

Secretary of State
**CERTIFICATE AND ORDER FOR FILING TEMPORARY ADMINISTRATIVE RULES
and
STATEMENT OF NEED AND JUSTIFICATION**

I certify that the attached copies are true, full and correct copies of the TEMPORARY Rule(s) adopted on
October 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 October 1, 2016 through March 29, 2017.*

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

Rule Caption: *Amending child care provider eligibility requirements*

In the Matter of: *The temporary amendment of OAR 461-165-0180*

AMEND: 461-165-0180

ORS 329A.500, 409.050, 411.060, 411.070

Stat. Auth.

Child Care and Development Block Grant Act of 2014 (CCDBG)

Other Auth.

ORS 329A.500, 409.010, 409.050, 409.610, 411.060, 411.070

Stats. Implemented

Rule Summary

OAR 461-165-0180 about child care provider eligibility is being amended to require child care providers to develop and disclose their suspension or expulsion policies to comply with federal Child Care and Development Fund (CCDF) regulations.

Need for the Rules

OAR 461-165-0180 needs to be amended to comply with federal requirements. [Proposed changes to 45 CFR §§ 98.16\(ee\) and 98.33](#) will require the Lead Agency for CCDF funding (the

Office of Child Care (OCC) of the Oregon Department of Education (ODE)) to have policies on suspension and expulsion of children in child care and other early childhood programs and disseminate them as part of consumer and provider education efforts. OCC, as the Lead Agency in Oregon, has requested that the Department require its child care providers to develop and disclose suspension and expulsion policies as part of OCC's efforts to comply with federal guidance which encourages states to "establish statewide policies, applicable across settings, including publicly and privately funded early childhood programs, to promote children's social-emotional and behavioral health and to eliminate or severely limit the use of expulsion, suspension, and other exclusionary discipline practices." The amendments ensure the state of Oregon is in compliance with regulations applicable to programs that receive CCDF funding.

Documents Relied Upon

Administration of Children and Families (ACF) proposed rule changes to 45 CFR §§ 98.16 and 98.33 available at <https://www.regulations.gov/document?D=ACF-2015-0011-0001>.

Justification of Temporary Rules

The Department finds that failure to act promptly by amending OAR 461-165-0180 will result in serious prejudice to the public interest, the Department, and clients who receive child care assistance because the Department would not be in full compliance with federal regulations applicable to state programs who receive CCDF funding. The Department needs to proceed by temporary rule because the public, the Department, and clients will immediately benefit when the Department is in compliance with federal regulations applicable to state programs who receive CCDF funding.

Eligibility of Child Care Providers

- (1) The Department must approve a child care provider to receive payment for child care if information available to the Department provides no basis for denying eligibility unless the Department determines, following a final fitness determination (see OAR 125-007-0260 and 407-007-0320) or Child Protective Service (CPS) records checks, that the provider or other *subject individual* (see OAR 125-007-0210 and 407-007-0210(8)(a)(J)) is not eligible for payment.
- (2) Ineligibility for payment may result from any of the following:
 - (a) A finding of "denied".
 - (A) A provider may be denied under OAR 461-165-0410 and 461-165-0420. If, after conducting a weighing test as described in OAR 407-007-0300, the Department finds substantial risk to the health or safety of a *child* (see OAR 461-001-0000) in the care of the provider, the provider must be denied and is ineligible for payment.
 - (B) A provider who has been denied has the right to a hearing under OAR 407-007-0335.
 - (b) A finding of "failed".
 - (A) A provider may be failed if the Department determines, based on a specific eligibility requirement and evidence, that a provider does not meet an eligibility requirement of this rule not covered in paragraph (c)(A) of this section.
 - (B) While the provider is in failed status:
 - (i) The Department does not pay any other child care provider for child care at the failed provider's site.
 - (ii) The Department does not pay a child care provider at another site if the failed provider is involved in the child care operation unless the Department determines that the reasons the provider is in failed status are not relevant to the new site.
 - (C) A provider with a status of "failed" may reapply at any time by providing the required documents and information to the Department for review.
 - (c) A finding of "suspended".

