

## SENATE AMENDMENTS TO SENATE BILL 49

By COMMITTEE ON HUMAN SERVICES, MENTAL HEALTH AND RECOVERY

April 9

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

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

3 “**SECTION 1.** ORS 329A.250 is amended to read:

4 “329A.250. As used in ORS 329A.030, [and] 329A.250 to 329A.450 **and 329A.500**, unless the con-  
5 text requires otherwise:

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

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

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

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

16 “(a) In the home of the child;

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

18 “(c) By a person related to the child by blood or marriage within the fourth degree as deter-  
19 mined by civil law;

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

21 “(e) By providers of medical services;

22 “(f) By a babysitter;

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

24 “(h) By a person who cares for no more than three children other than the person’s own chil-  
25 dren; or

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

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

31 “(a) Preschool recorded program.

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

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

1 “(d) Facility operated by:  
2 “(A) A school district as defined in ORS 332.002;  
3 “(B) A political subdivision of this state; or  
4 “(C) A governmental agency.  
5 “(e) Residential facility licensed under ORS 443.400 to 443.455.  
6 “(f) Babysitters.  
7 “(g) Facility operated as a parent cooperative for no more than four hours a day.  
8 “(h) Facility providing care while the child’s parent remains on the premises and is engaged in  
9 an activity offered by the facility or in other nonwork activity.  
10 “(i) Facility operated as a school-age recorded program.  
11 “(6) ‘Family’ has the meaning given that term in ORS 329.145.  
12 “(7) ‘Occasional’ means that care is provided for no more than 70 days in any calendar year.  
13 “(8) ‘Parent cooperative’ means a child care program in which:  
14 “(a) Care is provided by parents on a rotating basis;  
15 “(b) Membership in the cooperative includes parents;  
16 “(c) There are written policies and procedures; and  
17 “(d) A board of directors that includes parents of the children cared for by the cooperative  
18 controls the policies and procedures of the program.  
19 “(9) ‘Preschool recorded program’ means a facility providing care for preschool children that is  
20 primarily educational for four hours or less per day and where no child is present at the facility for  
21 more than four hours per day.  
22 “(10) ‘Record’ means the record that is issued under ORS 329A.255 to a preschool recorded  
23 program or under ORS 329A.257 to a school-age recorded program.  
24 “(11) ‘Registration’ means the registration that is issued under ORS 329A.330 by the Office of  
25 Child Care to a family child care home where care is provided in the family living quarters of the  
26 provider’s home.  
27 “(12) ‘School age’ means of an age eligible to be enrolled in kindergarten or above on or before  
28 the first day of the current school year.  
29 “(13) ‘School-age recorded program’ means a program for school-age children:  
30 “(a) That is not operated by a school district as defined in ORS 332.002;  
31 “(b) That is not required to be certified under ORS 329A.280 or registered under ORS 329A.330;  
32 and  
33 “(c) In which youth development activities are provided to children during hours that school is  
34 not in session and does not take the place of a parent’s care.  
35 “(14)(a) **‘Subsidized care’ means the care, supervision and guidance on a regular basis of**  
36 **a child, unaccompanied by a parent, guardian or custodian, provided to a child during a part**  
37 **of the 24 hours of a day, with or without compensation.**  
38 **“(b) ‘Subsidized care’ does not include care provided:**  
39 **“(A) By the child’s parent, guardian or person acting in loco parentis;**  
40 **“(B) By a sibling living in the same home as the child;**  
41 **“(C) By a person on the same subsidized care case of a child in care; or**  
42 **“(D) By a provider of medical services, as determined by the office on a case-by-case**  
43 **basis.**  
44 **“(15) ‘Subsidized care facility’ means any facility that provides subsidized care to chil-**  
45 **dren, including a day nursery, nursery school, child care center, certified or registered family**

1 **child care home or similar unit operating under any name, but not including any program**  
2 **described in subsection (5)(a) to (i) of this section.**

3 “[14] (16) ‘Youth development activities’ means care, supervision or guidance that is intended  
4 for enrichment, including but not limited to teaching skills or proficiency in physical, social or ed-  
5 ucational activities such as tutoring, music lessons, social activities, sports and recreational activ-  
6 ities.

7 **“SECTION 2.** ORS 329A.500 is amended to read:

8 “329A.500. (1) The Department of Human Services, in consultation with the Early Learning Di-  
9 vision and the Office of Child Care, shall adopt rules for the operation of subsidy programs for  
10 employment-related child care administered by the department. At a minimum, and taking into ac-  
11 count the availability of funds, the rules must provide the following:

12 “(a) Subsidy recipients may be entitled to receive the subsidy for at least one year, regardless  
13 of changes in employment. Rules adopted by the department may provide for termination of subsidy  
14 eligibility for reasons other than changes in employment during the one-year period. Exit eligibility  
15 and copays must be structured to mitigate the financial impact of reduced subsidy support due to  
16 increased income.

