

Chapter 329A

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Child Care

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OFFICE OF CHILD CARE

329A.010 Office of Child Care; Child Care Fund. (1) There is established within the Early Learning Division the Office of Child Care.

(2)(a) The Office of Child Care, as designated by the Governor, shall be responsible for administering funds received by the State of Oregon pursuant to the federal Child Care and Development Block Grant Act of 1990, the Dependent Care Planning and Development Grant and other federal child care funds and grants received by the State of Oregon.

(b) Through the legislative budgeting process, the Legislative Assembly shall identify the portion of the funds received by the State of Oregon pursuant to the federal Child Care and Development Block Grant Act of 1990 to be spent to provide quality child care, to provide child care subsidies and for administrative expenditures. The Office of Child Care shall administer the funds according to the portions identified by the Legislative Assembly.

(c) The Office of Child Care shall submit an annual report to the Legislative Fiscal Office regarding the expenditures of the funds received by the State of Oregon pursuant to the federal Child Care and Development Block Grant Act of 1990 and the most recent estimate of the balance of the funds.

(3) The Office of Child Care shall comply with directives of the Early Learning Council established in ORS 326.425 in the office's implementation of the provisions of ORS 329A.250 to 329A.450.

(4) There is established in the State Treasury, separate and distinct from the General Fund, the Child Care Fund. The Child Care Fund shall consist of moneys collected and received by the Office of Child Care pursuant to subsection (2) of this section, ORS 329A.310 and 329A.992 and such moneys as may be otherwise made available by law. Interest earned on the fund shall be credited to the fund. The moneys in the Child Care Fund are appropriated continuously to the Office of Child Care and shall be used in a manner consistent with the grant of funds or for the administration of ORS 181.537, 329A.030 and 329A.250 to 329A.450. [Formerly 657A.010]

329A.020 Duties of office. (1) The Office of Child Care staff shall provide technical assistance, linkage of local agencies, data collection and monitoring.

(2) The Office of Child Care shall continually monitor and disseminate information about federal and charitable programs for the purposes of ORS 329A.100 to 329A.190. [Formerly 657A.020]

329A.030 Central Background Registry; rules. (1) The Office of Child Care shall establish a Central Background Registry.

(2) A subject individual shall apply to and must be enrolled in the Central Background Registry as part of the individual's application to operate a program or serve in a position described in subsection (8) of this section.

(3) Upon receiving an application for enrollment in the Central Background Registry, the office shall complete a criminal records check under ORS 181.534 and shall complete a child protective services records check with the Department of Human Services. The office shall enroll the individual in the registry if the individual:

(a) Is determined to have no criminal or child protective services history or to have dealt with the issues and provided adequate evidence of suitability for the registry;

(b) Has paid the applicable fee established pursuant to ORS 329A.275; and

(c) Has complied with the rules of the Early Learning Council adopted pursuant to this section.

(4) The office may conditionally enroll an individual in the registry pending the results of a nationwide criminal records check through the Federal Bureau of Investigation if the individual has met other requirements of the office for enrollment in the registry.

(5) An enrollment in the Central Background Registry shall expire two years from the date of enrollment and may be renewed upon application to the office, payment of the fee established pursuant to ORS 329A.275 and compliance with rules adopted by the Early Learning Council pursuant to this section. However, an individual who is determined to be ineligible for enrollment in the registry after the date of initial enrollment shall be removed from the registry by the office.

(6)(a) A child care facility shall not hire or employ an individual if the individual is not enrolled in the Central Background Registry.

(b) Notwithstanding paragraph (a) of this subsection, a child care facility may employ on a probationary basis an individual who is conditionally enrolled in the Central Background Registry.

(7) The Early Learning Council may adopt any rules necessary to carry out the purposes of this section and the criminal records check program.

(8) For purposes of this section, "subject individual" means a subject individual as defined by the Early Learning Council by rule or a person who applies to be:

(a) The operator or an employee of a child care or treatment program;

(b) The operator or an employee of an Oregon prekindergarten program under ORS 329.170 to 329.200;

(c) The operator or an employee of a federal Head Start program regulated by the United States Department of Health and Human Services;

(d) An individual in a child care facility who may have unsupervised contact with children as identified by the office;

(e) A contractor or an employee of the contractor who provides early childhood special education or early intervention services pursuant to ORS 343.455 to 343.534;

(f) A child care provider who is required to be enrolled in the Central Background Registry by any state agency;

(g) A contractor, employee or volunteer of a metropolitan service district organized under ORS chapter 268 who may have unsupervised contact with children and who is required to be enrolled in the Central Background Registry by the metropolitan service district; or

(h) A provider of respite services, as defined in ORS 418.205, for parents pursuant to a properly executed power of attorney under ORS 109.056 who is providing respite services as a volunteer with a private agency or organization that facilitates the provision of such respite services.

(9)(a) Information provided to a metropolitan service district organized under ORS chapter 268 about the enrollment status of the persons described in subsection (8)(g) of this section shall be subject to a reciprocal agreement with the metropolitan service district. The agreement must provide for the recovery of administrative, including direct and indirect, costs incurred by the office from participation in the agreement. Any moneys collected under this paragraph shall be deposited in the Child Care Fund established under ORS 329A.010.

(b) Information provided to a private agency or organization facilitating the provision of respite services, as defined in ORS 418.205, for parents pursuant to a properly executed power of attorney under ORS 109.056 about the enrollment status of the persons described in subsection (8)(h) of this section shall be subject to an agreement with the private agency or organization. The agreement must provide for the recovery of administrative, including direct and indirect, costs incurred by the office from participation in the agreement. Any moneys collected under this paragraph shall be deposited in the Child Care Fund established under ORS 329A.010. [Formerly 657A.030]

RESOURCE AND REFERRAL PROGRAMS

329A.100 “Resource and referral agencies” defined for ORS 329A.100 to 329A.190. As used in ORS 329A.100 to 329A.190 “resource and referral agencies” means agencies with programs that provide information to parents, including referrals and coordination of community resources for parents and public or private providers of child care. [Formerly 657A.100]

329A.110 Policy. The Legislative Assembly believes that:

(1) Child care resource and referral programs involving a statewide network of local resource and referral agencies coordinated centrally are essential to long-range solutions to the child care crisis. Services may be both public and private ventures, which meet the needs of diverse audiences including, but not limited to:

(a) Parents for consumer education to find, select and maintain quality child care;

(b) Providers for access to training and consultation;

(c) Employers for cost-effective solutions to meet the needs of their workforce;

(d) Communities to plan effectively for improvements to the system; and

(e) The state for the need of a productive workforce.

