

OFFICE OF THE SECRETARY OF STATE

SHEMIA FAGAN
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION

STEPHANIE CLARK
DIRECTOR

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

TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

SSP 36-2022

CHAPTER 461

DEPARTMENT OF HUMAN SERVICES

SELF-SUFFICIENCY PROGRAMS

FILED

05/05/2022 11:26 AM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Increasing Child Care Provider Rates Effective June 1, 2022

EFFECTIVE DATE: 06/01/2022 THROUGH 09/06/2022

AGENCY APPROVED DATE: 05/05/2022

CONTACT: Meorah Solar

503-602-7545

meorah.a.solar@dhsosha.state.or.us

2885 Chad Drive

Eugene, OR 97408

Filed By:

Meorah Solar

Rules Coordinator

NEED FOR THE RULE(S):

OAR 461-155-0150 about Child Care Provider Eligibility Standard, Payment Rates, Payment Limits, and Payable Hours, needs to be changed to place into rule the child care provider payment rate increases that are mandated under House Bill 4005 (2022 Oregon Regular Legislative Session). The Department intends to file the increases into permanent rule effective July 1, 2022. These changes bring the rule into alignment with the House Bill by the required June 1 deadline.

JUSTIFICATION OF TEMPORARY FILING:

Failure to act promptly by amending OAR 461-155-0150 will result in serious prejudice to the public interest, the Department, individuals who receive or apply for its programs, and individuals who are eligible to receive child care provider payments. The Department needs to proceed by temporary rule because House Bill 4005 requires a June 1, 2022, implementation date to the provider rate increases, and because the Department must honor the Letters of Agreement they have entered into with SEIU and AFSCME provider unions. In addition, the Department must move forward with rule making so payments to child care providers, which are issued on a continuous basis, align with administrative rule and law. The updated child care provider rates as of June 1, 2022, will allow ODHS to accurately determine provider payment amounts, which provide essential support to those who qualify as providers, and for the families who depend on their care.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Documents relied upon for changes to OAR 461-155-0150:

2020 Oregon Child Care Market Price Study, available here: Supplemental Findings

https://www.oregon.gov/dhs/ASSISTANCE/CHILD-CARE/Documents/2020%20CCMR%20Report_Supplemental.pdf

AMEND: 461-155-0150

SUSPEND: Temporary 461-155-0150 from SSP 32-2022

RULE SUMMARY: OAR 461-155-0150 is being changed to adopt, by temporary rule filing, the second child care provider rate increase of 2022. The child care provider rates were first increased effective January 1, 2022, also by

temporary rule.

CHANGES TO RULE:

461-155-0150

Child Care Provider Eligibility Standard, Payment Rates, Payment Limits, and Payable Hours ¶¶

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 their age due to a physical, behavioral, or mental disability. 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 or participating in the Alternative Pathway program through 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 caretaker 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 absent days each month the child is absent. Absent days can be billed if:

(A) It is the provider's policy to bill all families for absent days; and

(B) The child was scheduled to be in care, the provider bills for the amount of time the child was scheduled to be in care, and the child has not been absent for a calendar month.

(g) Child care providers are eligible to receive an incentive payment upon achieving and maintaining a three star or higher rating with the Quality Rating Improvement System (QRIS) subject to all of the following provisions.

(A) The incentive payment is in addition to the Department maximum rate.

(B) A provider may receive an incentive payment for any ERDC child that the Department paid the provider for full-time care (136 hours or more).

(C) Providers who are contracted for child care services through the ERDC program are not eligible to receive incentive payments, with the exception of Early Head Start providers.

(D) Eligibility for the incentive payment is effective the month after the QRIS rating has been achieved.

(E) The incentive payment amount is based on the provider's star QRIS rating as follows:

Star Rating & Amount

3 & \$54

4 & \$72

5 & \$90

(h) In the ERDC program, child care providers eligible for the licensed rate may receive payment from the Department for registration and other fees if they are required by the facility for a child to begin or continue care and the fees are also required of the general public. Fees related to penalties, fines, charges exceeding approved ERDC hours or rates (see section (4) of this rule), or advance payment for cost of care are not eligible for payment.

(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) [see attached table]

(b) [see attached table]

(c) [see attached table]

(5) OAR 461-160-0300 establishes ERDC financial eligibility, allowable child care cost, and the copay calculation, except for child care under a contract between a Head Start agency and the Department, which is covered under OAR 461-135-0405.

(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(3) and (6); or

(ii) To participate in activities included in a case plan (see OAR 461-001-0025) including, for caretakers in the JOBS Plus program, the time the caretaker searches for unsubsidized employment and for which the employer pays the caretaker.

(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 caretaker meets the criteria for extra hours under section (10) of this rule.

(b) In the ERDC program, for a caretaker 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 caretaker 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 caretaker'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 caretaker has special circumstances. For the purposes of this section, a caretaker has special circumstances when it is necessary for the caretaker to obtain child care in excess of 215 hours in a month to perform the requirements of their 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.

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

Statutes/Other Implemented: ORS 329A.500, 409.010, 409.610, 411.060, 411.070, 411.122, 411.141, 412.006, 412.049, 412.124, 418.485, HB 4005, 2022 Reg. Sess. (Oregon 2022)

RULE ATTACHMENTS DO NOT SHOW CHANGES. PLEASE CONTACT AGENCY REGARDING CHANGES.