17 “(b) Subsidy recipients who are enrolled in coursework, as defined by the department by rule,  
18 may be entitled to receive the subsidy to enable the subsidy recipient to attend and participate in  
19 the coursework provided all other eligibility requirements are met.

20 “(c) Persons who are self-employed may qualify for subsidy programs provided all other eligi-  
21 bility requirements are met.

22 “(d) Subsidy recipients who voluntarily choose [*child care providers*] **subsidized care facilities**  
23 that meet minimum standards established under the tiered quality rating and improvement system  
24 implemented under ORS 329A.261 may qualify for lower copayments. A fair representation of the  
25 subsidy recipients who qualify for lower copayments must be persons with children who are from  
26 underserved racial, ethnic or minority populations. In addition, [*child care providers*] **subsidized**  
27 **care facilities** that meet specified minimum standards established under the tiered quality rating  
28 and improvement system may receive an enhanced reimbursement under the subsidy programs.

29 “(e) Subsidy recipients must report a change of [*child care provider*] **subsidized care facility** to  
30 the department during the period a subsidy is being received.

31 **“(f) A care provider is not eligible to receive a reimbursement under the subsidy pro-**  
32 **grams unless each subject individual described in ORS 329A.030 (10)(d) who operates, resides**  
33 **in or may have unsupervised contact with children at the subsidized care facility that pro-**  
34 **vides or will provide subsidized care to the person’s child is enrolled in the Central Back-**  
35 **ground Registry under ORS 329A.030.**

36 “(2) The department shall work to meet federal recommendations for income eligibility and  
37 market access in regard to employment-related child care administered by the department.

38 **“SECTION 3.** ORS 329A.030 is amended to read:

39 “329A.030. (1) The Office of Child Care shall establish a Central Background Registry and may  
40 maintain information in the registry through electronic records systems.

41 “(2)(a) A subject individual shall apply to and must be enrolled in the Central Background  
42 Registry as part of the individual’s application to operate a program or serve in a position described  
43 in subsection [(10)] **(10)(a) or (c)** of this section.

44 “(b) An individual who has been the subject of a founded or substantiated report of child abuse  
45 shall apply to and **must** be enrolled in the Central Background Registry prior to providing any of

1 the types of care identified in ORS 329A.250 (4)(a), (g) or (h) if:

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

4 “(B) The child abuse occurred on or after September 1, 2019, and involved any child for whom  
5 the individual was providing child care, as defined in ORS 329A.250 (4), or care identified in ORS  
6 329A.250 (4)(a), (c), (f), (g), (h) or (i).

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

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

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

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

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

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

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

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

24 “(4)[(a)] The office shall enroll the individual in the Central Background Registry if the indi-  
25 vidual:

26 “[A] (a) Is determined to have no criminal, child abuse and neglect, negative adult protective  
27 services or negative foster home certification history, or to have dealt with the issues and provided  
28 adequate evidence of suitability for the registry;

29 “[B] (b) Has paid the applicable fee established pursuant to ORS 329A.275; and

30 “[C] (c) Has complied with the rules of the Early Learning Council adopted pursuant to this  
31 section.

32 “[b] *Notwithstanding subsection (3) of this section and paragraph (a) of this subsection, the office  
33 may enroll an individual in the registry if the Department of Human Services has completed a back-  
34 ground check on the individual and the individual has received approval from the department for  
35 purposes of providing child care.]*

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

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

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

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

42 “(6)(a) The office may conditionally enroll an individual in the Central Background Registry  
43 pending the results of a nationwide criminal records check through the Federal Bureau of Investi-  
44 gation if the individual has met other requirements of the office for enrollment in the registry.

45 “(b) The office may enroll an individual in the registry subject to limitations identified in rules

1 adopted by the council.

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

7 “(8)(a) A child care facility shall not hire or employ an individual if the individual is not en-  
8 rolled in the Central Background Registry.

