

HB 4005-1
(LC 104)
2/2/22 (HRL/ps)

Requested by HOUSE COMMITTEE ON EARLY CHILDHOOD (at the request of Representative Karin Power)

**PROPOSED AMENDMENTS TO
HOUSE BILL 4005**

1 On page 2 of the printed bill, line 33, restore the bracketed material and
2 delete the boldfaced material.

3 On page 5, delete lines 40 through 42 and insert:

4 “(f) The Early Learning Division for the purpose of carrying out the
5 functions of the division, including the certification, registration or regu-
6 lation of child care facilities and child care providers and the administration
7 of enrollment in the Central Background Registry;”.

8 On page 6, delete line 5 and insert:

9 “(j) The Office of Child Care for purposes of applications described in
10 ORS 329A.030 (10)(c)(G), (H) and (I);”.

11 On page 11, delete lines 15 through 45.

12 On page 12, delete lines 1 and 2 and insert:

13 **“SECTION 15.** ORS 329A.992, as amended by section 27 of this 2022 Act,
14 is amended to read:

15 “329A.992. (1) In addition to any other provision of law or rule adopted
16 pursuant to ORS 329A.260 for enforcement of the provisions of ORS chapter
17 329A, the Office of Child Care may:

18 “(a) Suspend or revoke a certification or registration issued under ORS
19 [329A.030 and] 329A.250 to 329A.450, or impose a civil penalty in the manner
20 provided in ORS 183.745, for violation of:

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

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

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

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

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

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

13 “(B) Any rule of the Early Learning Council adopted under ORS 329A.030,
14 329A.500 or 329A.505 or of the Department of Human Services adopted under
15 ORS 329A.500.

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

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

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

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

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

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

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

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

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

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

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

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

10 On page 18, after line 14, insert:

11 “**SECTION 22.** ORS 329A.250 is amended to read:

12 “329A.250. As used in ORS 329A.030, [*and*] 329A.250 to 329A.450 **and**
13 **329A.500**, unless the context requires otherwise:

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

17 “(2) ‘Certification’ means the certification that is issued under ORS
18 329A.280 by the Office of Child Care to a family child care home, child care
19 center or other child care facility.

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

23 “(4)(a) ‘Child care’ means the care, supervision and guidance on a regular
24 basis of a child, unaccompanied by a parent, guardian or custodian, provided
25 to a child during a part of the 24 hours of the day, in a place other than the
26 child’s home, with or without compensation.

27 “(b) ‘Child care’ does not include care provided:

28 “(A) In the home of the child;

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

30 “(C) By a person related to the child by blood or marriage within the

1 fourth degree as determined by civil law;

2 “(D) On an occasional basis by a person not ordinarily engaged in pro-
3 viding child care;

4 “(E) By providers of medical services;

5 “(F) By a babysitter;

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

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

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

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

16 “(a) Preschool recorded program.

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

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

22 “(d) Facility operated by:

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

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

25 “(C) A governmental agency.

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

27 “(f) Babysitters.

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

30 “(h) Facility providing care while the child’s parent remains on the

1 premises and is engaged in an activity offered by the facility or in other
2 nonwork activity.

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

4 “(6) ‘Family’ has the meaning given that term in ORS 329.155.

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

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

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

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

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

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

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

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

20 “(11) ‘Registration’ means the registration that is issued under ORS
21 329A.330 by the Office of Child Care to a family child care home where care
22 is provided in the family living quarters of the provider’s home.

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

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

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

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

30 “(c) In which youth development activities are provided to children during

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

3 **“(14)(a) ‘Subsidized care’ means the care, supervision and guidance**
4 **on a regular basis of a child, unaccompanied by a parent, guardian or**
5 **custodian, provided to a child during a part of the 24 hours of a day,**
6 **paid for in whole or in part by public funds.**

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

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

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

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

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

15 **“(15) ‘Subsidized care facility’ means any facility that provides**
16 **subsidized care to children, including a day nursery, nursery school,**
17 **child care center, certified or registered family child care home or**
18 **similar unit operating under any name, but not including any program**
19 **or facility identified by the Early Learning Council by rule.**

20 **“[(14)] (16) ‘Youth development activities’ means care, supervision or**
21 **guidance that is intended for enrichment, including but not limited to**
22 **teaching skills or proficiency in physical, social or educational activities**
23 **such as tutoring, music lessons, social activities, sports and recreational ac-**
24 **tivities.”.**

25 In line 15, delete “22” and insert “23”.

26 On page 19, line 40, delete “with or without compensation” and insert
27 “paid for in whole or in part by public funds”.

