to 1 year. For licensed care, an infant is a child aged newborn to 2 years.
  - (b) **Toddler:** For all providers other than licensed (registered or certified) care, a child aged 1 year to 3 years. For licensed care, a toddler is a child aged 2 years to 3 years.
  - (c) **Preschool:** A child aged 3 years to 6 years.
  - (d) **School:** A child aged 6 years or older.
  - (e) **Special Needs:** A child who meets the age requirement of the program (ERDC or TANF) and who requires a level of care over and above the norm for his or her age due to a physical, behavioral, or mental disability. The need for a higher level of care must be determined by the provider and the disability must be verified by one of the following:
    - (A) A physician, nurse practitioner, clinical social worker, or any additional sources in OAR 461-125-0830.
    - (B) Eligibility for Early Intervention and Early Childhood Special Education Programs, or school-age Special Education Programs.
    - (C) Eligibility for SSI.
- (2) The following definitions apply to the types of care specified in the child care rate charts in subsections (4)(a) through (4)(c) of this rule:
  - (a) The *Standard Family Rate* applies to child care provided in the provider's own home or in the home of the child when the provider does not qualify for the enhanced rate allowed by subsection (b) of this section.
  - (b) The *Enhanced Family Rate* applies to child care provided in the provider's own home or in the home of the child when the provider meets the training requirements of the Oregon Registry, established by the Oregon Center for Career Development in Childhood Care and Education.
  - (c) The *Registered Family Rate* applies to child care provided in the provider's own home when the provider meets criteria established by the Office of Child Care.
  - (d) The *Certified Family Rate* applies to child care provided in a residential dwelling that is certified by the Office of Child Care as a Certified Family Home. To earn

this designation, the facility must be inspected, and both provider and facility are required to meet certain standards not required of a registered family provider.

- (e) The *Standard Center Rate* applies to child care provided in a facility that is not located in a residential dwelling and is exempt from Office of Child Care Certification rules (see OAR 414-300-0000).
  - (f) The *Enhanced Center Rate* applies to child care provided in an exempt center whose staff meet the training requirements of the Oregon Registry established by the Oregon Center for Career Development in Childhood Care and Education. Eligibility to receive the enhanced center rate for care provided in an exempt center is subject to the following requirements:
    - (A) A minimum of one staff member for every 20 children in care must meet the Oregon Registry training requirements noted in subsection (b) of this section.
    - (B) New staff must meet the Oregon Registry training requirements within 90 days of hire, if necessary to maintain the trained staff-to-children ratio described in paragraph (A) of this subsection.
    - (C) There must be at least one person present where care is provided who has a current certificate in infant and child CPR and a current American Red Cross First Aid card or an equivalent.
  - (g) An enhanced rate will become effective not later than the second month following the month in which the Department receives verification that the provider has met the requirements of subsection (b) or (f) of this section.
  - (h) The *Certified Center Rate* applies to child care provided in a center that is certified by the Office of Child Care.
- (3) The following provisions apply to child care payments:
- (a) Providers not eligible for the enhanced or licensed rate will be paid at an hourly rate for children in care less than 158 hours per month subject to the maximum full-time monthly rate.
  - (b) Providers eligible for the enhanced or licensed rate will be paid at an hourly rate for children in care less than 136 hours a month, unless the provider customarily bills all families at a part-time monthly rate subject to the maximum full-time monthly rate and is designated as the primary provider for the case.
  - (c) At their request, providers eligible for the enhanced or licensed rate may be paid at the part-time monthly rate if they provide 63 or more hours of care in the month, customarily bill all families at a part-time monthly rate, and are designated as the primary provider for the case.