- (A) A provider may be suspended if the Department determines and provides notice that the provider does not meet an eligibility requirement in the following subsections and paragraphs of section (7) of this rule: (d), (e), (h), (i), (j), (k), (L), (o)(H), (o)(I), (o)(L), or (t) or in section (10) of this rule. A provider who has been suspended may challenge this status by requesting a contested case hearing subject to the requirements and limitations of OAR 461-025.
- (B) While the provider is in suspended status:
 - (i) The provider is ineligible for payment for at least six months.
 - (ii) The Department does not pay any other child care provider for child care at the suspended provider's site.
 - (iii) The Department does not pay a child care provider at another site if the suspended provider is involved in the child care operation unless the Department determines that the reasons the provider is in suspended status are not relevant to the new site.
- (C) A provider with a status of "suspended" may be eligible for payments after the six month ineligibility period ends when the provider has been approved following reapplication, including providing the required documents and information to the Department for review.
- (d) The Department has referred an overpayment against the provider for collection and the claim is unsatisfied.
- (3) The provider must submit a completed Child Care Provider Listing Form (DHS 7494) to the Department within 30 calendar days from the date the Department issues the listing form to the client. The provider and each individual identified under section (4) of this rule must complete and sign the authorization for a records check through the Criminal History (CH) record system maintained by the Oregon State Police (OSP), Federal Bureau of Investigation (FBI), and the Child Protective Service (CPS) record system maintained by the Department and, if necessary, an authorization to release information and fingerprint cards. The provider, each individual described in section (4) of this rule, and each *subject individual* described in OAR 125-007-0210 and 407-007-0210(8)(a)(J) must fully disclose all requested information as part of the records check.
- (4) This rule also establishes additional requirements for the following individuals:
 - (a) The site director of an exempt child care facility and each employee of the facility who may have unsupervised access to a *child* in care.
 - (b) The child care provider and each individual the provider uses to supervise a *child* in his or her absence.

- (c) In the case of a provider who provides care for a *child* in the provider's home--
 - (A) Each individual 16 years of age or older who lives in the provider's home; and
 - (B) Each individual who visits the home of the provider during the hours care is provided and may have unsupervised access to a *child* in care.
- (5) To receive payment or authorization for payment, the provider must meet the requirements of either subsection (a) or (b) of this section:
 - (a) Currently be certified or registered with the Office of Child Care (OCC) of the Oregon Department of Education (ODE) under OAR 414-205-0000 to 414-205-0170, 414-300-0000 to 414-300-0440, or 414-350-0000 to 414-350-0250 unless legally exempt, and be in compliance with the applicable rules. The provider must also complete the Department's listing process and be approved by the Department.
 - (b) If legally exempt from being certified or registered with the OCC, complete the Department's background check process and be approved by the Department.
- (6) Each individual described in section (4) of this rule must:
 - (a) Allow the Department to conduct a national criminal history records check through the Oregon State Police and the Federal Bureau of Investigation as specified in OAR 407-007-0250.
 - (b) Provide, in a manner specified by the Department, information required to conduct CH, FBI, OSP, and CPS records checks and determine whether the provider meets health and safety requirements.
 - (c) Have a history of behavior that indicates no substantial risk to the health or safety of a *child* in the care of the provider.
- (7) Each provider must:
 - (a) Obtain written approval from their certifier or certifier's supervisor if the provider is also certified as a foster parent.
 - (b) Be 18 years of age or older and in such physical and mental health as will not affect adversely the ability to meet the needs of safety, health, and well-being of a *child* in care.

