

# House Bill 2777

Sponsored by Representative PARRISH (Pre-session filed.)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires Department of Education and Department of Human Services, in consultation with Early Learning Division and Office of Child Care, to implement and administer program that requires all persons with regular presence at child care facility to take drug test at intervals prescribed by rule, at expense of owner or operator of child care facility.

Mandates that program impose disciplinary action for refusal to take drug test or for failing drug test, including immediate termination of work or employment, suspension or revocation of certificate, registration, record, license or authorization to operate child care facility and immediate suspension of state funding.

## A BILL FOR AN ACT

1  
2 Relating to mandatory drug testing of certain persons at child care facilities; creating new pro-  
3 visions; and amending ORS 329A.992.

4 **Be It Enacted by the People of the State of Oregon:**

### **SECTION 1. (1) As used in this section:**

5  
6 (a) **"Child care facility" means:**

7 (A) **A child care facility that has been certified under ORS 329A.280;**

8 (B) **A family child care home that has been registered under ORS 329A.330;**

9 (C) **A preschool recorded program that has become recorded under ORS 329A.255;**

10 (D) **A school-age recorded program that has become recorded under ORS 329A.257;**

11 (E) **A relief nursery described in ORS 417.788; or**

12 (F) **Any other program or facility that provides child care as defined in ORS 329A.250 and**  
13 **that receives state funds for operating the program or facility.**

14 (b) **"Drug test" means a test administered to determine whether a person is under the**  
15 **influence of a controlled substance, a prescription drug or tetrahydrocannabinol or other**  
16 **cannabinoids:**

17 (A) **For which the person does not have a valid prescription or registry identification**  
18 **card; or**

19 (B) **Used by the person in a manner contrary to the prescribed regimen.**

20 (c) **"Person with a regular presence at a child care facility" means a person who is an**  
21 **owner or operator of or an employee, worker or volunteer at a child care facility, or another**  
22 **person who will have contact with children at a child care facility.**

23 (d) **"Registry identification card" has the meaning given that term in ORS 475.302.**

24 (2)(a) **The Department of Education and the Department of Human Services, in consul-**  
25 **tation with the Early Learning Division established in ORS 326.430 and the Office of Child**  
26 **Care established in ORS 329A.010, shall implement and administer a program that requires**  
27 **all persons with a regular presence at a child care facility to take a drug test at such in-**  
28 **tervals as prescribed by the departments by rule, at the expense of the owner or operator**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 of the child care facility.

2 (b) The drug test required by this subsection may be requested by and performed at the  
3 direction of:

- 4 (A) The owner or operator of the child care facility;
- 5 (B) The Department of Education;
- 6 (C) The Department of Human Services;
- 7 (D) The Early Learning Division; or
- 8 (E) The Office of Child Care.

9 (c) The program shall impose disciplinary action for a refusal to take a drug test or for  
10 failing a drug test that is required under this section, including but not limited to:

11 (A) Immediate termination of work or employment at, and expulsion of the person who  
12 refused to take or failed the drug test from the premises of, the child care facility.

13 (B) Suspension or revocation of a certificate, registration or record to operate the child  
14 care facility when the certificate, registration or record was issued by the Office of Child  
15 Care.

16 (C) A request to an issuing entity that is not the Office of Child Care to suspend or re-  
17 voke any certificate, registration, license or other authorization to operate the child care  
18 facility at which the person who refused to take or failed the drug test had a regular pres-  
19 ence.

20 (D) Immediate suspension of state funding for the child care facility at which the person  
21 who refused to take or failed the drug test had a regular presence.

22 (d) The program shall require that owners and operators of child care facilities establish,  
23 distribute and implement a reasonable written policy that requires a person with a regular  
24 presence at a child care facility to, at a minimum, take drug tests at intervals prescribed  
25 by rule of the Department of Education and the Department of Human Services.

26 (3) The Department of Education and the Department of Human Services shall adopt  
27 rules for the implementation and administration of the program established under this sec-  
28 tion, including but not limited to rules regarding:

29 (a) The processes for requesting, taking, administering and reporting the results of drug  
30 tests required by this section;

31 (b) Exemptions from the requirements of the program for certain individuals or entities  
32 and the circumstances under which the exemptions apply;

33 (c) The imposition and taking of disciplinary measures and actions, and the circum-  
34 stances under which such measures and actions apply; and

35 (d) The confidentiality of the results of drug tests taken under this section.

36 **SECTION 2.** ORS 329A.992 is amended to read:

37 329A.992. (1) In addition to any other provision of law or rule adopted pursuant to ORS 329A.260  
38 for enforcement of the provisions of ORS chapter 329A and pursuant to section 1 of this 2015  
39 Act regarding drug testing at child care facilities, the Office of Child Care may suspend or re-  
40 voke a certification or registration issued under ORS 329A.030 and 329A.250 to 329A.450, or impose  
41 a civil penalty in the manner provided in ORS 183.745, for violation of:

42 (a) Any of the provisions of ORS 329A.030 and 329A.250 to 329A.450 and section 1 of this 2015  
43 Act;

44 (b) The terms and conditions of a certification or registration issued under ORS 329A.030 and  
45 329A.250 to 329A.450; or

1 (c) Any rule of the Early Learning Council adopted under ORS 329A.030 and 329A.250 to  
2 329A.450.

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

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

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

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

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

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

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

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

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

23 (8) All moneys received under this section shall be deposited in the Child Care Fund established  
24 under ORS 329A.010 (4) and may be used for the administration of ORS 181.537, 329A.030 and  
25 329A.250 to 329A.450.

26 **SECTION 3. Section 1 of this 2015 Act applies to child care facilities that are certified,**  
27 **registered, recorded or provided state funds by the Office of Child Care, and to persons with**  
28 **a regular presence at child care facilities as defined in section 1 of this 2015 Act who are**  
29 **hired or employed or whose services are otherwise engaged, on or after the effective date**  
30 **of this 2015 Act.**