(2) The state has an essential role in solving the child care crisis by becoming a stable partner with parents, local communities, employers and private contributors in developing solid child care resource and referral agencies for all citizens. [Formerly 657A.110]

329A.120 Services by resource and referral agencies. Services offered by resource and referral agencies shall include but are not limited to assistance for:

(1) Parents in locating available and appropriate child care, including counseling on how to choose a quality arrangement and sources of subsidies for low income families;

(2) Parents in locating child care during nontraditional work hours;

(3) Parents of children with disabilities in locating available and appropriate child care and respite care services;

(4) Parents in locating child care for ill children;

(5) Providers of child care programs in acquiring clients for their services;

(6) Providers of child care programs in upgrading the quality of services offered and business operation;

(7) Communities in assessing and recruiting for underserved needs; and

(8) Employers in providing assistance to employees in locating or providing child care. [Formerly 657A.120]

329A.130 Resource and referral agency requirements. Each resource and referral agency shall establish a referral process, maintain a record file of existing child care facilities in the designated area, maintain documentation of requests, provide consultation to parents and provide technical assistance to providers of child care. [Formerly 657A.130]

329A.140 Referrals to certified child care facilities; access requirements. (1) Resource and referral agencies shall make referrals to certified child care facilities. Referrals shall be made to uncertified child care facilities only if there is no requirement that the facility be certified.

(2) The referral process shall:

(a) Afford parents maximum access to all referral information. Access shall include, but is not limited to, telephone referrals to be made available for at least 20 hours per week of operation, including nontraditional hours.

(b) Make every effort to be accessible to all parents within the defined geographic area, including but not limited to any of the following:

(A) Toll-free telephone lines;

(B) Office space convenient to parents and providers; and

(C) Referrals in languages which are spoken in the community.

(3) Each child care resource and referral agency shall publicize its services through available sources, agencies and other appropriate methods. [Formerly 657A.140]

329A.150 Resource files; content. (1) A resource file shall be maintained by resource and referral agencies to identify the full range of existing child care services through information provided by all relevant public and private agencies in the areas of service and through the development of a resource file of those services which shall be maintained and updated at least annually.

(2) The resource file shall include, but not be limited to, the following information:

(a) Type of program;

(b) Hours of service;

(c) Ages of children served;

(d) Fees and eligibility for services; and

(e) Significant program information. [Formerly 657A.150]

329A.160 Documentation of requests for service. (1) Resource and referral agencies shall maintain documentation of requests for service. The following documentation of requests shall be maintained by resource and referral agencies:

(a) Number and time of calls and contacts to the child care resource and referral agency;

(b) Ages of children for whom care is requested;

(c) Time category of child care requested for each child;

(d) Special time category, such as nights, weekends and swing shift; and

(e) The reason child care is needed.

(2) The information shall be maintained in such a manner that it is easily accessible for dissemination and evaluation purposes. [Formerly 657A.160]

329A.170 Technical assistance to providers of child care services. (1) Resource and referral agencies shall provide technical assistance, with input from providers, to existing and potential providers of all types of child care services. Assistance shall include, but not be limited to, the following:

(a) Information on initiating new child care services, including but not limited to licensing, zoning, program and budget development and assistance in finding information from other such sources;

(b) Information and resources which shall help existing child care services providers to maximize their ability to serve the children and parents of the community; and

(c) Facilitation of communication between existing child care and child-related services providers in the community served.

(2) Services prescribed by this section shall be provided in order to maximize parental choice in the selection of child care and to facilitate the maintenance and development of child care services and resources. [Formerly 657A.170]

329A.180 Advisory committee; members; duties of committee and Office of Child Care. (1) The Office of Child Care shall create an advisory committee to advise the office on the development and administration of child care resource and referral policies and practices. The Office of Child Care shall, in consultation with the advisory committee, establish criteria for proposals, prepare requests for proposals, receive proposals and award grants for the establishment of resource and referral programs.

(2) The Office of Child Care shall collect and report data concerning resource and referral programs.

(3)(a) The local resource and referral agencies shall match grant funds in an amount not less than 10 percent of grant funds received. Matching financial support includes, but is not limited to, in-kind contributions.

(b) As used in this subsection, “in-kind contributions” means nonmonetary contributions that include but are not limited to:

- (A) Provision of rent-free program space;
- (B) Provision of utilities;
- (C) Provision of custodial services;
- (D) Provision of secretarial services;
- (E) Provision of liability insurance or health insurance benefits;
- (F) Administrative services; and
- (G) Transportation services.

(4) The Office of Child Care shall provide to the Early Learning Council a report that summarizes the development and administration of child care resource and referral policies and practices under this section. The report must be provided at least twice a year and as otherwise required by the Early Learning Council. [Formerly 657A.180]

329A.190 Criteria for renewal of program; reallocation of funds. (1) The criteria for the renewal of a resource and referral program shall include the following:

(a) Current and continuous satisfactory performance as a resource and referral agency providing the full range of services required by ORS 329A.100 to 329A.190.

(b) Full fiscal and program compliance with contract requirements established by the Office of Child Care.

(c) Cost effectiveness.

(d) Extent and quality of service to the community.

(2) The office shall reallocate any funds made available through nonrenewal of a contract for resource and referral programs.

(3) Satisfactory contract performance by a resource and referral agency shall be a condition for the renewal of that contract in the subsequent fiscal year. [Formerly 657A.190]

CHILD CARE FACILITIES

(Generally)

329A.250 Definitions for ORS 329A.030 and 329A.250 to 329A.450. As used in ORS 329A.030 and 329A.250 to 329A.450, unless the context requires otherwise:

(1) “Babysitter” means a person who goes into the home of a child to give care during the temporary absence of the parent or legal guardian or custodian.

(2) “Certification” means the certification that is issued under ORS 329A.280 by the Office of Child Care to a family child care home, child care center or other child care facility.

(3) “Child” means a child under 13 years of age or a child under 18 years of age who has special needs or disabilities and requires a level of care that is above normal for the child’s age.

(4) Subject to ORS 329A.440, “child care” means the care, supervision and guidance on a regular basis of a child, unaccompanied by a parent, guardian or custodian, provided to a child during a part of the 24 hours of the day, in a place other than the child’s home, with or without compensation. “Child care” does not include care provided:

(a) In the home of the child;

(b) By the child’s parent, guardian, or person acting in loco parentis;

(c) By a person related to the child by blood or marriage within the fourth degree as determined by civil law;

(d) On an occasional basis by a person not ordinarily engaged in providing child care;

(e) By providers of medical services;

(f) By a babysitter;

(g) By a person who cares for children from only one family other than the person’s own family;

(h) By a person who cares for no more than three children other than the person’s own children; or

(i) By a person who is a member of the child’s extended family, as determined by the office on a case-by-case basis.

(5) “Child care facility” means any facility that provides child care to children, including a day nursery, nursery school, child care center, certified or registered family child care home or similar unit operating under any name, but not including any:

(a) Preschool recorded program.

(b) Facility providing care for school-age children that is primarily a single enrichment activity, for eight hours or less a week.

(c) Facility providing care that is primarily group athletic or social activities sponsored by or under the supervision of an organized club or hobby group.

(d) Facility operated by:

(A) A school district as defined in ORS 332.002;

(B) A political subdivision of this state; or

(C) A governmental agency.

(e) Residential facility licensed under ORS 443.400 to 443.455.

(f) Babysitters.

(g) Facility operated as a parent cooperative for no more than four hours a day.

(h) Facility providing care while the child's parent remains on the premises and is engaged in an activity offered by the facility or in other nonwork activity.

(i) Facility operated as a school-age recorded program.

(6) "Family" has the meaning given that term in ORS 329.145.

(7) "Occasional" means that care is provided for no more than 70 days in any calendar year.

