



Oregon

Kate Brown, Governor

Early Learning Division



Temporary Changes to Child Care Rules in Response to COVID-19 State of Emergency

Amended June 2, 2020

As authorized by [Executive Orders](#) 20-03, 20-08, 20-12, 20-19, 20-20, and 20-25, and as a necessary response to developments in the COVID-19 state of emergency, the Early Learning System Director hereby orders temporary changes to child care rules.

This order supersedes the [order issued on April 24, 2020](#). This order continues rule changes from the prior order pertaining to Emergency Child Care Facilities, health guidance, emergency background checks, expedited training, and exception requests but (a) implements the Oregon Health Authority/Oregon Department of Education Early Learning Division Statewide Standards for Child Care Operations (“OHA/ELD Specific Guidance for Child Care Sector”), (b) further clarifies the scope of operation of Emergency Child Care as authorized by Executive Order 20-19, (c) modifies provisions for Emergency Child Care operations by non-licensed, experienced providers, (d) provides notice to certain individuals and entities providing licensed-exempt child care that they may not do so because they cannot meet the Governor’s physical distancing (also referred to as social distancing) requirements, and (e) adds numbering to certain requirements in this order to make these temporary changes easier to reference.

On March 23, 2020, Governor Brown issued [Executive Order 20-12](#). This order required that all licensed child care facilities close from March 25, 2020 through April 28, 2020. However, licensed facilities and other groups were allowed to seek permission from Office of Child Care (OCC) to operate as an Emergency Child Care Facility if they met certain requirements in addition to any currently applicable regulations. On April 23, 2020, Governor Brown issued [Executive Order 20-19](#), extending the restrictions on child care facilities, and expanding the Early Learning Division’s authority to regulate Emergency Child Care services. On May 14, 2020, Governor Brown issued [Executive Order 20-25](#), noting that any expansion or restriction of child care services will proceed pursuant to Executive Order 20-19, as extended or modified by further Executive Orders and any guidance from OCC.

These temporary changes are effective immediately and expire after the Governor lifts the emergency declaration. An individual or entity is not eligible to provide Emergency Child Care if the individual’s enrollment in the Central Background Registry was denied, suspended, or removed, or the individual or entity’s child care facility license was denied, suspended, or revoked. Any individual or entity under an OCC legal order, settlement agreement, or currently in the administrative hearing process with OCC is ineligible to provide Emergency Child Care, unless OCC, in its discretion, approves the application with or without conditions. OCC may

exercise discretion to allow Emergency Child Care by an ineligible individual or entity if conditions can be imposed to address OCC's concerns and there is a need for additional child care capacity in the area.

1. Emergency Child Care Facilities

While licensed child care facilities were directed by the Governor to close on March 25, 2020, the facilities could remain open if they submitted an application to become an Emergency Child Care Facility and are approved by OCC. Recognizing the need to consult with families and staff about their willingness and ability to serve in Emergency Child Care, providers were required to submit their application to provide Emergency Child Care, as described below, by the deadlines established by OCC. Further, Recorded Programs under ORS 329A.255 and 329A.257 - both preschool and school-aged - may not operate without applying and being approved to operate as an Emergency Child Care Facility. Because all such deadlines have passed, a Licensed Child Care or Recorded Program may apply to become an Emergency Child Care Facility but cannot operate until it both submits an application and is approved. These restrictions do not apply to license-exempt individuals that provide care that is not considered child care under ORS 329A.250(4)(a)-(i) such as care "by a person who cares for no more than three children other than the person's own children."

Any Licensed Child Care or Recorded Program that does not apply, applies and does not receive approval, or does not abide by the requirements, must close. Because social distancing during the state of emergency counsels against most in-person monitoring, OCC may deny approval to or revoke its approval for an individual or entity to provide Emergency Child Care at any time based on a determination that the facility has not maintained compliance with applicable requirements or that OCC is unable to ensure compliance without in-person monitoring. Further, if OCC determines there is danger to children, OCC may deny, revoke or suspend approval to provide Emergency Child Care.