28 On page 20, line 4, after “facility” delete the rest of the line and insert
29 “identified by the Early Learning Council by rule.”.

30 After line 8, insert:

1 **“SECTION 24.** ORS 329A.500 is amended to read:

2 “329A.500. (1) As used in this section, ‘family’ means any individual who
3 is responsible for the care, control and supervision of a child.

4 “(2) The Department of Human Services and the Early Learning Council
5 shall adopt rules for the operation of the Employment Related Day Care
6 subsidy program **and for other subsidy programs** administered by the de-
7 partment.

8 “(3) The rules adopted under this section must support equitable access
9 to a supply of diverse [*child care providers*] **subsidized care facilities** that
10 meet the needs of families, as those needs are defined by the department by
11 rule, including:

12 “(a) Cultural diversity;

13 “(b) Linguistic diversity;

14 “(c) Racial and ethnic diversity; and

15 “(d) Diversity of [*provider*] **subsidized care facility** types.

16 “(4) The rules adopted under this section must provide that:

17 “(a) A child’s eligibility to participate in the Employment Related Day
18 Care subsidy program must be based on:

19 “(A) The household income of a child’s family; and

20 “(B) Any other criteria established by the department.

21 “(b) A child must be able to receive care that:

22 “(A) Meets the child’s developmental, disability and neurodiversity needs;
23 and

24 “(B) Enables the child’s family to complete activities that relate to family
25 well-being, which may include the family’s work hours, education hours,
26 commute time, study time and other activities that support family well-being.

27 “(c) Payment to [*child care providers*] **subsidized care facilities** must be
28 based on enrollment instead of attendance.

29 “(d) A child’s family may qualify for an incentive if the family voluntarily
30 chooses a [*child care provider*] **subsidized care facility** that participates in

1 the quality recognition and improvement system established under ORS
2 329A.261. A fair representation of the recipients who qualify for incentives
3 must be families with children who are from underserved racial, ethnic or
4 minority populations. In addition, [*child care providers*] **subsidized care fa-**
5 **cilities** that participate in the quality recognition and improvement system
6 may receive financial incentives under the subsidy programs in accordance
7 with criteria established by rule.

8 “(e) A child care facility is not eligible to be a subsidized care fa-
9 cility and to receive a reimbursement under the subsidy program un-
10 less each subject individual described in ORS 329A.030 (10)(d) who
11 operates, resides in or may have unsupervised contact with children
12 at the subsidized care facility that provides or will provide subsidized
13 care to the person’s child is enrolled in the Central Background Reg-
14 istry under ORS 329A.030.

15 “(5) Taking into account the availability of funds, the rules adopted under
16 this section must establish a sliding scale for copayment, with the require-
17 ment that a copayment may not exceed seven percent of the household in-
18 come of the child’s family.

19 “(6) In developing rules under this section, the department shall consider
20 policies for increasing the stability and continuity of a child’s access to a
21 family’s preferred child care [*provider*] **facility**.

22 “(7) Rules adopted by the department under this section establish mini-
23 mum requirements pertaining to the Employment Related Day Care subsidy
24 program and may not be construed to preempt, limit or otherwise diminish
25 the applicability of any policy, standard or collective bargaining agreement
26 that provides for an increased subsidy or a [*child care provider*] **subsidized**
27 **care facility** reimbursement amount under state or federal law.

28 “(8)(a) The department shall work to meet federal recommendations for
29 income eligibility and market access in regard to the Employment Related
30 Day Care subsidy program administered by the department.

1 “(b) Notwithstanding any provision of this section or any rule adopted
2 by the department pursuant to this section, the laws and regulations appli-
3 cable to any federal funds shall govern when any aspect of child care is
4 funded by federal funds.”.