(8) "Parent cooperative" means a child care program in which:

(a) Care is provided by parents on a rotating basis;

(b) Membership in the cooperative includes parents;

(c) There are written policies and procedures; and

(d) A board of directors that includes parents of the children cared for by the cooperative controls the policies and procedures of the program.

(9) "Preschool recorded program" means a facility providing care for preschool children that is primarily educational for four hours or less per day and where no child is present at the facility for more than four hours per day.

(10) "Record" means the record that is issued under ORS 329A.255 to a preschool recorded program or under ORS 329A.257 to a school-age recorded program.

(11) "Registration" means the registration that is issued under ORS 329A.330 by the Office of Child Care to a family child care home where care is provided in the family living quarters of the provider's home.

(12) "School age" means of an age eligible to be enrolled in the first grade or above and, during the months of summer vacation from school, means of an age eligible to be enrolled in first grade or above in the next school year.

(13) "School-age recorded program" means a program for school-age children:

(a) That is not operated by a school district as defined in ORS 332.002;

(b) That is not required to be certified under ORS 329A.280 or registered under ORS 329A.330; and

(c) In which youth development activities are provided to children during hours that

school is not in session and does not take the place of a parent's care.

(14) "Youth development activities" means care, supervision or guidance that is intended for enrichment, including but not limited to teaching skills or proficiency in physical, social or educational activities such as tutoring, music lessons, social activities, sports and recreational activities. [Formerly 657A.250]

329A.252 Provision of care by persons whose enrollment in registry is denied, revoked or under suspension. (1) Notwithstanding ORS 329A.250 (4), care provided to children other than the children of the person providing the care by a person whose enrollment in the Central Background Registry established by ORS 329A.030 has been denied for cause, has been revoked or is under suspension, or whose certification or registration has been denied for cause, has been revoked or is under suspension, or who has voluntarily surrendered the person's certification or registration while under investigation by the Office of Child Care, is "child care" for purposes of ORS 329A.030 and 329A.250 to 329A.450.

(2) Notwithstanding ORS 329A.250 (5), a facility providing care for four hours or less per day that is primarily educational to preschool children that is operated by a person whose enrollment in the Central Background Registry established by ORS 329A.030 has been denied for cause, has been revoked or is under suspension, or whose certification or registration has been denied for cause, has been revoked or is under suspension, or who has voluntarily surrendered the person's certification or registration while under investigation by the Office of Child Care, is a "child care facility" for purposes of ORS 329A.030 and 329A.250 to 329A.450. [Formerly 657A.252]

329A.255 Preschool recorded program; criminal background check required; fee; rules; civil penalty. (1) A person operating a preschool recorded program may not operate the program without performing criminal background checks for all staff and volunteers and becoming recorded with the Office of Child Care as provided in this section.

(2) To obtain recording, the person must apply to the office by submitting a completed record application form and a nonrefundable fee as established by the office. The office shall determine and apply the fee through rules adopted by the Early Learning Council under ORS 329A.275. The office shall deposit fees received under this subsection as provided in ORS 329A.310 (2).

(3) The office shall issue a record to a person operating a preschool recorded program if the office determines that the applicant meets the requirements of ORS

329A.250 to 329A.450 and the rules adopted pursuant to ORS 329A.250 to 329A.450 and subsection (9) of this section.

(4) Unless the record is revoked as provided in subsection (8) of this section, the record is valid for a period of two years from the date of issuance.

(5) A record authorizes operation of the preschool recorded program only on the premises described in the record and only by the person named in the record.

(6) The office shall create and maintain a database of preschool recorded programs recorded under this section and shall update the database annually. The database shall include, but need not be limited to, the following information:

- (a) Name and address of the program;
- (b) Name of operator; and

(c) Significant program information, as determined by the Early Learning Council by rule.

(7) A preschool recorded program recorded under this section must post, and provide parents with, a notice that the preschool recorded program is not certified under ORS 329A.280 or registered under ORS 329A.330.

(8) An initial application or renewal application for recording of a preschool recorded program may be denied, revoked or suspended, if the office finds:

(a) That the program or its operation does not comply with ORS 329A.250 to 329A.450, with applicable rules and with any term or condition imposed under the record; or

(b) That visitation, on-site investigation or inspection of a program or its records authorized by ORS 329A.390 has not been permitted.

(9) The Early Learning Council shall adopt any rules necessary to carry out the provisions of this section.

(10) A person who violates any provision of this section or any term or condition of a record is subject to a civil penalty not to exceed \$100. [Formerly 657A.255]

329A.257 School-age recorded program; criminal background check required; fee; rules; civil penalty. (1) A person operating a school-age recorded program may not operate the program without performing criminal background checks for all staff and volunteers and becoming recorded with the Office of Child Care as provided in this section.

(2) To obtain recording, the person must apply to the office by submitting a completed

record application form and a nonrefundable fee as established by the office. The office shall determine and apply the fee through rules adopted by the Early Learning Council under ORS 329A.275. The office shall deposit fees received under this subsection as provided in ORS 329A.310 (2).

(3) The office shall issue a record to a person operating a school-age recorded program if the office determines that the applicant meets the requirements of ORS 329A.250 to 329A.450 and the rules adopted pursuant to ORS 329A.250 to 329A.450 and subsection (9) of this section.

(4) Unless the record is revoked as provided in subsection (8) of this section, the record is valid for a period of two years from the date of issuance.

(5) A record authorizes operation of the school-age recorded program only on the premises described in the record and only by the person named in the record.

(6) The office shall create and maintain a database of school-age recorded programs recorded under this section and shall update the database annually. The database shall include, but need not be limited to, the following information:

- (a) Name and address of the program;
- (b) Name of operator; and

(c) Significant program information, as determined by the Early Learning Council by rule.

(7) A school-age recorded program recorded under this section must post, and provide parents with, a notice that the school-age recorded program is not certified under ORS 329A.280 or registered under ORS 329A.330.

(8) An initial application or renewal application for recording of a school-age recorded program may be denied, revoked or suspended, if the office finds:

(a) That the program or its operation does not comply with ORS 329A.250 to 329A.450, with applicable rules and with any term or condition imposed under the record; or

(b) That visitation, on-site investigation or inspection of a program or its records authorized by ORS 329A.390 has not been permitted.

(9) The Early Learning Council shall adopt any rules necessary to carry out the provisions of this section.

(10) A person who violates any provision of this section or any term or condition of a record is subject to a civil penalty not to exceed \$100. [Formerly 657A.257]

329A.260 Minimum standards for child care facilities; rules. (1) After consultation with appropriate agencies and interested persons, the Early Learning Council by rule shall establish minimum standards for child care facilities and the operation thereof and for the administration of ORS 329A.030 and 329A.250 to 329A.450.

(2) In establishing minimum standards of health and safety, the council shall consult with the Oregon Health Authority and the State Fire Marshal and shall give consideration to their recommendations and to all basic requirements for the protection of the children to receive child care, including the criteria prescribed in ORS 329A.290, and may adopt rules applicable to different categories of child care facilities, considering:

(a) The numbers and ages of the children to receive care in the child care facility.

(b) The number, experience and training of the staff of the child care facility.

(c) The types and qualities of equipment and other factors in the physical plant of the child care facility.

