



STATE OF OREGON
LEGISLATIVE COUNSEL COMMITTEE

February 9, 2024

Senator Sara Gelser Blouin
900 Court Street NE S211
Salem OR 97301

Re: LC 73—Child-caring agencies and licensure requirements

Dear Senator Gelser Blouin:

You asked several questions regarding the application of statutory law to unlicensed child-caring agencies. Your questions and our answers are set forth below.

1. Are child-caring agencies that are providing services to children without a license subject to provisions of statutory law that apply to child-caring agencies?

Yes. The statutory provisions applicable to child-caring agencies under ORS chapter 418 apply regardless of whether a child-caring agency is licensed so long as the child-caring agency is providing the types of services described in ORS 418.205 (2)(a) or (b). ORS 418.205 (2) defines “child-caring agency” as “any private school, private agency, private organization or county program” providing specified services to children. The statute does not premise the definition of “child-caring agency” on the provider of services being licensed to provide such services. Accordingly, a private school, private agency, private organization or county program that provides services described in ORS 418.205 (2) is a child-caring agency, regardless of whether the provider is licensed to provide such services, and all provisions of law applicable to child-caring agencies would apply to the care provider.

2. May a child-caring agency, or the Department of Human Services, avoid being required to comply with statutory provisions of law that apply to child-caring agencies by not obtaining, or not issuing, a child-caring agency license?

No. As stated above, the statutory provisions applicable to child-caring agencies under ORS chapter 418 apply regardless of whether the child-caring agency is licensed so long as the child-caring agency is providing the types of services described in ORS 418.205 (2)(a) or (b).

3. If an unlicensed child-caring agency applies for a child-caring agency license to provide the care or services it is already providing and such care or services is described in ORS 418.205, is there a statutory mechanism that allows the child-caring agency to continue providing care while its application for a child-caring license is being processed?

Yes, the child-caring agency can obtain a temporary child-caring agency license from the Department of Human Services.

ORS 418.215 prohibits a child-caring agency from providing services described in ORS 418.205 unless the agency has obtained a license, certification or other authorization from the Department of Human Services to do so. ORS 418.240 describes the criteria the department must use when determining whether or not to issue a child-caring agency license and directs the department to adopt rules regarding such criteria. The department's rules regarding child-caring agency licensure are set forth in OAR chapter 419, division 400.

ORS 418.240 (2) prohibits the department from issuing a license to a child-caring agency unless the department finds that the agency "is or will be" in full compliance with certain requirements. Nothing in ORS 418.240 prohibits the department from issuing a temporary license while an application for licensure is pending. In addition, the use of the term "will be" in ORS 418.240 (2) can reasonably be read to give the department the discretion to issue a license, such as a temporary license, even if the applicant has not been found to already be in total compliance with all of the criteria for licensure. The department has adopted rules permitting the issuance of a temporary license to a child-caring agency that has applied for a child-caring license.¹ Under those rules, the department is authorized to issue a temporary child-caring agency license to an applicant if the child-caring agency meets all of the requirements under OAR chapter 419, division 400 for issuance of a child-caring agency license, "except those that can be met only while providing services."² Because the department's rule regarding issuance of a temporary license requires compliance with all of the licensing criteria that can be met before actually providing services to children, and this requirement aligns with the criteria under ORS 418.240, adoption of the rule is likely a proper exercise of the agency's rulemaking authority.

Accordingly, under ORS 418.240 and relevant administrative rules, if a child-caring agency applies to the department for a child-caring agency license and the department determines that the child-caring agency meets all of the requirements for issuance of a license under the department's rules, other than those the child-caring agency cannot meet until it is actually providing services to children, the department has the authority to issue a temporary child-caring agency license and the child-caring agency may provide care or services to children while the child-caring agency's application for licensure is pending

4. If the definition of "child-caring agency" under ORS 418.205 was amended to include the provision of specified services that are already been provided by unlicensed providers, and the licensing requirement under ORS 418.215 is delayed until a later date, would the unlicensed providers of these services be obligated to comply with all of the statutory requirements applicable to child-caring agencies, other than the licensing requirement?

Yes. If the legislature specifically exempts specified entities from the licensing requirements under ORS 418.215 for definite period of time, the entities would be permitted to continue providing care or services that would otherwise be prohibited without a license, but the entities would still be subject to any other provisions of law applicable to child-caring agencies.

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¹ See OAR 419-400-0290.

² *Id.*

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Very truly yours,

DEXTER A. JOHNSON
Legislative Counsel

A handwritten signature in black ink that reads "Lori Anne Sills". The signature is written in a cursive, flowing style.

By
Lori Anne Sills
Senior Deputy Legislative Counsel