OCC may impose conditions on the approval to provide Emergency Child Care, or on the operations of a previously approved Emergency Child Care Facility in response to compliance concerns in order to promote the facility's adherence with applicable requirements. If an individual or entity becomes ineligible to provide Emergency Child Care pursuant to this order, OCC may revoke the individual or entity's approval to provide Emergency Child Care.

OCC accepts complaints from parents/caregivers or others who report concerns. OCC may inspect or investigate an Emergency Child Care Facility at any time. OCC may issue findings against Emergency Child Care Facilities for violations of any applicable requirements. For licensed child care providers approved to operate an Emergency Child Care Facility, these findings will attach to both the Emergency Facility record and the facility's underlying license in the same ways as a finding on the underlying license, and may be relied upon to support legal action against a facility's Emergency Child Care approval, or its underlying license. For experienced child care providers operating as temporary sites for Emergency Child Care, these findings will attach to the Emergency Facility record. For Recorded Programs operating as

temporary sites for Emergency Child Care, these findings will be included in the program’s record.

A. Standards Applicable to All Types of Emergency Child Care

[Executive Order 20-12’s directives](#) to limit group size, maintain consistent groupings, and prioritize child care for essential workers, are incorporated in and now a part of this order, notwithstanding Executive Order 20-19’s rescission of the same. In addition, all Emergency Child Care Facilities must adhere to the OHA/ELD Specific Guidance for Child Care Sector available [here](#), and incorporated below.

a. Stable Group Size and Cohorting Requirements

1. Child care must be carried out in maximum “stable” groups of 10 or fewer children. A home-based provider’s own children are counted as part of the overall number of children allowed in a group. “Stable” means the same 10 or fewer children, and the teacher or other staff, are in the same group each day, except that a stable group may be composed of up to 12 children total so long as only 10 children are in attendance at any one time. A program may allow some families to “swap” slots between days. For example, Child A attends Monday, Wednesday, and Friday, and Child B attends Tuesday and Thursday.
2. Each group of 10 children must be cared for in a room that cannot be accessed by children outside of the stable group, and, for center-based care, must maintain the following staff to child ratios (with ratio for mixed age groups of children based on the youngest child in the group):

Age	Ratio	Maximum Group Size (children)
6 weeks – 23 months	1:4	8
24 months – 35 months	1:5	10
36 months – Kindergarten	1:10	10
Kindergarten and up	1:10	10

3. Emergency Child Care providers may serve new children if the provider has not yet reached the maximum, age-specific group size or if an opening becomes available due to a family ending enrollment. If a vacancy exists, the provider is allowed to accept new enrollments up to the age-specific group size limits. A provider may move children from one stable group to another only if it is a permanent move, such as when the child has aged out of the current group.
4. A Certified Family Child Care Facility (CF) operating as an Emergency Child Care may serve the number of children up to their licensed CF capacity if there are separate, stable groups of children, with no more than 10 children per group,

and these groups are in separate rooms that cannot be accessed by the other group with at least 35 square feet per child. The provider must communicate with their licensing specialist a plan of how they will meet the requirements. The licensing specialist will review and approve, or deny the plan based on their knowledge of the program's operation.

5. Under the prior order, a Certified Center (CC) program could have one group of 10 children in each room regardless of the size of the room. Under this new order, with the approval of their licensing specialist, a CC program may divide large classrooms into two rooms with a physical barrier that is at least four feet high so long as each of the two rooms provides at least 35 square feet per child and is not accessible to children in the other group. Other large rooms, such as cafeterias and gymnasiums, may be used as a classroom for school-aged children only. Each group of children must be in a space that meets the minimum of 35 square feet per child.
6. In general, only one stable group may use a specific room that remains the same from day to day. However, morning and afternoon classes composed of different stable groups may use the same space provided the facility implements sanitization protocols of the physical space in between the morning and afternoon classes. This includes sanitization of food preparation areas, high-touch surfaces, toys and materials, and with no more than two groups of children allowed in any one classroom over the course of a day.
7. The separate, stable groups may use shared spaces such as common bathrooms, eating areas, and outdoor areas, but only one stable group of children may be in shared spaced at one time. Providers must observe sanitation practices in between uses of common areas by different groups.
8. Facilities must stagger arrival and drop-off times to the extent practicable or put in place other protocols to limit contact between families and with staff.
9. Facilities must require that individuals, including but not limited to household members, who do not assist in the child care program maintain physical distance ("physical distance" refers to the amount of social distance recommended by the Governor) from stable groups and their adult staff at all times.
10. Facilities must use the same adult staff with each stable group from day to day. If volunteers are used, facilities must use the same volunteers with each stable group from day to day.