(d) Any other factor affecting the care provided in the child care facility. [Formerly 657A.260]

329A.261 Development of rating and improvement system. (1) In addition to the minimum standards established for child care facilities and the operation of child care facilities under ORS 329A.260 and subject to available funds, the Office of Child Care, under the direction and with the approval of the Early Learning Council, shall initiate development of a tiered quality rating and improvement system for child care facilities.

(2) The tiered quality rating and improvement system implemented under this section shall:

(a) Establish a set of progressively higher standards that are used to evaluate the quality of an early learning and development program and to support program improvement.

(b) Consist of the following components:

(A) Tiered standards that define a progression of quality for early learning and development programs.

(B) Monitoring of programs to evaluate quality based on established standards.

(C) Support for programs and providers of programs to meet tiered quality standards, including training, technical assistance and financial incentives.

(D) Program quality ratings that are publicly available. [2012 c.37 §130; 2013 c.624 §86]

329A.263 Emergency plan for facilities; training; rules. (1) As used in this section:

(a) "Certified child care facility" means a child care facility that has been certified under ORS 329A.280 by the Office of Child Care.

(b) "Child care facility" has the meaning given that term in ORS 329A.250 (5).

(c) "Registered child care facility" means a child care facility that has been registered under ORS 329A.330 by the Office of Child Care.

(2) Every certified child care facility and registered child care facility shall:

(a) Adopt a plan to provide for the safety of children who are receiving child care at a child care facility in the event of an emergency that requires immediate action by the staff of the facility due to conditions of imminent danger that pose a threat to the life, health or safety of children who are receiving child care at the facility; and

(b) Provide training to all employees of the child care facility about the responsibilities of the employees to implement the plan required by this section.

(3) The Early Learning Council shall adopt by rule the requirements for the plan and training required by this section. The rules adopted shall include, but are not limited to, procedures for the evacuation of the children who are receiving child care at the child care facility to a place of safety when the conditions of imminent danger require relocation of those children. [Formerly 657A.263]

Note: 329A.263 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 329A or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

329A.270 Renewal procedure for certification or registration. (1) A certification or registration authorized by ORS 329A.030 and 329A.250 to 329A.450 and issued to a child care facility may be renewed upon submission of an application and payment of the required fee not later than 30 days prior to the expiration date of the current certification or registration if the Office of Child Care finds that the child care facility that is seeking renewal of the certification or registration is in compliance with the requirements of ORS 181.537, 329A.030 and 329A.250 to 329A.450 and the rules promulgated pursuant to ORS 181.534, 181.537, 329A.030 and 329A.250 to 329A.450.

(2) Upon submission of an application for renewal in proper time, manner and form, and payment of the required fee, the current certification or registration, unless officially revoked, shall remain in force until the Office of Child Care has acted on the applica-

tion for renewal and has given notice of the action taken. [Formerly 657A.270]

329A.275 Rules; fees and charges. (1) The Early Learning Council shall adopt rules establishing fees for certification, registration and recording under ORS 329A.250 to 329A.450.

(2) Subject to prior approval of the Oregon Department of Administrative Services and a report to the Legislative Assembly prior to adopting the fees and charges, the fees and charges established under ORS 181.534, 329A.030 and 329A.250 to 329A.450 may not exceed the cost of administering the program of the Office of Child Care pertaining to the purpose for which the fee is established, as authorized by the Legislative Assembly within the budget of the office.

(3) Notwithstanding subsection (2) of this section and any other provision of this chapter, the following fees established by the Early Learning Council under ORS 329A.030 and 329A.250 to 329A.450 may not exceed:

(a) For Certified Family Child Care Home Initial Certification, \$25;

(b) For Certified Family Child Care Home Annual Fee Per Certified Space, \$2;

(c) For Child Care Center Initial Certification, \$100;

(d) For Child Care Center Annual Fee Per Certified Space, \$2;

(e) For Registered Family Child Care Home Registration, \$30;

(f) For Preschool Recorded Program Recording, \$20;

(g) For School-Age Recorded Program Recording, \$20;

(h) For administering a class on child care abuse and neglect issues, \$10; and

(i) For enrollment in the Central Background Registry, the cost of administering the program, including fees for:

(A) Duplicate enrollment in the Central Background Registry;

(B) Law Enforcement Data System criminal records check; and

(C) Federal Bureau of Investigation fingerprint check. [Formerly 657A.275]

(Certification)

329A.280 When certification required; rules. (1) A person may not operate a child care facility, except a facility subject to the registration requirements of ORS 329A.330, without a certification for the facility from the Office of Child Care.

(2) The Early Learning Council shall adopt rules for the certification of a family

child care home caring for not more than 16 children. The rules shall be specifically adopted for the regulation of certified child care facilities operated in a facility constructed as a single-family dwelling. Notwithstanding fire and other safety regulations, the rules that the council adopts for certified child care facilities shall set standards that can be met without significant architectural modification of a typical home. In adopting the rules, the council may consider and set limits according to factors including the age of children in care, the ambulatory ability of children in care, the number of the provider's children present, the length of time a particular child is continuously cared for and the total amount of time a particular child is cared for within a given unit of time.

(3) In addition to rules adopted for and applied to a certified family child care home providing child care for not more than 16 children, the council shall adopt and apply separate rules appropriate for any child care facility that is a child care center.

(4) Any person seeking to operate a child care facility may apply for a certification for the facility from the Office of Child Care and receive a certification upon meeting certification requirements. [Formerly 657A.280]

329A.290 Qualifications of applicant for certification. A person applying for a certification for a child care facility shall demonstrate to the satisfaction of the Office of Child Care that:

(1) The moral character and habits of the person will not endanger the well-being of children for whom the person is to provide care.

(2) The attitude of the person toward children and understanding of their needs qualify the person to care for children.

(3) The person is physically and mentally capable of caring for children.

(4) The facility and its operation are adequate to protect the health, the safety and the physical, moral and mental well-being of the children to be cared for in the facility, including but not limited to:

(a) Adequate staffing by suitable persons qualified by education or experience to meet their respective responsibilities in the care of children.

(b) Adequate physical facilities for the care of children, such as building construction, sanitation, plumbing, heating, lighting, ventilation, maintenance, indoor and outdoor activity areas and fire protection.

(c) A program of activities conforming to recognized practices in the areas of child welfare, education and physical and mental

health to provide opportunity for development and recreation.

(d) Exclusion from the facility of individuals whose presence may be detrimental to the welfare of children, including exclusion of any individual with a criminal record indicating conviction of any crime which would bar the individual from operating or being employed in a child care facility under ORS 329A.260. [Formerly 657A.290]

329A.300 Issuance of certification; temporary certification; office's duties under federal programs. (1) Upon receipt of an application for a certification, accompanied by the required fee, the Office of Child Care shall issue a certification if the office finds that the child care facility and its operations are in compliance with the requirements of ORS 181.537, 329A.030 and 329A.250 to 329A.450 and the rules promulgated pursuant to ORS 181.534, 181.537, 329A.030 and 329A.250 to 329A.450.

(2) The Office of Child Care may issue a temporary certification, subject to reasonable terms and conditions, for a period not longer than 180 days to a child care facility that does not comply with the requirements and rules if the office finds that the health and safety of any child will not be endangered thereby. Not more than one temporary certification shall be issued for the same child care facility in any 12-month period.

