



PERMANENT ADMINISTRATIVE ORDER

SSP 33-2018

CHAPTER 461
DEPARTMENT OF HUMAN SERVICES
SELF-SUFFICIENCY PROGRAMS

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CONTACT: Robert Trachtenberg
503-947-5290
robert.trachtenberg@state.or.us

DHS - SSP
500 Summer Street NE, E-48
Salem, OR 97301

Filed By:
Robert Trachtenberg
Rules Coordinator

RULES:

461-165-0160, 461-165-0180

AMEND: 461-165-0160

NOTICE FILED DATE: 10/12/2018

RULE SUMMARY: OAR 461-165-0160 about direct provider payments is being amended to make permanent a temporary rule effective July 1, 2018 that piloted the process allowing the Department to pay certified centers for child care prospectively prior to the delivery of services. This amendment promotes family access to quality child care in a certified center setting by connecting payments to enrollment and supporting center business practices.

CHANGES TO RULE:

461-165-0160

Direct Provider Payments; General Information ¶¶

(1) The Department makes payments on behalf of eligible clients to the providers they select to care for their children. The payments are made directly to the provider. To be eligible for payment, a provider must:¶¶

- (a) Charge Department clients at a rate no higher than the rate charged other customers;¶¶
- (b) Provide the Department his or her social security number (SSN) or IRS identification number; and¶¶
- (c) Meet the requirements of OAR 461-165-0180.¶¶

(2) Payments to a client's provider are subject to each of the following limitations:¶¶

- (a) A payment is made only for child care already provided, with the exception of certified centers designated to participate in the pre-pay center pilot program.¶¶
- (b) Payment is made for the amount charged to the client but may not exceed the rate authorized in OAR 461-155-0150.¶¶
- (c) No payment will be authorized unless the client has designated a primary provider.¶¶
- (d) No payment will be made for less than one dollar.¶¶

(e) Except as provided otherwise in subsection (f) of this section, a payment is made only for child care provided on or after the date the designated provider has met the requirements to be listed and paid through the Department.¶¶

(f) A designated child care provider who the Department approves to be listed and paid through the Department may receive payment for child care provided prior to obtaining Department approval if the provider met the other Department requirements and was licensed under OAR 414-205-0000 to 414-205-0170, 414-350-0000 to 414-350-0405, or 414-300-0000 to 414-300-0415.¶¶

(3) In the ERDC and TANF programs, the Department may issue a payment to an eligible provider during a month for which child care is being provided to meet an unexpected need of the provider related to the care of a covered child. The payment may be made if, without the payment, continued care by the same provider would be jeopardized and the client could not immediately obtain child care from another provider.

Statutory/Other Authority: ORS 329A.500, 409.050, 411.060, 411.070, 411.122, 412.049

Statutes/Other Implemented: ORS 329A.500, 409.010, 411.060, 411.070, 411.122, 412.049, 45 CFR 98.45

