SENATE AMENDMENTS TO
SENATE BILL 49

By COMMITTEE ON HUMAN SERVICES, MENTAL HEALTH AND RECOVERY

April 9

On page 1 of the printed bill, delete lines 6 through 28 and delete pages 2 through 5.

On page 6, delete lines 1 through 27 and insert:

"SECTION 1. ORS 329A.250 is amended to read:

"329A.250. As used in ORS 329A.030, [and] 329A.250 to 329A.450 and 329A.500, 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 kindergarten or above on or before
the first day of the current 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)(a) ‘Subsidized 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 a day, with or without compensation.
“(b) ‘Subsidized care’ does not include care provided:
“(A) By the child’s parent, guardian or person acting in loco parentis;
“(B) By a sibling living in the same home as the child;
“(C) By a person on the same subsidized care case of a child in care; or
“(D) By a provider of medical services, as determined by the office on a case-by-case
basis.
“(15) ‘Subsidized care facility’ means any facility that provides subsidized care to chil-
dren, 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 program
described in subsection (5)(a) to (i) of this section.

“[(14)] (16) ‘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 ed-
ucational activities such as tutoring, music lessons, social activities, sports and recreational activ-
ities.

“SECTION 2. ORS 329A.500 is amended to read:
“329A.500. (1) The Department of Human Services, in consultation with the Early Learning Di-
vision and the Office of Child Care, shall adopt rules for the operation of subsidy programs for
employment-related child care administered by the department. At a minimum, and taking into ac-
count the availability of funds, the rules must provide the following:
“(a) Subsidy recipients may be entitled to receive the subsidy for at least one year, regardless
of changes in employment. Rules adopted by the department may provide for termination of subsidy
eligibility for reasons other than changes in employment during the one-year period. Exit eligibility
and copays must be structured to mitigate the financial impact of reduced subsidy support due to
increased income.
“(b) Subsidy recipients who are enrolled in coursework, as defined by the department by rule,
may be entitled to receive the subsidy to enable the subsidy recipient to attend and participate in
the coursework provided all other eligibility requirements are met.
“(c) Persons who are self-employed may qualify for subsidy programs provided all other eligi-
Bility requirements are met.
“(d) Subsidy recipients who voluntarily choose [child care providers] subsidized care facilities
that meet minimum standards established under the tiered quality rating and improvement system
implemented under ORS 329A.261 may qualify for lower copayments. A fair representation of the
subsidy recipients who qualify for lower copayments must be persons with children who are from
underserved racial, ethnic or minority populations. In addition, [child care providers] subsidized
care facilities that meet specified minimum standards established under the tiered quality rating
and improvement system may receive an enhanced reimbursement under the subsidy programs.
“(e) Subsidy recipients must report a change of [child care provider] subsidized care facility to
the department during the period a subsidy is being received.
“(f) A care provider is not eligible to receive a reimbursement under the subsidy pro-
grams unless each subject individual described in ORS 329A.030 (10)(d) who operates, resides
in or may have unsupervised contact with children at the subsidized care facility that pro-
vides or will provide subsidized care to the person’s child is enrolled in the Central Back-
ground Registry under ORS 329A.030.
“(2) The department shall work to meet federal recommendations for income eligibility and
market access in regard to employment-related child care administered by the department.

“SECTION 3. ORS 329A.030 is amended to read:
“329A.030. (1) The Office of Child Care shall establish a Central Background Registry and may
maintain information in the registry through electronic records systems.
“(2)(a) 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 [(10)] (10)(a) or (c) of this section.
“(b) An individual who has been the subject of a founded or substantiated report of child abuse
shall apply to and must be enrolled in the Central Background Registry prior to providing any of
the types of care identified in ORS 329A.250 (4)(a), (g) or (h) if:

“(A) The child abuse occurred on or after January 1, 2017, and involved a child who died or suffered serious physical injury, as defined in ORS 161.015; or

“(B) The child abuse occurred on or after September 1, 2019, and involved any child for whom the individual was providing child care, as defined in ORS 329A.250 (4), or care identified in ORS 329A.250 (4)(a), (c), (f), (g), (h) or (i).

“(c) Notwithstanding paragraph (a) of this subsection, an individual described in paragraph (b)(B) of this subsection is not required to enroll in the Central Background Registry if more than seven years has elapsed since the date of the child abuse determination.

“(d) A subject individual described in subsection (10)(d) of this section may apply to and be enrolled in the Central Background Registry.

“(3)(a) Upon receiving an application for enrollment in the Central Background Registry, the office shall complete:

“(A) A criminal records check under ORS 181A.195;

“(B) A criminal records check of other registries or databases in accordance with rules adopted by the Early Learning Council;

“(C) A child abuse and neglect records check in accordance with rules adopted by the council; and

“(D) A foster care certification check and an adult protective services check in accordance with rules adopted by the council.

“(b) In addition to the information that the office is required to check under paragraph (a) of this subsection, the office may consider any other information obtained by the office that the office, by rule, determines is relevant to enrollment in the Central Background Registry.

“(4) (a) The office shall enroll the individual in the Central Background Registry if the individual:

“(A) Is determined to have no criminal, child abuse and neglect, negative adult protective services or negative foster home certification 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.