(3) The Office of Child Care shall serve as the state agency authorized, upon request, to certify compliance with applicable federal child care standards or requirements by any facility providing child care in the state. [Formerly 657A.300]

329A.310 Application; fees; use; certification applies only to premises and applicant; expiration date. (1) Application for a certification or for the annual renewal thereof shall be made to the Office of Child Care on forms provided by the office and accompanied by a nonrefundable fee. The fee shall vary according to the type of facility and the number of children for which the facility is requesting to be certified, and shall be determined and applied through rules adopted by the Early Learning Council pursuant to ORS 329A.275.

(2) All fees received under subsection (1) of this section shall be deposited in the Child Care Fund established under ORS 329A.010 (4) and may be used for the administration of ORS 181.537, 329A.030 and 329A.250 to 329A.450.

(3) Any certification issued pursuant to ORS 329A.030 and 329A.250 to 329A.450 authorizes operation of the facility only on the premises described in the certification and

only by the person named in the certification.

(4) Unless sooner revoked, a temporary certification expires on the date specified therein. Unless sooner revoked and except as provided in ORS 329A.270 (2), an annual certification expires one year from the date of issuance. [Formerly 657A.310]

(Registration)

329A.330 Registration requirements; fee; waiver; renewal; rules; work sheet.

(1) A provider operating a family child care home where care is provided in the family living quarters of the provider's home that is not subject to the certification requirements of ORS 329A.280 may not operate a child care facility without registering with the Office of Child Care.

(2) A child care facility holding a registration may care for a maximum of 10 children, including the provider's own children. Of the 10 children:

(a) No more than six may be younger than school age; and

(b) No more than two may be 24 months of age or younger.

(3)(a) To obtain a registration, a provider must apply to the Office of Child Care by submitting a completed application work sheet and a nonrefundable fee. The fee shall vary according to the number of children for which the facility is requesting to be registered, and shall be determined and applied through rules adopted by the Early Learning Council under ORS 329A.275. The fee shall be deposited as provided in ORS 329A.310 (2). The office may waive any or all of the fee if the office determines that imposition of the fee would impose a hardship on the provider.

(b) Upon receipt of an initial or renewal application satisfactory to the office, the office shall conduct an on-site review of the child care facility under this section. The on-site review shall be conducted within 30 days of the receipt of a satisfactory application.

(4) The office shall issue a registration to a provider operating a family child care home if:

(a) The provider has completed a child care overview class administered by the office;

(b) The provider has completed two hours of training on child abuse and neglect issues;

(c) The provider is currently certified in infant and child first aid and cardiopulmonary resuscitation;

(d) The provider is certified as a food handler under ORS 624.570; and

(e) The office determines that the application meets the requirements of ORS 181.537, 329A.030 and 329A.250 to 329A.450 and the rules promulgated pursuant to ORS 181.534, 181.537, 329A.030 and 329A.250 to 329A.450, and receives a satisfactory records check, including criminal records and protective services records.

(5) Unless the registration is revoked as provided in ORS 329A.350, the registration is valid for a period of two years from the date of issuance. The office may renew a registration of a provider operating a family child care home if the provider:

(a) Is currently certified in infant and child first aid and cardiopulmonary resuscitation;

(b) Has completed a minimum of eight hours of training related to child care during the most recent registration period; and

(c) Is certified as a food handler under ORS 624.570.

(6) A registration authorizes operation of the facility only on the premises described in the registration and only by the person named in the registration.

(7) The Early Learning Council shall adopt rules:

(a) Creating the application work sheet required under subsection (3) of this section;

(b) Defining full-time and part-time care;

(c) Establishing under what circumstances the adult to child ratio requirements may be temporarily waived; and

(d) Establishing health and safety procedures and standards on:

(A) The number and type of toilets and sinks available to children;

(B) Availability of steps or blocks for use by children;

(C) Room temperature;

(D) Lighting of rooms occupied by children;

(E) Glass panels on doors;

(F) Condition of floors;

(G) Availability of emergency telephone numbers; and

(H) Smoking.

(8) The office shall adopt the application work sheet required by subsection (3) of this section. The work sheet must include, but need not be limited to, the following:

(a) The number and ages of the children to be cared for at the facility; and

(b) The health and safety procedures in place and followed at the facility.

(9) The office, upon good cause shown, may waive one or more of the registration

requirements. The office may waive a requirement only if appropriate conditions or safeguards are imposed to protect the welfare of the children and the consumer interests of the parents of the children. The office may not waive the on-site review requirement for applicants applying for an initial registration or renewal of a registration.

(10) The Early Learning Council, by rule, shall develop a list of recommended standards consistent with standards established by professional organizations regarding child care programs for child care facilities. Compliance with the standards is not required for a registration, but the office shall encourage voluntary compliance and shall provide technical assistance to a child care facility attempting to comply with the standards. The child care facility shall distribute the list of recommended minimum standards to the parents of all children cared for at the facility.

(11) In adopting rules relating to registration, the Early Learning Council shall consult with the appropriate legislative committee in developing the rules to be adopted. If the rules are being adopted during a period when the Legislative Assembly is not in session, the Early Learning Council shall consult with the appropriate interim legislative committee. [Formerly 657A.330]

(Orientation)

329A.340 Certain child care providers required to attend orientation; content of orientation; effect of ceasing to provide services; cost. (1) A child care provider not subject to certification or registration who begins providing child care services after June 30, 2010, and who receives funds from the Department of Human Services shall attend an orientation provided by the department or a resource and referral agency under ORS 329A.100 to 329A.190 within 90 days of being approved by the department to receive funds for child care services from the department.

(2) The orientation required by subsection (1) of this section must provide information regarding financial resources and reimbursements available through private or public sources and information to maximize the likelihood of provider payments and reimbursements for child care services.

(3) The department shall ensure that at least one orientation required by subsection (1) of this section is offered in each department service delivery area every quarter.

(4) A child care provider described in subsection (1) of this section who ceases to provide child care services for a period of one year or more must attend an orientation under this section within 90 days of being

approved by the department to receive funds for child care services from the department.

(5) The orientation required by subsection (1) of this section must be provided at minimal or no cost to the child care provider.

(6) The orientation required by subsection (1) of this section must include, but need not be limited to, information about the following:

(a) Department of Human Services listings, vouchers and payments;

(b) Child care provider rights and responsibilities;

(c) Enhanced rate training options;

(d) Food program resources available through the United States Department of Agriculture; and

(e) Other resources available to child care providers. [Formerly 657A.340]

(Discipline; Enforcement)

329A.350 Denial, revocation or suspension of certification or registration.

An initial application from a child care facility for certification or registration or a renewal application from a child care facility for certification or registration may be denied, or a temporary or regular certification or regular registration may be revoked or suspended, if the Office of Child Care finds:

(1) That the facility or its operation does not comply with ORS 181.537, 329A.030 and 329A.250 to 329A.450 or with applicable rules or with any term or condition imposed under the certification or registration; or

(2) That visitation, on-site review or inspection of a facility or its records authorized by ORS 329A.390 or 329A.400 has not been permitted. [Formerly 657A.350]

329A.360 Notice; hearing; decision; judicial review.

(1) Upon deciding to deny, revoke, suspend or not to renew a certification or registration, the Office of Child Care shall give notice and opportunity for hearing as provided in ORS chapter 183.