AMEND: 461-165-0180

REPEAL: Temporary 461-165-0180 from SSP 26-2018

NOTICE FILED DATE: 10/12/2018

RULE SUMMARY: OAR 461-165-0180 about eligibility of child care providers is being amended to make permanent a temporary rule change effective August 1, 2018 that established an exemption to allow a member of a household to be approved to provide subsidized child care to support another household member with criminal or CPS history so the latter may participate in the JOBS program, or the education or employment covered by the ERDC program. This rule is also being amended to make permanent a temporary rule change effective August 1, 2018 that specified that a child care provider have competence, sound judgment and self-control, be mentally, physically and emotionally capable of performing duties related to child care, broadened the requirements related to being within sight or sound of all children, and broadened background check requirements to apply to individuals who have unsupervised access to children who are not employees supporting child safety. This rule is being further amended to make permanent a temporary rule change effective August 1, 2018 that set out Department policy as to when child care facilities that are tribally licensed are eligible for Department payments. This rule is also being amended to make permanent a temporary rule change effective August 1, 2018 that required that providers allow the Department to visit the site while child care is being provided to support technical assistance from the Department to child care providers. This rule is being further amended to make permanent a temporary rule change effective August 1, 2018 that specified that records showing the arrival and departure times for each child in care be recorded as the children arrive and depart. This rule also is being amended to make permanent a temporary rule change effective August 1, 2018 that required retention of exemption forms for immunizations to improve documentation requirements related to immunization. This rule is being further amended to make permanent a temporary rule change effective August 1, 2018 that provided further specificity in the safe drinking water requirements, supporting child health. This rule is also being amended to make permanent a temporary rule change effective August 1, 2018 that stated that the provider may not be in the same ERDC or TANF filing group as the child cared for; the parent of a child in the filing group, or a sibling living in the home of the child, supporting program integrity. This rule is being further amended to make permanent a temporary rule change effective August 1, 2018 that specified that indictments must be reported to the Direct Pay Unit within five days of occurrence, clarifying the arrest requirements in the rule. This rule is also being amended to make permanent a temporary rule change effective August 1, 2018 that update orientation and training requirements, consistent with current practices.

CHANGES TO RULE:

461-165-0180

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) The Department may approve a child care provider who is legally exempt (see section (12) of this rule) as a child care provider for a child (see OAR 461-001-0000) in their household, despite the criminal or CPS history of another member of this household, if all of the following requirements are met:¶¶

(a) There is no criminal history consisting of a disqualifying crime listed in 45 CFR 98.43(c).¶¶

(b) The household member with the criminal or CPS history is a parent (see OAR 461-001-0000) or caretaker relative (see OAR 461-001-0000) of the child needing child care.¶¶

- (c) The child care is needed for the household member with the criminal or CPS history to participate in the JOBS program, or the education or employment covered by the ERDC program.¶
- (d) The approval for Department payments only applies for the child of the household member, or a child for whom the household member is a caretaker relative.¶
- (3) 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 ~~(78)~~ of this rule: (b), (d), (e), (h), (i), (j), (k), (L), (o)(H), (o)(I), (o)(L), ~~(t)~~, or in section ~~(101)~~ 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.¶
- ~~(34)~~ 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 ~~(45)~~ 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.¶
- ~~(45)~~ This rule also establishes additional requirements for the following individuals:¶
- (a) The site director of an exempt child care facility and each employee of individual in 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.¶
- (56) To receive payment or authorization for payment, the provider must comply with at least one of the following subsections:¶
- (a) If the provider is not legally exempt (~~see section (11) of this rule~~):¶
- (A) Be currently 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 and be in compliance with the applicable rules;¶
- (B) Complete the Department's background check process;¶
- (C) Complete the Department's listing process; and¶
- (D) Be approved by the Department.¶
- (b) If the provider is legally exempt and a legally exempt relative (see section (142) of this rule):¶
- (A) Complete the Department's background check process;¶
- (B) Complete the Department's listing process; and¶
- (C) Be approved by the Department.¶
- (c) If the provider is legally exempt and not a legally exempt relative for all children in care:¶
- (A) Meet all OCC Regulated Subsidy Provider requirements under OAR 414-180-0005 through 414-180-0100;¶
- (B) Submit to and pass a site visit at the location where care will be provided;¶
- (C) Complete the Department's background check process;¶
- (D) Complete the Department's listing process; and¶
- (E) Be approved by the Department.¶
- (6d) In the case of a tribally licensed child care facility:¶
- (A) Must receive annual health and safety inspections from the Indian Health Services;¶
- (B) Each individual who may have unsupervised access to a child in care must be enrolled in the Early Learning Division Office of Child Care Central Background Registry or approved by the Department of Human Services Background Check Unit;¶
- (C) Complete the Department's listing process; and¶
- (D) Be approved by the Department.¶
- (7) Each individual described in section (45) 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.¶
- (78) 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; and¶
- (A) Have competence, sound judgment and self-control when working with children;¶
- (B) Be mentally, physically and emotionally capable of performing duties related to child care.¶
- (c) Not be in the same ERDC or TANF filing group (see OAR 461-110-03430 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 at the child in the filing group.¶
- (d) Allow the Department to visit or 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.¶