“(b) Notwithstanding subsection (3) of this section and paragraph (a) of this subsection, the office may enroll an individual in the registry if the Department of Human Services has completed a background check on the individual and the individual has received approval from the department for purposes of providing child care.

“(5)(a) Notwithstanding subsections (3) and (4) of this section, the office may not enroll an individual in the Central Background Registry if:

“(A) The individual has a disqualifying condition as defined in rules adopted by the council; or

“(B) The individual is an exempt prohibited individual, as provided by ORS 329A.252.

“(b) If an individual prohibited from enrolling in the registry as provided by this subsection is enrolled in the registry, the office shall remove the individual from the registry.

“(6)(a) The office may conditionally enroll an individual in the Central Background 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.

“(b) The office may enroll an individual in the registry subject to limitations identified in rules
adopted by the council.

“(7) An enrollment in the Central Background Registry 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 or suspended from the registry by the office.

“(8)(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.

“(9) The Early Learning Council may adopt any rules necessary to carry out the purposes of this section, including but not limited to rules regarding expiration and renewal periods and limitations related to the subject individual’s enrollment in the Central Background Registry.

“(10) [For purposes of] As used in this section, ‘subject individual’ means:

“(a) A subject individual as defined by the Early Learning Council by rule;

“(b) An individual subject to subsection (2)(b) of this section;

“(c) A person who applies to be:

“[(a)] (A) The operator or an employee of a child care or treatment program;

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

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

“[(d)] (D) An individual in a child care facility who may have unsupervised contact with children, as [identified by the office] determined by the council by rule;

“[(e)] (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)] (F) A child care provider who is required to be enrolled in the Central Background Registry by any state agency;

“[(g)] (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;

“[(h)] (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; or

“[(i)] (I) The operator or an employee of an early learning program as defined in rules adopted by the council;

“(d)(A) An individual who operates a subsidized care facility;

“(B) An individual who has attained 18 years of age and resides in a subsidized care facility; or

“(C) An individual in a subsidized care facility who has attained 18 years of age and who may have unsupervised contact with children, as determined by the council by rule.

“(11)(a) Information provided to a metropolitan service district organized under ORS chapter 268 about the enrollment status of the persons described in subsection [(10)(g)] (10)(e)(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 [(10)(b)]
(10)(c)(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 para-
graph shall be deposited in the Child Care Fund established under ORS 329A.010.

“(c) Information provided to a private agency or organization about the enrollment status of the
persons described in subsection [(10)(i)] (10)(c)(I) of this section shall be subject to an agreement
with the private agency or organization. The agreement must provide for the recovery of adminis-
trative, including direct and indirect, costs incurred by the office from participation in the agree-
ment. Any moneys collected under this paragraph shall be deposited in the Child Care Fund
established under ORS 329A.010.”.

On page 10, delete lines 9 through 45.
On page 11, delete lines 1 and 2 and insert:

“SECTION 8. ORS 329A.992 is amended to read:

“329A.992. (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:

“(a) 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; or

“(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.

“(b) Impose a civil penalty in the manner provided in ORS 183.745 and file for injunctive relief
in a circuit court for the provision of child care, or for having a child in an individual’s care, in
violation of ORS 329A.030 (2).

“(c) Remove an individual described in ORS 329A.030 (10)(d) from the Central Background
Registry, or impose a civil penalty in the manner provided in ORS 183.745, for the individual’s
or the subsidized care facility’s violation of:

“(A) Any of the provisions of ORS 329A.030 or 329A.500; or

“(B) Any rule of the Early Learning Council adopted under ORS 329A.030, 329A.500 or
329A.505 or of the Department of Human Services adopted under ORS 329A.500.

“(2) The Early Learning Council may adopt by rule a schedule establishing the civil penalties
that may be imposed under this section.

“(3) Except as provided in subsection (4) of this section, penalties imposed under this section
may not exceed:

“(a) $750 per violation for a registered family child care home.
“(b) $1,200 per violation for a certified family child care home.
“(c) $2,500 per violation for a certified child care center that is not a family child care home.
“(d) The office may impose a civil penalty of not more than $1,500 for a child care facility that
provides child care without a valid:

“(a) Certification, in violation of ORS 329A.280; or
“(b) Registration, in violation of ORS 329A.330.
“(5) Each day that a child care facility is operating in violation of any of the provisions de-
scribed in subsection (1) of this section is a separate violation.
“(6) The office may revoke a child care facility's certification or registration or deny a child
care facility’s renewal application for a certification or registration if the facility fails to pay a civil
penalty after the order imposing the penalty becomes final.
“(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 paid into the State Treasury and credited
to the General Fund.”.

On page 19, delete lines 10 through 19 and insert:

“SECTION 16. (1) The amendments to ORS 329A.030, 329A.250 and 329A.500 by sections 1
to 3 of this 2021 Act apply to subsidized care facilities providing subsidized care under ORS
329A.500 on or after the operative date specified in section 17 (1) of this 2021 Act.
“(2) Notwithstanding subsection (1) of this section, a subject individual described in ORS
329A.030 (10)(d) who was approved as a provider of care by the Department of Human Ser-
vices for the purposes of the subsidy program for employment-related child care before the
operative date specified in section 17 (1) of this 2021 Act is not required to enroll in the
Central Background Registry under ORS 329A.030 until the earlier of the expiration of their
child care background check or June 30, 2024.”.