11. Facilities must use the same floater staff (“floater” being staff that provide relief for staff during breaks) for the same stable group each day to the extent possible.

b. Essential Worker Priority Enrollment Requirements

1. All Emergency Child Care Facilities, except respite care, relief nurseries as defined in ORS 417.786, federal Head Start programs offering summer school, and Recorded Programs meeting the statutory limitations as a Recorded Program, must prioritize providing child care for individuals in the essential workforce. Guidance on how to determine whether a person is in the essential workforce can be found in the May 19, 2020 guidance from the U.S. Department of Homeland Security (“Homeland Security Guidance”), linked [here](#).
2. A facility may not disenroll or refuse to enroll children of a parent/caregiver in the essential workforce because of a belief that these children may be more likely to transmit the COVID-19 virus.
3. Facilities may enroll children of families who return to work in phased reopening.

c. COVID-19 Safety and Cleaning Requirements

1. ELD and Oregon Health Authority’s Safety Procedures and Guidance for Child Care Facilities Operating During COVID-19 (“COVID-19 Safety Requirements”), are available [here](#). Following the COVID-19 safety requirements is required. Some of below requirements are included in the OHA/ELD Specific Guidance for Child Care Sector.
2. Facilities must also follow ELD and Oregon Health Authority’s COVID-19 Sanitation Recommendations and Cleaning Schedule for Emergency Child Care Settings (“COVID-19 Cleaning Requirements”), available [here](#). Following the COVID-19 Cleaning Requirements is required.
3. These requirements may be updated at any time and will likely continue to evolve as new information becomes available on how best to prevent the spread of COVID-19 or more specific guidance is developed in response to questions from providers. Providers will be notified of updates via email and must update their own procedures to comply with updates and provide on-going training to staff on cleaning protocols and safety requirements.
4. Facilities must permit staff to wear cloth, paper, or disposable face coverings if they choose and must require face covering use for floater staff and staff

conducting daily health checks of children and staff.

5. Facilities must keep daily logs for each stable group that conform to the following requirements to support contact tracing of cases if necessary:
 - i. Child name
 - ii. Drop off / pick up time
 - iii. Adult completing both drop off / pick up
 - iv. All staff who interact with the stable group of children (including floater staff)
 - v. Number of hours child was in care

6. Children and Face Coverings
 - i. Children over the age of 2 may wear face coverings if under close adult supervision.
 - ii. Children under the age of two must not wear face coverings. Children of any age must not wear a face covering: If they have a medical condition that makes it difficult for them to breathe with a face covering; If they have a disability that prevents them from wearing a face covering; If they are unable to remove the face covering independently; or while sleeping.
 - iii. Face coverings cannot be required for use by children and should never prohibit or prevent access to instruction or activities.

B. Requirements for Non-School Based Emergency Child Care

Licensed child care providers who want to provide Emergency Child Care must apply and be approved as an Emergency Child Care Facility.

Under the prior order, experienced child care providers, including Recorded Programs, that were opening temporary sites for Emergency Child Care could also apply to become an Emergency Child Care Facility. Experienced providers that are not licensed and apply to provide Emergency Child Care must demonstrate a lack of child care capacity in their local area. Recorded Programs must apply and be approved as an Emergency Child Care Facility to operate, but if they meet the statutory definition of Recorded Program, they do not need to demonstrate a lack of local child care capacity.

a. Basic Standards for Non-School Based Emergency Child Care

1. Currently licensed child care facilities providing Emergency Child Care must continue to follow all applicable rules for their licensed child care type. However, requirements set forth in this order—the Stable Group Size and Cohorting Requirements, the Essential Worker Priority Enrollment Requirements, the COVID-19 Safety and Cleaning Requirements, and the OHA/ELD Specific Guidance for Child Care Sector—control and supersede any conflicting or inconsistent provisions in rules for the licensed child care type.