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

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

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

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

16 “(b) An individual subject to subsection (2)(b) of this section; *[or]*

17 “(c) A person who applies to be:

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

19 “[b] **(B)** The operator or an employee of an Oregon prekindergarten program under ORS  
20 329.170 to 329.200;

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

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

25 “[e] **(E)** A contractor or an employee of the contractor who provides early childhood special  
26 education or early intervention services pursuant to ORS 343.455 to 343.534;

27 “[f] **(F)** A child care provider who is required to be enrolled in the Central Background Reg-  
28 istry by any state agency;

29 “[g] **(G)** A contractor, employee or volunteer of a metropolitan service district organized under  
30 ORS chapter 268 who may have unsupervised contact with children and who is required to be en-  
31 rolled in the Central Background Registry by the metropolitan service district;

32 “[h] **(H)** A provider of respite services, as defined in ORS 418.205, for parents pursuant to a  
33 properly executed power of attorney under ORS 109.056 who is providing respite services as a vol-  
34 unteer with a private agency or organization that facilitates the provision of such respite services;  
35 or

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

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

39 “**(B) An individual who has attained 18 years of age and resides in a subsidized care fa-  
40 cility; or**

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

43 “(11)(a) Information provided to a metropolitan service district organized under ORS chapter 268  
44 about the enrollment status of the persons described in subsection [(10)(g)] **(10)(c)(G)** of this section  
45 shall be subject to a reciprocal agreement with the metropolitan service district. The agreement

1 must provide for the recovery of administrative, including direct and indirect, costs incurred by the  
2 office from participation in the agreement. Any moneys collected under this paragraph shall be  
3 deposited in the Child Care Fund established under ORS 329A.010.

4 “(b) Information provided to a private agency or organization facilitating the provision of respite  
5 services, as defined in ORS 418.205, for parents pursuant to a properly executed power of attorney  
6 under ORS 109.056 about the enrollment status of the persons described in subsection [(10)(h)]  
7 **(10)(c)(H)** of this section shall be subject to an agreement with the private agency or organization.  
8 The agreement must provide for the recovery of administrative, including direct and indirect, costs  
9 incurred by the office from participation in the agreement. Any moneys collected under this para-  
10 graph shall be deposited in the Child Care Fund established under ORS 329A.010.

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

17 On page 10, delete lines 9 through 45.

18 On page 11, delete lines 1 and 2 and insert:

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

20 “329A.992. (1) In addition to any other provision of law or rule adopted pursuant to ORS  
21 329A.260 for enforcement of the provisions of ORS chapter 329A, the Office of Child Care may:

22 “(a) Suspend or revoke a certification or registration issued under ORS [329A.030 and] 329A.250  
23 to 329A.450, or impose a civil penalty in the manner provided in ORS 183.745, for violation of:

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

25 “(B) The terms and conditions of a certification or registration issued under ORS [329A.030  
26 and] 329A.250 to 329A.450; or

27 “(C) Any rule of the Early Learning Council adopted under ORS 329A.030 and 329A.250 to  
28 329A.450.

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

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

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

36 “**(B) Any rule of the Early Learning Council adopted under ORS 329A.030, 329A.500 or**  
37 **329A.505 or of the Department of Human Services adopted under ORS 329A.500.**

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

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

42 “(a) \$750 per violation for a registered family child care home.

43 “(b) \$1,200 per violation for a certified family child care home.

44 “(c) \$2,500 per violation for a certified child care center that is not a family child care home.

45 “(4) The office may impose a civil penalty of not more than \$1,500 for a child care facility that

1 provides child care without a valid:

2 “(a) Certification, in violation of ORS 329A.280; or

3 “(b) Registration, in violation of ORS 329A.330.

4 “(5) Each day that a child care facility is operating in violation of any of the provisions de-  
5 scribed in subsection (1) of this section is a separate violation.

6 “(6) The office may revoke a child care facility’s certification or registration or deny a child  
7 care facility’s renewal application for a certification or registration if the facility fails to pay a civil  
8 penalty after the order imposing the penalty becomes final.

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

11 “(8) All moneys received under this section shall be paid into the State Treasury and credited  
12 to the General Fund.”.

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

14 **“SECTION 16. (1) The amendments to ORS 329A.030, 329A.250 and 329A.500 by sections 1  
15 to 3 of this 2021 Act apply to subsidized care facilities providing subsidized care under ORS  
16 329A.500 on or after the operative date specified in section 17 (1) of this 2021 Act.**

17 **“(2) Notwithstanding subsection (1) of this section, a subject individual described in ORS  
18 329A.030 (10)(d) who was approved as a provider of care by the Department of Human Ser-  
19 vices for the purposes of the subsidy program for employment-related child care before the  
20 operative date specified in section 17 (1) of this 2021 Act is not required to enroll in the  
21 Central Background Registry under ORS 329A.030 until the earlier of the expiration of their  
22 child care background check or June 30, 2024.”.**

23