

# Enrolled House Bill 2717

Sponsored by Representative NERON, Senator DEMBROW; Representatives BOICE, GAMBA, GRAYBER, MARSH, NGUYEN H, OWENS, REYNOLDS, RUIZ, SMITH G, Senators FREDERICK, GOLDEN, MANNING JR, PROZANSKI (Presession filed.)

CHAPTER .....

## AN ACT

Relating to outdoor preschool programs; creating new provisions; amending ORS 329A.250, 329A.280 and 329A.290; and declaring an emergency.

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

**SECTION 1.** ORS 329A.250, as amended by section 6, chapter 90, Oregon Laws 2022, is amended to read:

329A.250. As used in ORS 329A.030 and 329A.250 to 329A.450, 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)(a) "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.

(b) "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, **outdoor child care program**, 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 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) "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 educational activities such as tutoring, music lessons, social activities, sports and recreational activities.
- SECTION 2.** ORS 329A.250, as amended by section 40, chapter 631, Oregon Laws 2021, section 23, chapter 27, Oregon Laws 2022, and section 5, chapter 90, Oregon Laws 2022, is amended to read:
- 329A.250. As used in ORS 329A.030, 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)(a) "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.

(b) "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, **outdoor child care program**, 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 329.155.

(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 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, paid for in whole or in part by public funds.

(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 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 program or facility identified by the Early Learning Council by rule.

(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 educational activities such as tutoring, music lessons, social activities, sports and recreational activities.

**SECTION 3.** ORS 329A.280 is amended to read:

329A.280. (1) A person may not operate a child care facility, except a facility subject to the registration requirements of ORS 329A.330, without a certification for the facility from the Office of Child Care.

(2) The Early Learning Council shall adopt rules for the certification of a family child care home caring for not more than 16 children. Rules may be adopted specifically for certified child care facilities operated in a single-family dwelling or other dwelling. Notwithstanding fire and other safety regulations, the rules that the council adopts for certified child care facilities shall set standards that can be met without significant architectural modification. In adopting the rules, the council may consider and set limits according to factors including the age of children in care, the ambulatory ability of children in care, the number of the provider's children present, the length of time a particular child is continuously cared for and the total amount of time a particular child is cared for within a given unit of time. The rules must require compliance with the provisions of ORS 329A.600.

(3) In addition to rules adopted for and applied to a certified family child care home providing child care for not more than 16 children, the council shall adopt and apply separate rules appropriate for any child care facility that is a child care center **or an outdoor child care program**.

(4) Any person seeking to operate a child care facility may apply for a certification for the facility from the Office of Child Care and receive a certification upon meeting certification requirements.

(5) A facility described in ORS 329A.250 (5)(d) may, but is not required to, apply for a certification under this section and receive a certification upon meeting certification requirements.

**SECTION 4.** ORS 329A.290 is amended to read:

329A.290. A person applying for a certification for a child care facility shall demonstrate to the satisfaction of the Office of Child Care that:

(1) The moral character and habits of the person will not endanger the well-being of children for whom the person is to provide care.

(2) The attitude of the person toward children and understanding of their needs qualify the person to care for children.

(3) The person is physically and mentally capable of caring for children.

(4) The facility and its operation are adequate to protect the health, the safety and the physical, moral and mental well-being of the children to be cared for in the facility, including but not limited to:

(a) Adequate staffing by suitable persons qualified by education or experience to meet their respective responsibilities in the care of children.

(b) Adequate physical facilities for the care of children, such as:

**(A) For family child care homes and child care centers,** building construction, sanitation, plumbing, heating, lighting, ventilation, maintenance, indoor and outdoor activity areas and fire protection.

**(B) For outdoor child care programs, sanitation, maintenance, food preparation and food storage areas.**

(c) A program of activities conforming to recognized practices in the areas of child welfare, education and physical and mental health to provide opportunity for development and recreation.

(d) Exclusion from the facility of individuals whose presence may be detrimental to the welfare of children, including exclusion of any individual with a criminal record indicating conviction of any crime which would bar the individual from operating or being employed in a child care facility under ORS 329A.260.

**SECTION 5. (1) The amendments to ORS 329A.250, 329A.280 and 329A.290 by sections 1 to 4 of this 2023 Act become operative July 1, 2025.**

**(2) Notwithstanding the operative date set forth in subsection (1) of this section, the Department of Early Learning and Care and the Early Learning Council may take any action before the operative date set forth in subsection (1) of this section that is necessary for the department and the council to exercise, on and after the operative date set forth in subsection (1) of this section, all of the duties, functions and powers conferred on the department and the council by the amendments to ORS 329A.250, 329A.280 and 329A.290 by sections 1 to 4 of this 2023 Act.**

**SECTION 6. Notwithstanding any other provision of law, the General Fund appropriation made to the Department of Early Learning and Care by section 1 (1), chapter \_\_, Oregon Laws 2023 (Enrolled House Bill 5013), for the biennium beginning July 1, 2023, for operations, is increased by \$65,496, for certifying outdoor child care programs.**

**SECTION 7. This 2023 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2023 Act takes effect on its passage.**

**Passed by House June 13, 2023**

.....  
Timothy G. Sekerak, Chief Clerk of House

.....  
Dan Rayfield, Speaker of House

**Passed by Senate June 22, 2023**

.....  
Rob Wagner, President of Senate

**Received by Governor:**

.....M,....., 2023

**Approved:**

.....M,....., 2023

.....  
Tina Kotek, Governor

**Filed in Office of Secretary of State:**

.....M,....., 2023

.....  
Secretary of State