- (d) Unless required by the circumstances of the client or child, the Department will not pay for care at a part-time monthly or a monthly rate to more than one provider for the same child for the same month.
  - (e) The Department will pay at the hourly rate for less than 63 hours of care in the month subject to the maximum full-time monthly rate.
  - (f) The Department will pay for up to five days each month the child is absent if:
    - (A) The child was scheduled to be in care and the provider bills for the amount of time the child was scheduled to be in care; and
    - (B) It is the provider's policy to bill all families for absent days.
  - (g) The Department will not pay for more than five consecutive days of scheduled care for which the child is absent.
- (4) The following are the child care rates based on the type of provider, the location of the provider (shown by zip code), the age of the child, and the type of billing used (hourly or monthly):
- (a)

Group Area A  
STANDARD RATE MAXIMUMS (Not Licensed)

	Standard Family Rate		Standard Center Rate	
	1-157 Hours per month	158-215 Hours per month	1-157 Hours per month	158-215 Hours per month
	Hourly	Monthly	Hourly	Monthly
Infant	<u>\$2,903.07</u>	<u>\$521,552</u>	<u>\$5,259.00</u>	<u>\$848,941</u>
Toddler	<u>\$2,903.07</u>	<u>\$487,516</u>	\$5.25	<u>\$778,928</u>
Preschool	<u>\$2,903.07</u>	<u>\$481,509</u>	<u>\$4,505.06</u>	<u>\$638,724</u>
School	<u>\$2,903.07</u>	<u>\$455,482</u>	\$4.50	<u>\$544,638</u>
Special Needs	<u>\$2,903.07</u>	<u>\$521,552</u>	<u>\$5,259.00</u>	<u>\$848,941</u>

ENHANCED RATE MAXIMUMS (Not Licensed)

	Enhanced Family Rate			Enhanced Center Rate		
	1-62 Hours per month	63-135 Hours per month	136-215 Hours per month	1-62 Hours per month	63-135 Hours per month	136-215 Hours per month
	Hourly	Part-time	Monthly	Hourly	Part-time	Monthly
Infant	<u>\$3,041.8</u>	<u>\$422,446</u>	<u>\$562,594</u>	<u>\$5,9510.20</u>	<u>\$721,800</u>	<u>\$961,067</u>
Toddler	<u>\$3,001.7</u>	<u>\$394,416</u>	<u>\$525,555</u>	\$5.95	<u>\$662,788</u>	<u>\$882,051</u>
Preschool	<u>\$3,001.7</u>	<u>\$390,412</u>	<u>\$520,549</u>	<u>\$5,105.74</u>	<u>\$543,615</u>	<u>\$723,820</u>
School	<u>\$3,001.7</u>	<u>\$368,389</u>	<u>\$491,519</u>	\$5.10	<u>\$463,542</u>	<u>\$617,723</u>
Special Needs	<u>\$3,041.8</u>	<u>\$422,446</u>	<u>\$562,594</u>	<u>\$5,9510.20</u>	<u>\$721,800</u>	<u>\$961,067</u>

LICENSED RATE MAXIMUMS

	Registered Family Rate			Certified Family Rate			Certified Center Rate		
	1-62 Hours per month	63-135 Hours per month	136-215 Hours per month	1-62 Hours per month	63-135 Hours per month	136-215 Hours per month	1-62 Hours per month	63-135 Hours per month	136-215 Hours per month
	Hourly	Part-time	Monthly	Hourly	Part-time	Monthly	Hourly	Part-time	Monthly
Infant	\$3.50	\$450	\$600	\$6.00	\$675	\$900	<del>\$712.00</del>	<del>\$848941</del>	<del>\$1,130255</del>
Toddler	\$3.25	\$450	\$600	\$5.00	\$675	\$900	\$7.00	<del>\$778928</del>	<del>\$1,037237</del>
Preschool	\$3.00	\$450	\$600	\$5.00	\$589	\$785	<del>\$6.00</del> <del>75</del>	<del>\$638724</del>	<del>\$850965</del>
School	\$3.00	\$413	\$550	\$4.50	\$488	\$650	\$6.00	<del>\$544638</del>	<del>\$725850</del>
Special Needs	\$3.50	\$450	\$600	\$6.00	\$675	\$900	<del>\$712.00</del>	<del>\$848941</del>	<del>\$1,130255</del>

Zip Codes for Group Area A:  
Portland, Bend, Eugene, Corvallis, Springfield, Monmouth and Ashland areas