(2) The Office of Child Care shall make the final decision and notice thereof shall be sent by certified mail to the address of the child care facility as shown on the records of the office. The decision of the office is reviewable by the Court of Appeals in the manner provided in ORS 183.480 for the review of orders in contested cases. [Formerly 657A.360]

329A.370 Injunction. Without the necessity of prior administrative proceedings or hearing and entry of an order or at any time during such proceedings if they have been commenced, the Office of Child Care may

institute proceedings to enjoin the operation of any child care facility operating in violation of ORS 181.537, 329A.030 and 329A.250 to 329A.450 or the rules promulgated pursuant to ORS 181.534, 181.537, 329A.030 and 329A.250 to 329A.450. [Formerly 657A.370]

(Inspection)

329A.390 Inspection; right to enter premises and to inspect records; investigation.

(1) Whenever an authorized representative of the Office of Child Care is advised or has reason to believe that child care that is subject to regulation by the office is being provided without a certification, registration or record, the authorized representative may visit and conduct an on-site investigation of the premises of the facility at any reasonable time to determine whether the facility is subject to the requirements of ORS 181.537, 329A.030 and 329A.250 to 329A.450.

(2) At any reasonable time, an authorized representative of the Office of Child Care may conduct an on-site investigation of the premises of any certified or registered child care facility to determine whether the child care facility is in conformity with ORS 181.537, 329A.030 and 329A.250 to 329A.450 and the rules promulgated pursuant to ORS 181.534, 181.537, 329A.030 and 329A.250 to 329A.450.

(3) An authorized representative of the Office of Child Care shall conduct an on-site investigation of the premises of any certified or registered child care facility or of any other child care facility that is subject to regulation by the office if the office receives a serious complaint about the child care facility. The Early Learning Council, by rule, shall adopt a definition for "serious complaint."

(4) Any state agency that receives a complaint about a certified or registered child care facility, a preschool recorded program or a school-age recorded program shall notify the Office of Child Care about the complaint and any subsequent action taken by the state agency based on that complaint.

(5) The director and operator of a child care facility, a preschool recorded program or a school-age recorded program shall permit an authorized representative of the office to inspect records of the facility or program and shall furnish promptly reports and information required by the office. [Formerly 657A.390]

329A.400 Duties of Oregon Health Authority; inspection.

(1) An authorized representative of the Oregon Health Authority may inspect the premises of a child care facility certified under ORS 329A.280 to deter-

mine whether the facility is in conformity with applicable laws and regulations relating to health and sanitation.

(2) An authorized representative of the authority shall inspect any child care facility when requested to do so by the Office of Child Care in accordance with arrangements under ORS 329A.420 and shall submit written findings to the Office of Child Care. The Office of Child Care shall not issue or renew any certification for any child care facility for which an inspection by the authority has been requested unless an authorized representative of the authority submits a written finding that the facility is in compliance with applicable laws and regulations relating to health and sanitation.

(3) An environmental health specialist's inspection may be performed by a private consultant so long as the consultant is registered under ORS chapter 700. [Formerly 657A.400]

329A.410 When search warrant required; procedure. (1) In the event that any authorized representative of the Office of Child Care, Oregon Health Authority or other agency is denied access to any premises for the purpose of making an inspection in the administration of ORS 181.537, 329A.030 and 329A.250 to 329A.450, the representative shall not inspect the premises without a search warrant.

(2) Application for a search warrant to inspect the premises shall be made to any magistrate authorized to issue a warrant of arrest. The application must be supported by an affidavit filed with the magistrate showing probable cause for the inspection by stating the purpose and extent of the proposed inspection, the statutes and rules which provide the basis for inspection, whether it is a routine or periodic inspection, an on-site review or an investigation instituted by complaint and other specific or general information concerning the premises.

(3) If the magistrate is satisfied that there is probable cause to believe that the grounds of the application exist, the magistrate shall issue the search warrant specifying the purpose and extent of the inspection, on-site review or investigation of the premises covered by the warrant. [Formerly 657A.410]

329A.420 Cooperative agreements to inspect premises. The Office of Child Care may enter into cooperative arrangements with the Oregon Health Authority, the State Fire Marshal and other public agencies for the provision of services in the inspection of child care facilities in the administration of ORS 181.537, 329A.030 and 329A.250 to 329A.450. The arrangements shall designate which services shall be reimbursed and the

rate and manner of reimbursement. [Formerly 657A.420]

(Collective Bargaining)

329A.430 Rights of family child care providers to join labor organizations; state as employer for collective bargaining purposes. (1) As used in this section:

(a) "Certified family child care provider" means an individual who operates a family child care home that is certified under ORS 329A.280.

(b) "Child care subsidy" means a payment made by the state on behalf of eligible children for child care services provided for periods of less than 24 hours in a day.

(c) "Exempt family child care provider" means an individual who provides child care services in the home of the individual or in the home of the child, whose services are not required to be certified or registered under ORS 329A.250 to 329A.450 and who receives a child care subsidy.

(d) "Family child care provider" means an individual who is a certified, registered or exempt family child care provider.

(e) "Registered family child care provider" means an individual who operates a family child care home that is registered under ORS 329A.330.

(2) For purposes of collective bargaining under ORS 243.650 to 243.782, the State of Oregon is the public employer of record of family child care providers.

(3) Notwithstanding ORS 243.650 (19), family child care providers are considered to be public employees governed by ORS 243.650 to 243.782. Family child care providers have the right to form, join and participate in the activities of labor organizations of their own choosing for the purpose of representation and collective bargaining on matters concerning labor relations. These rights shall be exercised in accordance with the rights granted to public employees, with mediation and interest arbitration under ORS 243.742 as the method of concluding the collective bargaining process. Family child care providers may not strike.

(4) Notwithstanding subsections (2) and (3) of this section, family child care providers are not for any other purpose employees of the State of Oregon or any other public body.

(5) The Oregon Department of Administrative Services shall represent the State of Oregon in collective bargaining negotiations with the certified or recognized exclusive representatives of all appropriate bargaining units of family child care providers. The Oregon Department of Administrative Services is authorized to agree to terms and condi-

tions of collective bargaining agreements on behalf of the State of Oregon.

(6) Notwithstanding ORS 243.650 (1):

(a) The appropriate bargaining unit for certified and registered family child care providers is a bargaining unit of all certified and registered family child care providers in the state.

(b) The appropriate bargaining unit for exempt family child care providers is a bargaining unit of all exempt family child care providers in the state.

(7) This section does not modify any right of a parent or legal guardian to choose and terminate the services of a family child care provider. [Formerly 657A.430]

(Miscellaneous)

329A.440 Application of zoning ordinances to registered or certified family child care homes. (1) A registered or certified family child care home shall be considered a residential use of property for zoning purposes. The registered or certified family child care home shall be a permitted use in all areas zoned for residential or commercial purposes, including areas zoned for single-family dwellings. A city or county may not enact or enforce zoning ordinances prohibiting the use of a residential dwelling, located in an area zoned for residential or commercial use, as a registered or certified family child care home.

(2) A city or county may impose zoning conditions on the establishment and maintenance of a registered or certified family child care home in an area zoned for residential or commercial use if the conditions are no more restrictive than conditions imposed on other residential dwellings in the same zone.