- (c) Not be in the same filing group (see OAR 461-110-0310 and 461-110-0350) as the *child* cared for; the *parent* (see OAR 461-001-0000) of a *child* in the *filing group*; or a sibling living in the home of a *child* in the *filing group*.
- (d) Allow the Department to inspect the site of care while child care is provided.
- (e) Keep daily attendance records showing the arrival and departure times for each *child* in care and billing records for each *child* receiving child care benefits from the Department. These written records must be retained for a minimum of 12 months and provided to the Department upon request.
- (f) Be the individual or facility listed as providing the child care. The provider may only use someone else to supervise a *child* on a temporary basis if the person was included on the most current listing form and the provider notifies the Department's Direct Pay Unit.
- (g) Not bill a Department client for an amount collected by the Department to recover an overpayment or an amount paid by the Department to a creditor of the provider because of a lien, garnishment, or other legal process.
- (h) Report to the Department's Direct Pay Unit within five days of occurrence:
 - (A) Any arrest or conviction of any *subject individual* or individual described in section (4) of this rule.
 - (B) Any involvement of any *subject individual* or individual described in section (4) of this rule with CPS or any other agencies providing child or adult protective services.
 - (C) Any change to the provider's name or address including any location where care is provided.
 - (D) The addition of any *subject individual* or individual described in section (4) of this rule.
 - (E) Any reason the provider no longer meets the requirements under this rule.
- (i) Report suspected child abuse of any *child* in his or her care to CPS or a law enforcement agency.
- (j) Supervise each *child* in care at all times.
- (k) Prevent any individual who behaves in a manner that may harm children from having access to a *child* in the care of the provider. This includes anyone *under the influence* (see section (11) of this rule).

- (L) Allow the custodial parent of a *child* in his or her care to have immediate access to the *child* at all times.
- (m) Inform a parent of the need to obtain immunizations for a *child* and have a completed, up-to-date Oregon shot record called the "Certification of Immunization Status" (CIS) form on file for each *child* in care.
- (n) Take reasonable steps to protect a *child* in his or her care from the spread of infectious diseases.
- (o) Ensure that the home or facility where care is provided meets all of the following standards:
 - (A) Each floor level used by a *child* has two usable exits to the outdoors (a sliding door or window that can be used to evacuate a *child* is considered a usable exit). If a second floor is used for child care, the provider must have a written plan for evacuating occupants in the event of an emergency.
 - (B) The home or facility has safe drinking water.
 - (C) The home or facility has a working smoke detector on each floor level and in any area where a *child* naps.
 - (D) Each fireplace, space heater, electrical outlet, wood stove, stairway, pool, pond, and any other hazard has a barrier to protect a *child*. Gates and enclosures have the Juvenile Products Manufacturers Association (JPMA) certification seal to ensure safety.
 - (E) Any firearm, ammunition, and other items that may be dangerous to children, including but not limited to alcohol, inhalants, tobacco and e-cigarette products, matches and lighters, any legally prescribed or over-the-counter medicine, cleaning supplies, paint, plastic bags, and poisonous and toxic materials are kept in a secure place out of a child's reach.
 - (F) The building, grounds, any toy, equipment, and furniture are maintained in a clean, sanitary, and hazard-free condition.
 - (G) The home or facility has a telephone in operating condition.
 - (H) No one may smoke or carry any lighted smoking instrument, including e-cigarettes or vaporizers, in the home or facility or within ten feet of any entrance, exit, window that opens, or any ventilation intake that serves an enclosed area, during child care operational hours or anytime child care children are present. No one may use smokeless tobacco in the home or facility during child care operational hours or anytime child care children are present. No one may smoke or carry any lighted smoking instrument,

including e-cigarettes and vaporizers, or use smokeless tobacco in motor vehicles while child care children are passengers.