<u>97003</u>	97004	97005	97006	97007	97008	97009	97010	97013	97014	97015	97019
97022	97023	97024	97027	97028	97030	97031	97034	97035	97036	97041	97045
97051	97055	97056	97060	97062	97064	97068	97070	97080	97086	97089	97106
97109	97112	97113	97116	97119	97123	97124	97125	97132	97133	97135	97140
97149	97201	97202	97203	97204	97205	97206	97209	97210	97211	97212	97213
97214	97215	97216	97217	97218	97219	97220	97221	97222	97223	97224	97225
97227	97229	97230	97231	97232	97233	97236	97239	97242	97258	97266	97267
97268	97286	97292	97330	97331	97333	97339	97351	97361	97371	97376	97401
97402	97403	97404	97405	97408	97454	97455	97477	97478	97482	97520	97525
97701	97702	97707	97708	97709							

(b)

Group Area B  
STANDARD RATE MAXIMUMS (Not Licensed)

	Standard Family Rate		Standard Center Rate	
	1-157 Hours per month	158-215 Hours per month	1-157 Hours per month	158-215 Hours per month
	Hourly	Monthly	Hourly	Monthly
Infant	\$2.4966	\$416444	<del>\$3.153.75</del>	\$537546
Toddler	\$2.4966	\$412440	<del>\$2.973.75</del>	\$513536
Preschool	\$2.3552	\$403432	<del>\$2.823.00</del>	\$420443
School	\$2.3552	\$396425	<del>\$3.003.30</del>	\$413428
Special Needs	\$2.4966	\$416444	<del>\$3.153.75</del>	\$537546



(c)

Group Area C  
STANDARD RATE MAXIMUMS (Not Licensed)

	Standard Family Rate		Standard Center Rate	
	1-157 Hours per month	158-215 Hours per month	1-157 Hours per month	158-215 Hours per month
	Hourly	Monthly	Hourly	Monthly
Infant	<u>\$2.4259</u>	<u>\$396424</u>	\$2.74	\$440
Toddler	<u>\$2.2037</u>	<u>\$372401</u>	\$2.91	\$432
Preschool	<u>\$2.2037</u>	<u>\$360388</u>	\$2.25	\$340
School	<u>\$2.2037</u>	<u>\$360388</u>	\$2.52	\$372
Special Needs	<u>\$2.4259</u>	<u>\$396424</u>	\$2.74	\$440

ENHANCED RATE MAXIMUMS (Not Licensed)

	Enhanced Family Rate			Enhanced Center Rate		
	1-62 Hours per month	63-135 Hours per month	136-215 Hours per month	1-62 Hours per month	63-135 Hours per month	136-215 Hours per month
	Hourly	Part-time	Monthly	Hourly	Part-time	Monthly
Infant	<u>\$2.6481</u>	<u>\$308338</u>	<u>\$432450</u>	<u>\$3.113.83</u>	<u>\$375398</u>	<u>\$499531</u>
Toddler	<u>\$2.4057</u>	<u>\$297321</u>	<u>\$400428</u>	<u>\$3.303.40</u>	<u>\$367383</u>	<u>\$489510</u>
Preschool	<u>\$2.4050</u>	<u>\$290314</u>	<u>\$390418</u>	<u>\$2.552.76</u>	\$290	\$386
School	<u>\$2.4050</u>	<u>\$285314</u>	<u>\$391419</u>	\$2.85	\$316	\$421
Special Needs	<u>\$2.6481</u>	<u>\$308338</u>	<u>\$432450</u>	<u>\$3.113.83</u>	<u>\$375398</u>	<u>\$499531</u>

LICENSED RATE MAXIMUMS

	Registered Family Rate			Certified Family Rate			Certified Center Rate		
	1-62 Hours per month	63-135 Hours per month	136-215 Hours per month	1-62 Hours per month	63-135 Hours per month	136-215 Hours per month	1-62 Hours per month	63-135 Hours per month	136-215 Hours per month
	Hourly	Part-time	Monthly	Hourly	Part-time	Monthly	Hourly	Part-time	Monthly
Infant	\$2.75	\$338	\$450	\$3.50	\$413	\$550	<u>\$3.654.50</u>	<u>\$440469</u>	<u>\$586625</u>
Toddler	\$2.50	\$338	\$450	\$3.48	\$357	\$475	<u>\$3.884.00</u>	<u>\$432450</u>	<u>\$575600</u>
Preschool	\$2.50	\$315	\$420	\$3.38	\$338	\$450	<u>\$3.003.25</u>	\$340	\$453
School	\$2.50	\$330	\$440	\$3.10	\$330	\$440	\$3.35	\$372	\$495
Special Needs	\$2.75	\$338	\$450	\$3.50	\$413	\$550	<u>\$3.654.50</u>	<u>\$440469</u>	<u>\$586625</u>



