

SB 49-1
(LC 613)
2/15/21 (LAS/ps)

Requested by SENATE COMMITTEE ON HUMAN SERVICES, MENTAL HEALTH AND RECOVERY

**PROPOSED AMENDMENTS TO
SENATE BILL 49**

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

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

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

5 “329A.250. As used in ORS 329A.030, [*and*] 329A.250 to 329A.450 **and**
6 **329A.500**, unless the context requires otherwise:

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

10 “(2) ‘Certification’ means the certification that is issued under ORS
11 329A.280 by the Office of Child Care to a family child care home, child care
12 center or other child care facility.

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

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

21 “(a) In the home of the child;

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

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

4 “(d) On an occasional basis by a person not ordinarily engaged in pro-
5 viding child care;

6 “(e) By providers of medical services;

7 “(f) By a babysitter;

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

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

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

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

18 “(a) Preschool recorded program.

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

21 “(c) Facility providing care that is primarily group athletic or social ac-
22 tivities sponsored by or under the supervision of an organized club or hobby
23 group.

24 “(d) Facility operated by:

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

26 “(B) A political subdivision of this state; or

27 “(C) A governmental agency.

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

29 “(f) Babysitters.

30 “(g) Facility operated as a parent cooperative for no more than four hours

1 a day.

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

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

6 “(6) ‘Family’ has the meaning given that term in ORS 329.145.

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

9 “(8) ‘Parent cooperative’ means a child care program in which:

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

11 “(b) Membership in the cooperative includes parents;

12 “(c) There are written policies and procedures; and

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

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

19 “(10) ‘Record’ means the record that is issued under ORS 329A.255 to a
20 preschool recorded program or under ORS 329A.257 to a school-age recorded
21 program.

22 “(11) ‘Registration’ means the registration that is issued under ORS
23 329A.330 by the Office of Child Care to a family child care home where care
24 is provided in the family living quarters of the provider’s home.

25 “(12) ‘School age’ means of an age eligible to be enrolled in kindergarten
26 or above on or before the first day of the current school year.

27 “(13) ‘School-age recorded program’ means a program for school-age chil-
28 dren:

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

30 “(b) That is not required to be certified under ORS 329A.280 or registered

1 under ORS 329A.330; and

2 “(c) In which youth development activities are provided to children during
3 hours that school is not in session and does not take the place of a parent’s
4 care.

5 **“(14)(a) ‘Subsidized care’ means the care, supervision and guidance
6 on a regular basis of a child, unaccompanied by a parent, guardian or
7 custodian, provided to a child during a part of the 24 hours of a day,
8 with or without compensation.**

9 **“(b) ‘Subsidized care’ does not include care provided:**

10 **“(A) By the child’s parent, guardian or person acting in loco
11 parentis;**

12 **“(B) By a sibling living in the same home as the child;**

13 **“(C) By a person on the same subsidized care case of a child in care;
14 or**

15 **“(D) By a provider of medical services, as determined by the office
16 on a case-by-case basis.**

17 **“(15) ‘Subsidized care facility’ means any facility that provides
18 subsidized care to children, including a day nursery, nursery school,
19 child care center, certified or registered family child care home or
20 similar unit operating under any name, but not including any program
21 described in subsection (5)(a) to (i) of this section.**

22 **“[(14)] (16) ‘Youth development activities’ means care, supervision or
23 guidance that is intended for enrichment, including but not limited to
24 teaching skills or proficiency in physical, social or educational activities
25 such as tutoring, music lessons, social activities, sports and recreational ac-
26 tivities.**

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

28 **“329A.500. (1) The Department of Human Services, in consultation with
29 the Early Learning Division and the Office of Child Care, shall adopt rules
30 for the operation of subsidy programs for employment-related child care ad-**

1 ministered by the department. At a minimum, and taking into account the
2 availability of funds, the rules must provide the following:

3 “(a) Subsidy recipients may be entitled to receive the subsidy for at least
4 one year, regardless of changes in employment. Rules adopted by the de-
5 partment may provide for termination of subsidy eligibility for reasons other
6 than changes in employment during the one-year period. Exit eligibility and
7 copays must be structured to mitigate the financial impact of reduced sub-
8 sidy support due to increased income.