(3) A county may:

(a) Allow a registered or certified family child care home in an existing dwelling in any area zoned for farm use, including an exclusive farm use zone established under ORS 215.203;

(b) Impose reasonable conditions on the establishment of a registered or certified family child care home in an area zoned for farm use; and

(c) Allow a division of land for a registered or certified family child care home in an exclusive farm use zone only as provided in ORS 215.263 (9).

(4) This section applies only to a registered or certified family child care home where child care is offered in the home of the provider to not more than 16 children, including children of the provider, regardless of full-time or part-time status. [Formerly 657A.440]

329A.450 Assistance to staff of facility. The Office of Child Care may consult with, advise or train the staffs of child care facilities or other interested persons concerning child care programs. [Formerly 657A.450]

329A.460 Separate sleeping quarters not required for certain persons providing child care or babysitting services; exemption from age group segregation requirements. Notwithstanding any other provision of law, children of any person providing babysitting or child care services within the person's own home shall not be required to sleep in any area other than their normal sleeping quarters. Such children related by blood within the first degree of consanguinity shall not be segregated by age grouping while in the care of a person providing babysitting or child care services if the parents request exemption from the operation of any statute or rule requiring such segregation or separation by age. [Formerly 657A.460]

CHILD CARE PROVIDER TRAINING

329A.490 Child care provider training program; fees; rules. If the Department of Education is able to find adequate funding under ORS 329A.493, the department, in partnership with organizations including, but not limited to, the Institute on Violence and Destructive Behavior at the University of Oregon, the Early Learning Council, the Youth Development Division and the Oregon Center for Career Development in Childhood Care and Education:

(1) Shall establish, in coordination with existing training systems, a statewide child care provider training program that will educate child care providers on:

(a) The importance of healthy brain development in the first three years of a child's life.

(b) The identification of risk factors and behaviors that indicate that a child:

(A) Needs special education or mental health treatment; or

(B) Is at risk of becoming involved in the criminal justice system.

(c) Appropriate referrals for intervention for the behaviors identified under paragraph (b) of this subsection.

(2) Shall establish an application process for child care providers who wish to attend the program and may charge child care providers a fee for attending the program.

(3) May adopt any rules necessary to implement this section. [Formerly 657A.490]

Note: 329A.490 and 329A.493 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 329A or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

329A.493 Funds for training program.

The Department of Education shall seek funds from public and private sources to implement and operate the child care provider training program established under ORS 329A.490. [Formerly 657A.493]

Note: See note under 329A.490.

CHILD CARE TAX CREDIT PROGRAM

329A.700 Definitions for ORS 329A.700 to 329A.718. As used in ORS 329A.700 to 329A.718:

(1) “Child care provider” means a provider, for compensation, of care, supervision or guidance to a child on a regular basis in a center or in a home other than the child’s home. “Child care provider” does not include a person who is the child’s parent, guardian or custodian.

(2) “Community agency” means a non-profit agency that:

(a) Provides services related to child care, children and families, community development or similar services; and

(b) Is eligible to receive contributions that qualify as deductions under section 170 of the Internal Revenue Code.

(3) “High quality child care” means child care that meets standards for high quality child care established or approved by the Early Learning Council.

(4) “Qualified contribution” means a contribution made by a taxpayer to the Office of Child Care or a selected community agency for the purpose of promoting child care, and for which the taxpayer will receive a tax credit certificate under ORS 329A.706.

(5) “Tax credit certificate” means a certificate issued by the Office of Child Care to a taxpayer to qualify the taxpayer for a tax credit under ORS 315.213.

(6) “Tax credit marketer” means an individual or entity selected by the Office of Child Care to market tax credits to taxpayers. [Formerly 657A.700]

Note: 329A.700 to 329A.718 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 329A or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

329A.703 Program established; purposes. (1) The Office of Child Care, in collaboration with an advisory committee established by the office, shall establish a program to:

(a) Allocate tax credit certificates to taxpayers that make qualified contributions to the Office of Child Care; and

(b) Distribute to child care providers moneys from qualified contributions and other contributions.

(2) The purposes of the program are to:

(a) Encourage taxpayers to make contributions to the Office of Child Care by providing a financial return on qualified contributions and by soliciting other contributions.

(b) Achieve specific and measurable goals for targeted communities and populations.

(c) Set standards for the child care industry concerning the cost of providing quality, affordable child care.

(d) Strengthen the viability and continuity of child care providers while making child care more affordable for low and moderate income families. [Formerly 657A.703]

Note: See note under 329A.700.

329A.706 Program implementation; community agency applications; tax credit certificates; rules. (1) For the purpose of implementing the program established under ORS 329A.703, the Early Learning Council, in collaboration with an advisory committee established by the council and the Office of Child Care, shall:

(a) Adopt rules.

(b) Select a tax credit marketer who agrees to market tax credits to taxpayers.

(c) Identify child care goals that are consistent with the purposes provided in ORS 329A.703 (2). The goals identified under this paragraph shall take into account state resources and needs.

(d) Develop by rule the application process an entity must complete to be designated as a community agency under ORS 329A.700 to 329A.718, and any process for the renewal of that designation.

(e) Select one or more community agencies.

(f) Enter into an agreement with each selected community agency to perform the functions specified in ORS 329A.715.

(g) Determine the total value of moneys to be available to each selected community agency to distribute to providers based on goals identified under paragraph (c) of this subsection, and distribute those moneys in the manner provided in ORS 329A.712 to the selected community agencies. The total value of moneys available to all selected community agencies in this state may not exceed the amount of contributions received from taxpayers during the tax year minus any reasonable administrative costs incurred by

the Office of Child Care and the selected community agencies.

(2) The Early Learning Council may adopt rules that establish a fixed percentage that is less than 100 percent by which the amount contributed by a taxpayer will be certified for a tax credit by the Office of Child Care. The purpose of the grant of rulemaking authority under this subsection is to permit the Early Learning Council to calibrate the amount of the tax credit to interpretations of the deductibility of qualified contributions under section 170 of the Internal Revenue Code for federal tax purposes.

(3)(a) The Office of Child Care shall issue tax credit certificates in the chronological order in which the contributions are received by the office. The office shall issue tax credit certificates to contributors until the total value of all certificates issued by the office for the calendar year equals \$500,000. Each issued certificate shall state the value of the contribution being certified as eligible for the tax credit allowed under ORS 315.213. Except as provided in rules adopted under subsection (2) of this section, the certified value shall equal the amount of the contribution.

(b) The Office of Child Care may not issue a tax credit certificate to a taxpayer to the extent the credit value to be certified, when added to the total credit value previously certified by the office under paragraph (a) of this subsection for the calendar year exceeds \$500,000.

(c) The Office of Child Care shall send a copy of all tax credit certificates issued under this section to the Department of Revenue.

(d) Qualified contributions shall be deposited in the Child Care Fund.

(4) A taxpayer that receives a notice of denial of a tax credit certificate or that receives a tax credit certificate issued for an amount that is less than the amount contributed may request a refund for the amount contributed within 90 days of the denial or issuance of the certificate by the Office of Child Care. The Office of Child Care must send notice of a denial or changed amount and refund the amount for which a tax credit will not be granted within 30 days after receiving the request. The refund shall be made from the Child Care Fund.