Zip Codes for Group Area C: Balance of State, Other State Zips

97001	97020	97021	97026	97029	97032	97033	97037	97039	97040	97050	97054	97057
97063	97065	97101	97102	97130	97136	97137	97144	97145	97147	97324	97329	97335
97342	97345	97346	97347	97350	97358	97359	97360	97364	97368	97369	97375	97384
97388	97390	97396	97406	97407	97409	97410	97411	97412	97413	97414	97416	97417
97419	97425	97427	97428	97429	97430	97432	97433	97434	97435	97436	97437	97438
97439	97441	97442	97443	97447	97449	97450	97451	97453	97458	97460	97461	97462
97463	97464	97466	97467	97468	97469	97472	97473	97476	97480	97481	97484	97486
97488	97490	97491	97492	97493	97494	97495	97496	97497	97498	97499	97522	97523
97526	97527	97530	97531	97532	97533	97536	97537	97538	97539	97540	97541	97543
97544	97601	97603	97604	97620	97621	97622	97623	97624	97625	97626	97627	97630
97632	97633	97634	97635	97636	97637	97638	97639	97640	97641	97710	97711	97712
97720	97721	97722	97730	97731	97732	97733	97734	97735	97736	97737	97738	97739
97740	97741	97742	97750	97751	97752	97753	97754	97758	97761	97810	97814	97817
97818	97819	97820	97821	97822	97823	97824	97825	97826	97827	97828	97830	97831
97833	97834	97835	97836	97837	97838	97839	97840	97841	97842	97843	97844	97845
97846	97848	97850	97856	97857	97859	97861	97862	97864	97865	97867	97868	97869
97870	97871	97872	97873	97874	97875	97876	97877	97880	97882	97883	97884	97885
97886	97901	97902	97903	97904	97905	97906	97907	97908	97909	97910	97911	97913
97914	97918	97919	97920									

- (5) Except to the extent provided otherwise in section (12) of this rule, this section establishes the ERDC eligibility standard and the client's copayment (copay).
- (a) At initial certification, the ERDC eligibility standard is met for a need group (see OAR 461-110-0630) of eight or less if monthly *countable income* (see OAR 461-001-0000) for the need group is less than 185 percent of the federal poverty level (FPL), as described in OAR 461-155-0180(6). The eligibility standard for a need group of eight applies to any need group larger than eight.
- (b) During the *certification period* (see OAR 461-001-0000) and at recertification the ERDC eligibility standard is met for a need group of eight or less if monthly *countable income* for the need group during the 12 month period is less than 85 percent state median income (SMI) or 250 percent FPL, whichever is higher, as described in OAR 461-155-0180(8) and (9). The eligibility standard for a need group of eight applies to any need group larger than eight.
- (c) The minimum monthly ERDC copay is \$25.
- (d) For a filing group (see OAR 461-110-0310) whose *countable income* is at or below 50 percent of the 2007 FPL, the copay is \$25 or 1.5 percent of the filing group's monthly *countable income*, whichever is greater.

- (e) For a filing group whose *countable income* is over 50 percent of the 2007 FPL, the copay amount is determined with the following percentage of monthly income:
- (A) Divide the filing group's *countable income* by the 2007 FPL, drop all digits beyond two decimal points, subtract 0.5, and multiply this difference by 0.12.
  - (B) Add .015 to the amount in paragraph (A) of this subsection. This sum is the percentage of monthly income used to determine the copay amount. Multiply this sum by the filing group's *countable income* and round to the nearest whole dollar.
- (f) The 2007 federal poverty level used to determine copay amounts under subsections (d) and (e) of this section is set at the following amounts:

Number in Family	Gross Monthly Income	Gross Yearly Income
2	\$1,141	\$13,690
3	1,431	17,170
4	1,721	20,650
5	2,011	24,130
6	2,301	27,610
7	2,591	31,090
8 or more	2,881	34,570