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

13 “(c) Persons who are self-employed may qualify for subsidy programs
14 provided all other eligibility requirements are met.

15 “(d) Subsidy recipients who voluntarily choose [*child care providers*]
16 **subsidized care facilities** that meet minimum standards established under
17 the tiered quality rating and improvement system implemented under ORS
18 329A.261 may qualify for lower copayments. A fair representation of the
19 subsidy recipients who qualify for lower copayments must be persons with
20 children who are from underserved racial, ethnic or minority populations. In
21 addition, [*child care providers*] **subsidized care facilities** that meet specified
22 minimum standards established under the tiered quality rating and improve-
23 ment system may receive an enhanced reimbursement under the subsidy
24 programs.

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

28 “(f) **A care provider is not eligible to receive a reimbursement under**
29 **the subsidy programs unless each subject individual described in ORS**
30 **329A.030 (10)(d) who operates, resides in or may have unsupervised**

1 **contact with children at the subsidized care facility that provides or**
2 **will provide subsidized care to the person’s child is enrolled in the**
3 **Central Background Registry under ORS 329A.030.**

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

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

8 “329A.030. (1) The Office of Child Care shall establish a Central Back-
9 ground Registry and may maintain information in the registry through elec-
10 tronic records systems.

11 “(2)(a) A subject individual shall apply to and must be enrolled in the
12 Central Background Registry as part of the individual’s application to oper-
13 ate a program or serve in a position described in subsection [(10)] **(10)(a)**
14 **or (c)** of this section.

15 “(b) An individual who has been the subject of a founded or substantiated
16 report of child abuse shall apply to and **must** be enrolled in the Central
17 Background Registry prior to providing any of the types of care identified
18 in ORS 329A.250 (4)(a), (g) or (h) if:

19 “(A) The child abuse occurred on or after January 1, 2017, and involved
20 a child who died or suffered serious physical injury, as defined in ORS
21 161.015; or

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

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

30 **“(d) A subject individual described in subsection (10)(d) of this sec-**

1 **tion may apply to and be enrolled in the Central Background Registry.**

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

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

5 “(B) A criminal records check of other registries or databases in accord-
6 ance with rules adopted by the Early Learning Council;

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

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

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

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

17 “[A] (a) Is determined to have no criminal, child abuse and neglect,
18 negative adult protective services or negative foster home certification his-
19 tory, or to have dealt with the issues and provided adequate evidence of
20 suitability for the registry;

21 “[B] (b) Has paid the applicable fee established pursuant to ORS
22 329A.275; and

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

25 “[b] *Notwithstanding subsection (3) of this section and paragraph (a) of*
26 *this subsection, the office may enroll an individual in the registry if the De-*
27 *partment of Human Services has completed a background check on the indi-*
28 *vidual and the individual has received approval from the department for*
29 *purposes of providing child care.]*

30 “(5)(a) Notwithstanding subsections (3) and (4) of this section, the office

1 may not enroll an individual in the Central Background Registry if:

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

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

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

9 “(6)(a) The office may conditionally enroll an individual in the Central
10 Background Registry pending the results of a nationwide criminal records
11 check through the Federal Bureau of Investigation if the individual has met
12 other requirements of the office for enrollment in the registry.

13 “(b) The office may enroll an individual in the registry subject to limita-
14 tions identified in rules adopted by the council.

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

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

23 “(b) Notwithstanding paragraph (a) of this subsection, a child care facility
24 may employ on a probationary basis an individual who is conditionally en-
25 rolled in the Central Background Registry.