- (A) Times must be recorded as the child care children arrive and depart.¶
- (B) Written attendance 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, indictment, or conviction of any subject individual or individual described in section (45) of this rule.¶
- (B) Any involvement of any subject individual or individual described in section (45) 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 (45) 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. This includes being within sight or sound of all children; being aware of what each child is doing; being near enough to children to respond when needed; and being physically present when kindergarten-age or younger children are playing outside, unless the play area is fully fenced and hazard free.¶
- (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 (142) 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, or a non-medical or medical Exemption 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 water that is safe for drinking water and preparing food. Additionally, a legally exempt provider must meet the lead testing requirements in OAR 414-180-0015(5)-(13) and OAR 414-180-0045(1)(e).¶
- (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. Any gate or barrier may not pose a risk or hazard to any child in care.¶
- (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 (142) 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.¶

(v) Provide care at a location within the state of Oregon.¶

~~(89) Legally exempt providers must complete the "Introduction to Child Care Health and Safety" two-hour, web-based training as provided in the following subsections:¶~~

~~(a) Legally exempt providers with a list date prior to November 1, 2016 must complete the "Introduction to Child Care Health and Safety" training by July 31, 2017. Providers who have continued to actively provide care and receive payment for Department subsidy families may be granted an extension to September 30, 2017 to complete the training.¶~~

~~(b) Legally exempt providers with a list date of November 1, 2016 or later must complete the "Introduction to Child Care Health and Safety" prior to Department approval.¶~~

~~(910) Legally exempt providers 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 ~~the or she:~~~~

~~(a) Receives funds from the Department; and¶~~

~~(b) Bprovider 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.¶~~

(101) 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.¶

(142) 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.¶

(c) "Legally exempt" means the child care provider is exempt from licensing with the OCC because the provider is not subject to the licensing requirements under OAR 414-205-0000 to 414-205-0170, OAR 414-350-000 to 414-350-0405, and OAR 414-300-0000 to 414-300-0415.¶

(d) "Legally exempt relative" means a legally exempt provider who is a relative to all children in care including a great-grandparent, grandparent, aunt, uncle, or sibling not living in the home of any child in care.¶

(123) Legally exempt providers that are not a legally exempt relative to all children in care must meet all of the requirements in this section before approval by the Department, unless otherwise noted:¶

(a) Have an up-to-date, in-person infant and child CPR and first aid certification or have a currently valid waiver of this requirement from the Child Care Resource and Referral program.¶

(b) Complete the Recognizing and Reporting Child Abuse and Neglect (RRCAN) web-based or classroom training.¶

(c) Complete six hours of ongoing education in each two-year listing period as provided in this subsection. All trainings must be accepted by the Oregon Center for Career Development (OCCD) and be part of the OCCD's 10 Core Knowledge Categories recognized by Oregon Registry Online to count toward the six hours.¶

(A) Two of the six hours must fall under the "Human Growth and Development" category; and¶

(B) Two of the six hours must cover "Understanding & Guiding Behavior".¶

(134) Child care centers or programs that are legally exempt from certification or registration with the OCC, are located in a commercial or institutional facility, and receive payment from the Department on behalf of a family receiving a child care subsidy, may not exceed the following staff to children in care ratios:¶

(a) Six weeks through 23 months of age, the minimum number of staff to children is one to four. The maximum number of children in a group is eight.¶

(b) 24 months through 35 months of age, the minimum number of staff to children is one to five. The maximum number of children in a group is 10.¶

(c) 36 months of age to attending kindergarten, minimum number of staff to children is one to 10. The maximum number of children in a group is 20.¶

(d) Attending kindergarten and older, the minimum number of staff to children is one to 15. The maximum number of children in a group is 30.¶

(e) In a mixed-age group of children, the number of staff and group size shall be determined by the age of the youngest child in the group.

Statutory/Other Authority: ORS 181.537, 329A.500, 409.050, 411.060, 411.070

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