- (6) Subject to the provisions in section (9) of this rule, the monthly limit for each child's child care payments is the lesser of the amount charged by the provider or providers and the following amounts:
- (a) The monthly rate provided in section (4) of this rule.
  - (b) The product of the hours of care, limited by section (8) of this rule, multiplied by the hourly rate provided in section (4) of this rule.
- (7) The limit in any month for child care payments on behalf of a child whose caretaker is away from the child's home for more than 30 days because the caretaker is a member of a reserve or National Guard unit that is called up for active duty is the lesser of the following:
- (a) The amount billed by the provider or providers.
  - (b) The monthly rate established in this rule for 215 hours of care.
- (8) The number of payable billed hours of care for a child is limited as follows:

- (a) In the ERDC and TANF programs, the total payable hours of care in a month may not exceed the amounts in paragraphs (A) or (B) of this subsection:
  - (A) 125 percent of the number of child care hours authorized:
    - (i) Under OAR 461-160-0040(2) and (5); or
    - (ii) To participate in activities included in a *case plan* (see OAR 461-001-0025) including, for clients in the JOBS Plus program, the time the client searches for unsubsidized employment and for which the employer pays the client.
  - (B) The monthly rate established in section (4) of this rule multiplied by a factor of not more than 1.5, determined by dividing the number of hours billed by 215, when the client meets the criteria for extra hours under section (10) of this rule.
- (b) In the ERDC program, for a client who earns less than the Oregon minimum wage, the total may not exceed 125 percent of the anticipated earnings divided by the state minimum wage not to exceed 172 hours (which is full time).
- (c) In the TANF program, for a client who earns less than the Oregon minimum wage or is self-employed, the total may not exceed 125 percent of the anticipated earnings divided by the state minimum wage not to exceed 172 hours (which is full time). The limitation of this subsection is waived for the first three months of the client's employment.
- (d) In the ERDC program, employed caretakers eligible under OAR 461-135-0400 may have education hours added to the authorized work hours. Education hours may not exceed authorized work hours and combined hours may not exceed 215 hours per month. Education hours are hours required to participate in coursework that leads to a certificate, degree, or job-related knowledge or skills attainment at an institution of higher education approved to receive federal financial aid.
- (9) The limit in any month for child care payments on behalf of a child whose caretaker has special circumstances, defined in section (10) of this rule, is the lesser of one of the following:
  - (a) The amount billed by the provider or providers; or
  - (b) The monthly rate established in section (4) of this rule multiplied by a factor, of not more than 1.5, determined by dividing the number of hours billed by 215.
- (10) The limit allowed by section (9) of this rule is authorized once the Department has determined the client has special circumstances. For the purposes of this section, a client has special circumstances when it is necessary for the client to obtain child care in excess

of 215 hours in a month to perform the requirements of his or her employment or training required to keep current employment, not including self-employment. This is limited to the following situations:

- (a) The commute time to and from work exceeds two hours per day.
  - (b) The caretaker works an overnight shift and care is necessary for both work hours and sleep hours.
  - (c) The caretaker works a split shift and it is not feasible to care for the child between shifts.
  - (d) The caretaker consistently works more than 40 hours per week.
- (11) The payment available for care of a child who meets the special needs criteria described in subsection (e) of section (1) of this rule is increased in accordance with OAR 461-155-0151 if the requirements of both of the following subsections are met:
- (a) The child requires significantly more direct supervision by the child care provider than normal for a child of the same age.
  - (b) The child is enrolled in a local school district Early Intervention or Early Childhood Special Education program or school-age Special Education Program. The enrollment required by this subsection is waived if determined inappropriate by a physician, nurse practitioner, licensed or certified psychologist, clinical social worker, or school district official.
- (12) Starting May 1, 2012:
- (a) The minimum monthly ERDC copay is \$27.
  - (b) Except as stated in subsection (a) of this section, the Department adds 10 percent to the monthly client copay amount set under section (5) of this rule by multiplying the copay amount by 1.1 and rounding down to the nearest whole dollar.
- (13) A provider caring for a child in a contracted child care slot with the Department will be paid the lesser of the monthly rate provided in section (4) of this rule or the amount charged by the provider.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 412.006, 412.049, Or Laws 2015, ch 698  
Stats. Implemented: ORS 409.010, 409.050, 409.610, 411.060, 411.070, 411.122, 411.141, 412.006, 412.049, 418.485, Or Laws 2015, ch 698