461-155-0150

(4)

(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	\$4.48	\$830	\$9.00	\$1,279
Toddler	\$4.43	\$797	\$7.50	\$1,279
Preschool	\$4.43	\$747	\$8.25	\$1,050
School	\$4.43	\$740	\$5.63	\$825
Special Needs	\$4.48	\$830	\$9.00	\$1,279

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	\$4.82	\$653	\$871	\$10.20	\$1,087	\$1,449
Toddler	\$4.55	\$627	\$835	\$8.50	\$1,087	\$1,449
Preschool	\$4.55	\$593	\$791	\$9.35	\$893	\$1,190
School	\$4.49	\$559	\$746	\$6.38	\$701	\$935
Special Needs	\$4.82	\$653	\$871	\$10.20	\$1,087	\$1,449

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	\$6.00	\$814	\$1,085	\$6.50	\$1,238	\$1,650	\$12.00	\$1,279	\$1,705
Toddler	\$5.00	\$720	\$960	\$7.00	\$1,176	\$1,568	\$10.00	\$1,279	\$1,705
Preschool	\$5.50	\$675	\$900	\$6.00	\$956	\$1,275	\$11.00	\$1,050	\$1,400
School	\$5.00	\$563	\$750	\$6.00	\$750	\$1,000	\$7.50	\$825	\$1,100
Special Needs	\$6.00	\$814	\$1,085	\$6.50	\$1,238	\$1,650	\$12.00	\$1,279	\$1,705

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

97003 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	97703	97707	97708	97709	97078					

(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	\$3.88	\$663	\$4.88	\$893
Toddler	\$3.88	\$636	\$4.69	\$812
Preschool	\$3.68	\$630	\$4.31	\$645
School	\$3.68	\$611	\$3.86	\$472
Special Needs	\$3.88	\$663	\$4.88	\$893

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	\$4.08	\$535	\$714	\$5.53	\$759	\$1,012
Toddler	\$4.08	\$510	\$680	\$5.31	\$690	\$921
Preschool	\$4.08	\$510	\$680	\$4.89	\$548	\$731
School	\$4.08	\$478	\$637	\$4.38	\$401	\$535
Special Needs	\$4.08	\$535	\$714	\$5.53	\$759	\$1,012

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	\$4.50	\$563	\$750	\$5.00	\$750	\$1,000	\$6.50	\$893	\$1,190
Toddler	\$4.00	\$525	\$700	\$5.00	\$675	\$900	\$6.25	\$812	\$1,083
Preschool	\$4.00	\$510	\$680	\$5.75	\$638	\$850	\$5.75	\$645	\$860
School	\$4.00	\$488	\$650	\$5.75	\$563	\$750	\$5.15	\$472	\$629
Special Needs	\$4.50	\$563	\$750	\$5.00	\$750	\$1,000	\$6.50	\$893	\$1,190

Zip Codes for Group Area B:

Salem, Medford, Roseburg, Brookings and areas outside the metropolitan areas in Eugene and Portland

97002	97011	97016	97017	97018	97038	97042	97044	97048	97049	97053	
97058	97067	97071	97103	97107	97108	97110	97111	97114	97115	97117	97118
97121	97122	97127	97128	97131	97134	97138	97141	97143	97146	97148	97301
97302	97303	97304	97305	97306	97307	97309	97310	97317	97321	97322	97325
97326	97327	97328	97336	97338	97341	97343	97344	97348	97352	97353	97355
97357	97362	97365	97366	97367	97370	97372	97374	97377	97378	97380	97381
97383	97385	97386	97389	97391	97392	97394	97415	97420	97423	97424	97426
97431	97444	97446	97448	97452	97456	97457	97459	97465	97470	97471	97479
97487	97489	97501	97502	97503	97504	97524	97534	97535	97756	97759	97760
97801	97812	97813									

(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	\$3.88	\$663	\$4.88	\$893
Toddler	\$3.88	\$636	\$4.69	\$812
Preschool	\$3.68	\$630	\$4.31	\$645
School	\$3.68	\$611	\$3.86	\$472
Special Needs	\$3.88	\$663	\$4.88	\$893

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	\$4.08	\$535	\$714	\$5.53	\$759	\$1,012
Toddler	\$4.08	\$510	\$680	\$5.31	\$690	\$921
Preschool	\$4.08	\$510	\$680	\$4.89	\$548	\$731
School	\$4.08	\$478	\$637	\$4.38	\$401	\$535
Special Needs	\$4.08	\$535	\$714	\$5.53	\$759	\$1,012

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	\$4.50	\$563	\$750	\$5.00	\$750	\$1,000	\$6.50	\$893	\$1,190
Toddler	\$4.00	\$525	\$700	\$5.00	\$675	\$900	\$6.25	\$812	\$1,083
Preschool	\$4.00	\$510	\$680	\$5.75	\$638	\$850	\$5.75	\$645	\$860
School	\$4.00	\$488	\$650	\$5.75	\$563	\$750	\$5.15	\$472	\$629
Special Needs	\$4.50	\$563	\$750	\$5.00	\$750	\$1,000	\$6.50	\$893	\$1,190

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									