5 In line 9, delete “23” and insert “25”.

6 In line 14, after “program” insert “and for other subsidy programs”.

7 In lines 39 and 40, restore the bracketed material and delete the boldfaced
8 material.

9 In line 42, delete “Employment Related Day Care”.

10 On page 21, line 39, delete “24” and insert “26”.

11 On page 24, delete lines 20 through 45.

12 Delete pages 25 through 27.

13 On page 28, delete lines 1 and 2 and insert:

14 **“SECTION 27.** ORS 329A.992 is amended to read:

15 “329A.992. (1) In addition to any other provision of law or rule adopted
16 pursuant to ORS 329A.260 for enforcement of the provisions of ORS chapter
17 329A, the Office of Child Care may:

18 “(a) Suspend or revoke a certification or registration issued under ORS
19 329A.030 and 329A.250 to 329A.450, or impose a civil penalty in the manner
20 provided in ORS 183.745, for violation of:

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

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

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

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

29 **“(c) Remove an individual described in ORS 329A.030 (10)(d) from the**
30 **Central Background Registry, or impose a civil penalty in the manner**

1 **provided in ORS 183.745, for the individual’s or the subsidized care**
2 **facility’s violation of:**

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

4 **“(B) Any rule of the Early Learning Council adopted under ORS**
5 **329A.030, 329A.500 or 329A.505 or of the Department of Human Services**
6 **adopted under ORS 329A.500.**

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

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

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

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

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

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

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

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

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

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

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

29 **“(8) All moneys received under this section shall be paid into the State**
30 **Treasury and credited to the General Fund.**

1 **“SECTION 28. (1)(a) The amendments to ORS 329A.030, 329A.250,**
2 **329A.500 and 329A.992 by sections 22 to 27 of this 2022 Act apply to**
3 **subsidized care facilities providing subsidized care under ORS 329A.500**
4 **on or after July 1, 2023.**

5 **“(b) On or after July 1, 2023, a subject individual described in ORS**
6 **329A.030 (10)(d) must enroll in the Central Background Registry under**
7 **ORS 329A.030 for the purpose of the Employment Related Day Care**
8 **subsidy program.**

9 **“(2) Notwithstanding subsection (1) of this section:**

10 **“(a) A subject individual described in ORS 329A.030 (10)(d) who was**
11 **approved before July 1, 2023, as a provider of care by the Department**
12 **of Human Services for the purposes of the Employment Related Day**
13 **Care subsidy program is not required to enroll in the Central Back-**
14 **ground Registry until the earlier of the expiration of a child care**
15 **background check or June 30, 2025.**

16 **“(b) Until July 1, 2023, a subject individual described in ORS**
17 **329A.030 (10)(d) who is seeking initial approval or renewed approval as**
18 **a provider of care for purposes of the Employment Related Day Care**
19 **subsidy program may choose to enroll in the Central Background**
20 **Registry under ORS 329A.030 or may seek a child background check**
21 **through the Department of Human Services.**

22 **“(3) For the purpose of transferring the Employment Related Day**
23 **Care subsidy program from the Department of Human Services to the**
24 **Department of Early Learning and Care, as provided by section 79,**
25 **chapter 631, Oregon Laws 2021, the Department of Human Services and**
26 **the Early Learning Council shall adopt rules that provide:**

27 **“(a) Until July 1, 2023, the Department of Human Services shall**
28 **accept an individual’s enrollment in the Central Background Registry**
29 **as satisfying any requirement for background checks for the Employ-**
30 **ment Related Day Care subsidy program.**

1 **“(b) Until July 1, 2025, the Office of Child Care shall accept the**
2 **Department of Human Service’s background check of an individual for**
3 **the purposes of the Employment Related Day Care subsidy program**
4 **as satisfying the requirements of the Central Background Registry.**

5 **“(4) No later than July 1, 2023, the Department of Human Services**
6 **shall transfer copies of all files necessary for the Office of Child Care**
7 **to provide background checks for individuals described in ORS 329A.030**
8 **(10)(d).”.**

9 In line 6, delete “30” and insert “29”.

10 In line 27, delete “31” and insert “30”.

11 On page 29, line 8, delete “32” and insert “31”.

12 In line 15, after “center” insert a period and delete the rest of the line
13 and line 16.

14 In line 18, after “center” insert a period and delete the rest of the line
15 and lines 19 and 20.

16 In line 29, delete “33” and insert “32” and delete “32” and insert “31”.

17 Delete lines 30 through 41.

18 In line 45, delete “35” and insert “33”.

19 On page 30, line 6, delete “36” and insert “34”.

20