(5) The Early Learning Council may establish by rule any other provisions required to implement the program established under ORS 329A.700 to 329A.718. [Formerly 657A.706]

Note: See note under 329A.700.

329A.709 Community agency selection.

(1) In selecting a community agency under ORS 329A.706, the Office of Child Care shall consider:

(a) A prospective agency's financial soundness, net worth, cash flow and accounting capacity to manage the tax credit program;

(b) A prospective agency's demonstrated ability to serve low and moderate income families;

(c) The degree to which the governing board of the prospective agency is representative of the community in which the agency is located, has a low turnover rate of board members, has experience with financial matters and has a demonstrated history of collaboration with other community agencies; and

(d) The experience and expertise of the executive or managing officer and staff of the prospective agency in child care business management and small business development.

(2) The office shall select the community agency that, in the judgment of the office and based on the criteria set forth in subsection (1) of this section, will best serve the interests of the community for which it is selected. [Formerly 657A.709]

Note: See note under 329A.700.

329A.712 Revenue distribution to community agencies; disbursement to child care providers; rules.

(1) The Office of Child Care shall distribute revenues in the Child Care Fund that are derived from contributions, minus the amounts needed to make refunds under ORS 329A.706 (4) and to cover expenses of the Office of Child Care in administering ORS 329A.700 to 329A.718.

(2) Distributions shall be made to community agencies selected under ORS 329A.706 in the proportion that the Office of Child Care determines best promotes the provision of child care in this state.

(3) Moneys distributed to selected community agencies shall be disbursed to child care providers, consistent with rules adopted by the Early Learning Council relating to the disbursement of moneys by selected community agencies. The council shall consider the factors described in ORS 329A.715 (2)(h) when adopting rules under this subsection. [Formerly 657A.712]

Note: See note under 329A.700.

329A.715 Community agency duties; disbursement of moneys to child care providers.

(1) Each community agency selected under ORS 329A.706 shall disburse moneys to child care providers, pursuant to ORS 329A.712 and rules adopted thereunder.

(2) A selected community agency must:

(a) Coordinate an application process by which persons may apply to be participating providers;

(b) Enter into agreements with participating providers under which the duties and responsibilities of participating providers and the community agency are stated;

(c) Provide or coordinate required training for participating providers;

(d) Monitor participating providers, through visits to providers and otherwise;

(e) Oversee the process by which a participating provider verifies the income of a family and establishes the total child care fee charged to a family;

(f) Report on participating provider compliance with ORS 329A.718 and other applicable requirements to contributors and the Office of Child Care;

(g) Establish a maximum family income level for the region for purposes of the child care fee limitation to which participating providers are subject under ORS 329A.718 (1)(g); and

(h) Determine, consistently with rules adopted by the Early Learning Council, the amount of moneys to be disbursed to a participating provider based on the incomes of the families the provider serves, the child care fees the provider charges and the actual cost to the provider of providing quality, affordable child care.

(3)(a) A selected community agency must distribute to participating child care providers all moneys that are available to the agency as a result of the determination made by the Office of Child Care under ORS 329A.706 (1)(g). Each selected community agency shall distribute a substantial portion of the moneys to participating child care providers that are home-based businesses.

(b) Distributions shall be based on the actual costs of providing quality, affordable child care in the community for which distributions are being made, including training costs, operating costs and wages.

(4) For the purpose of making distributions to child care providers, a selected community agency shall identify child care providers in the community that meet the requirements of ORS 329A.718. The selected community agency may develop a process through which child care providers apply to receive distributions of moneys from contributions made by taxpayers. [Formerly 657A.715]

Note: See note under 329A.700.

329A.718 Child care provider requirements; selection. (1) Each selected community agency shall select participating child care providers that meet the following requirements:

(a) If a home-based business, the provider must enter into an agreement with the community agency to continue to provide child care services for at least an additional two years.

(b) If a home-based business, the provider must serve at least two families that have incomes that are 85 percent or less of the median income for the region. If a center, at least 25 percent of the families the provider serves must have incomes that are 85 percent or less of the median income for the region.

(c) The provider must accept children for whom child care is paid for through a Department of Human Services subsidy.

(d) The provider and the employees of the provider must provide high quality child care.

(e) The provider, if the provider is an individual, and the employees of the provider must comply with Early Learning Council rules and requirements for registration or certification.

(f) The provider must maintain adequate liability insurance, financial records and parent policies and contracts, and permit the selected community agency to conduct visits.

(g) For care provided to children of families whose income does not exceed the level established by the selected community agency under ORS 329A.715 (2)(g), the provider must agree to limit the total child care fees charged to a family to a percentage established by the Early Learning Council by rule.

(2) In selecting participating child care providers, selected community agencies must give preference to providers that provide child care to low and moderate income families. [Formerly 657A.718]

Note: See note under 329A.700.

PENALTIES

329A.990 Criminal penalty. A person who violates ORS 329A.280 commits a Class A misdemeanor. Each day of violation is a separate offense. [Formerly 657A.990]

329A.992 Suspension; revocation; civil penalty; rules; deposit into Child Care Fund. (1) In addition to any other provision of law or rule adopted pursuant to ORS 329A.260 for enforcement of the provisions of ORS chapter 329A, the Office of Child Care may suspend or revoke a certification or registration issued under ORS 329A.030 and 329A.250 to 329A.450, or impose a civil penalty in the manner provided in ORS 183.745, for violation of:

(a) Any of the provisions of ORS 329A.030 and 329A.250 to 329A.450;

(b) The terms and conditions of a certification or registration issued under ORS 329A.030 and 329A.250 to 329A.450; or

(c) Any rule of the Early Learning Council adopted under ORS 329A.030 and 329A.250 to 329A.450.

(2) The Early Learning Council shall adopt by rule a schedule establishing the civil penalties that may be imposed under this section. The schedule must provide for categories of violations for which a penalty may be imposed, including “nonserious” and “serious” to be defined by the council by rule under ORS 329A.260.

(3) The office must issue a written warning for a nonserious or serious violation before assessing a civil penalty under this section. The written warning must prescribe a reasonable time in which to correct a violation.

(4) The office may not impose a civil penalty of more than \$100 for a first violation.

(5) The office may not impose a civil penalty for a subsequent violation that exceeds the penalty imposed for the previous violation by more than \$100. Penalties imposed under this subsection may not exceed \$500 per violation, or \$1,000 total for multiple violations per quarter.

(6) Notwithstanding any other provision of this section, the maximum civil penalty that may be imposed:

(a) For violation of ORS 329A.330 by a registered family child care home provider is \$100.

(b) For violation of ORS 329A.280 by an operator of a child care facility that is not a child care center is \$200.

(c) For violation of ORS 329A.280 by an operator of a child care facility that is a child care center is \$500.

(7) A civil penalty imposed under this section may be remitted or reduced upon such terms and conditions as the office considers proper and consistent with the public health and safety.

(8) All moneys received under this section shall be deposited in the Child Care Fund established under ORS 329A.010 (4) and may be used for the administration of ORS 181.537, 329A.030 and 329A.250 to 329A.450. [Formerly 657A.992]

Note: 329A.992 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 329A or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