- (I) No one may consume alcohol or use controlled substances (except legally prescribed and over-the-counter medications) or marijuana (including medical marijuana) on the *premises* (see section (11) of this rule) during child care operational hours or anytime child care children are present. No one *under the influence* of alcohol, controlled substances (except legally prescribed and over-the-counter medications) or marijuana (including medical marijuana) may be on the *premises* during child care operational hours or anytime child care children are present. No one may consume alcohol or use controlled substances (except legally prescribed and over-the-counter medications) or marijuana (including medical marijuana) in motor vehicles while child care children are passengers.
- (J) Is not a half-way house, hotel, motel, shelter, or other temporary housing such as a tent, trailer, or motor home. The restriction in this paragraph does not apply to licensed (registered or certified) care approved in a hotel, motel, or shelter.
- (K) Is not a structure –
 - (i) Designed to be transportable; and
 - (ii) Not attached to the ground, another structure, or to any utilities system on the same *premises*.
- (L) Controlled substances (except lawfully prescribed and over-the-counter medications), marijuana (including medical marijuana, marijuana edibles, and other products containing marijuana), marijuana plants, derivatives, and associated paraphernalia may not be on the premises during child care operational hours or anytime child care children are present.
- (p) Complete and submit a new listing form every two years, or sooner at the request of the Department, so that the Department may review the provider's eligibility.
- (q) Provide evidence of compliance with the Department's administrative rules, upon request of Department staff.
- (r) Comply with state and federal laws related to child safety systems and seat belts in vehicles, bicycle safety, and crib standards under 16 CFR 1219 and 1220.
- (s) Place infants to sleep on their backs.

- (t) Not hold a medical marijuana card; or distribute, grow, or use marijuana (including medical marijuana) or any controlled substance (except lawfully prescribed and over-the-counter medications).
 - (u) Develop and communicate expulsion and suspension policies to parents and caretakers.
- (8) Child Care providers who are License Exempt or Registered Family Child Care Providers with the Office of Child Care (OCC) of the Oregon Department of Education (ODE) under OAR 414-205-0000 to 414-205-0170 must complete the "Basic Child Care Health and Safety" two- hour, web-based training or the three-hour Oregon Kids Healthy and Safe (OKHS) classroom training prior to being approved by the Department.
- (a) Prior to June 16, 2014, a provider who sends the Department a Child Care Provider Listing and Provider Information Sheet (DHS 7494) with a revision date of March 2013, or those who attempt to take the web-based training but are unable due to technical difficulties at the training site, will not be failed for not meeting this training requirement.
 - (b) License Exempt or Registered Family Child Care Providers who are exempt from this training are those who state at least one of the following:
 - (A) English is a second language.
 - (B) No internet access is available.
- (9) A child care provider not subject to certification or registration with the Office of Child Care (OCC) of the Oregon Department of Education (ODE) under OAR 414-205-0000 to 414-205-0170, 414-300-0000 to 414-300-0440, or 414-350-0000 to 414-350-0250, must complete an orientation provided by the Department or a Child Care Resource and Referral agency within 90 days of being approved by the Department if he or she:
- (a) Receives funds from the Department; and
 - (b) Begins providing child care services after June 30, 2010, or resumes providing child care services, after a break of more than one year that began after June 30, 2010.
- (10) Child care providers and any individual supervising, transporting, preparing meals, or otherwise working in the proximity of child care children and those completing daily attendance and billing records shall not be *under the influence*.
- (11) For purposes of these rules:
- (a) "Premises" means the home or facility structure and grounds, including indoors and outdoors and space not directly used for child care.

- (b) "Under the influence" means observed abnormal behavior or impairments in mental or physical performance leading a reasonable person to believe the individual has used alcohol, any controlled substances (including lawfully prescribed and over-the-counter medications), marijuana (including medical marijuana), or inhalants that impairs their performance of essential job function or creates a direct threat to child care children or others. Examples of abnormal behaviors include, but are not limited to hallucinations, paranoia, or violent outbursts. Examples of impairments in physical or mental performance include, but are not limited to slurred speech as well as difficulty walking or performing job activities.

Stat. Auth.: ORS 181.537, 329A.500, 409.050, 411.060, 411.070

Stats. Implemented: ORS 181.537, 329A.340, 329A.500, 409.010, 409.050, 409.610, 411.060, 411.070, 411.122