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

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

1 means:

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

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

5 “(c) A person who applies to be:

6 “[a] (A) The operator or an employee of a child care or treatment pro-
7 gram;

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

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

12 “[d] (D) An individual in a child care facility who may have unsuper-
13 vised contact with children, as [*identified by the office*] **determined by the**
14 **council by rule;**

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

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

20 “[g] (G) A contractor, employee or volunteer of a metropolitan service
21 district organized under ORS chapter 268 who may have unsupervised con-
22 tact with children and who is required to be enrolled in the Central Back-
23 ground Registry by the metropolitan service district;

24 “[h] (H) A provider of respite services, as defined in ORS 418.205, for
25 parents pursuant to a properly executed power of attorney under ORS 109.056
26 who is providing respite services as a volunteer with a private agency or
27 organization that facilitates the provision of such respite services; or

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

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

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

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

6 “(11)(a) Information provided to a metropolitan service district organized
7 under ORS chapter 268 about the enrollment status of the persons described
8 in subsection [(10)(g)] **(10)(c)(G)** of this section shall be subject to a recip-
9 rocal agreement with the metropolitan service district. The agreement must
10 provide for the recovery of administrative, including direct and indirect,
11 costs incurred by the office from participation in the agreement. Any mon-
12 neys collected under this paragraph shall be deposited in the Child Care Fund
13 established under ORS 329A.010.

14 “(b) Information provided to a private agency or organization facilitating
15 the provision of respite services, as defined in ORS 418.205, for parents pur-
16 suant to a properly executed power of attorney under ORS 109.056 about the
17 enrollment status of the persons described in subsection [(10)(h)] **(10)(c)(H)**
18 of this section shall be subject to an agreement with the private agency or
19 organization. The agreement must provide for the recovery of administrative,
20 including direct and indirect, costs incurred by the office from participation
21 in the agreement. Any moneys collected under this paragraph shall be de-
22 posited in the Child Care Fund established under ORS 329A.010.

23 “(c) Information provided to a private agency or organization about the
24 enrollment status of the persons described in subsection [(10)(i)] **(10)(c)(I)**
25 of this section shall be subject to an agreement with the private agency or
26 organization. The agreement must provide for the recovery of administra-
27 tive, including direct and indirect, costs incurred by the office from partic-
28 ipation in the agreement. Any moneys collected under this paragraph shall
29 be deposited in the Child Care Fund established under ORS 329A.010.”.

30 On page 10, delete lines 9 through 45.

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

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

3 “329A.992. (1) In addition to any other provision of law or rule adopted
4 pursuant to ORS 329A.260 for enforcement of the provisions of ORS chapter
5 329A, the Office of Child Care may:

6 “(a) Suspend or revoke a certification or registration issued under ORS
7 [329A.030 and] 329A.250 to 329A.450, or impose a civil penalty in the manner
8 provided in ORS 183.745, for violation of:

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

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

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

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

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

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

22 **“(B) Any rule of the Early Learning Council adopted under ORS**
23 **329A.030, 329A.500 or 329A.505 or of the Department of Human Services**
24 **adopted under ORS 329A.500.**

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

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

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

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

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

3 “(4) The office may impose a civil penalty of not more than \$1,500 for a
4 child care facility that provides child care without a valid:

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

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

7 “(5) Each day that a child care facility is operating in violation of any
8 of the provisions described in subsection (1) of this section is a separate vi-
9 olation.

10 “(6) The office may revoke a child care facility’s certification or regis-
11 tration or deny a child care facility’s renewal application for a certification
12 or registration if the facility fails to pay a civil penalty after the order im-
13 posing the penalty becomes final.

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

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

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

20 **“SECTION 16. (1) The amendments to ORS 329A.030, 329A.250 and**
21 **329A.500 by sections 1 to 3 of this 2021 Act apply to subsidized care fa-**
22 **cilities providing subsidized care under ORS 329A.500 on or after the**
23 **operative date specified in section 17 (1) of this 2021 Act.**

24 **“(2) Notwithstanding subsection (1) of this section, a subject indi-**
25 **vidual described in ORS 329A.030 (10)(d) who was approved as a pro-**
26 **vider of care by the Department of Human Services for the purposes**
27 **of the subsidy program for employment-related child care before the**
28 **operative date specified in section 17 (1) of this 2021 Act is not required**
29 **to enroll in the Central Background Registry under ORS 329A.030 until**
30 **the earlier of the expiration of their child care background check or**

1 **June 30, 2024.”**

2