2. If a licensed child care facility is approved to operate an Emergency Child Care Facility and its license expires during the state of emergency without a timely renewal application, the Emergency Child Care approval is no longer valid and is rescinded.

3. Experienced child care providers, including Recorded Programs, approved to operate temporary sites for Emergency Child Care, must follow all the requirements on pages 1-15 of the Emergency Child Care Guide for Temporary Child Care Facilities, available [here](#). However, requirements set forth in this order—the Stable Group Size and Cohorting Requirements, the Essential Worker Priority Enrollment Requirements, the COVID-19 Safety and Cleaning Requirements, and the OHA/ELD Specific Guidance for Child Care Sector—control and supersede any conflicting or inconsistent provisions in the those requirements in the Emergency Child Care Guide. To the extent it furthers the opening of Emergency Child Care Facilities, OCC may allow child care facilities to open without seeking other approval from local jurisdictions.

b. Application Information for Non-School Based Emergency Child Care

A licensed child care facility or Recorded Program that wants to provide Emergency Child Care must submit an Emergency Child Care Facility application to OCC whereby the facility agrees to follow the applicable rules including the group size and priority enrollment requirements, and the COVID-19 safety requirements.

The application for all types of Emergency Child Care is available [here](#). An individual or entity whose Emergency Child Care Facility application was denied, or whose approval to operate as an Emergency Child Care Facility was suspended or revoked, or who voluntarily surrendered their Emergency Child Care Facility approval while under investigation by OCC or at any time after OCC gave notice of an administrative proceeding against the facility, may not reapply to operate at the same location. For licensed facilities, Recorded Programs, and experienced child care providers opening temporary sites, OCC will review the application and determine whether to approve the request.

If a group has submitted an Emergency Child Care Facility application by the deadlines established by OCC and agreed to abide by all applicable requirements, the group may continue to provide Emergency Child Care in compliance with all applicable requirements, pending OCC's decision on whether to approve the application. Any group that submits an Emergency Child Care Facility application after the deadlines established by OCC may not open or otherwise provide Emergency Child Care until OCC approves the application.

Emergency Child Care applications for Licensed and Recorded Programs to operate in a different location, or other experienced providers who did not have a license to operate at that location before applying to provide Emergency Child Care, will no longer be

accepted unless there is a demonstrated lack of child care supply in the proposed service area. These requests will be processed on a case-by-case basis. Any Emergency Child Care program currently operating in a temporary location/facility or without an underlying license should begin making plans to transition families to other Emergency Child Care programs and/or reopen their child care programs in the licensed or registered facility address as an approved Emergency Child Care provider.

The Early Learning Division is working with the Governor's Office to develop a plan to appropriately transition children in unlicensed facilities to care that is licensed under existing statute and rule.

C. School-based Emergency Child Care

Corresponding to the end of the school year, school-based Emergency Child Care must end no later than June 30, 2020, unless the school provided child care prior to the state of emergency.

a. Basic Standards for School-Based Emergency Child Care

Typically, schools that operate child care are license exempt. However, during the state of emergency, the following basic standards for school-based Emergency Child Care from ELD's March 18, March 24, and April 24, 2020 orders remain in place:

- Child care providers must adhere to specific social distancing guidelines as directed by the Governor.
- Staff may use the emergency background check process described below if they do not have sufficient staff enrolled in the CBR.
- Staff must complete basic online training. At least one person on site must have First Aid/Infant CPR (online acceptable) certification and complete the training "Intro to Child Care Health and Safety." Any staff caring for infants must complete the "Safe Sleep" training. All staff must complete the training "Recognizing and Reporting Child Abuse and Neglect."
- To the extent it furthers the opening of Emergency Child Care Facilities, OCC will allow child care to open without seeking other approval from local jurisdictions.
- Equipment (e.g., cribs, playpens, and high chairs) must meet U.S. Consumer Product Safety Commission or equivalent standards.
- Smoking, vaping, alcohol, marijuana, and illegal substances are prohibited.
- Building, grounds, and water supply must be maintained and hazard-free.
- Toilets, sinks, smoke detectors, fire extinguishers, phone (mobile acceptable) must be on site and in working condition.
- Children must be supervised, and adults must provide positive guidance/discipline. Hand washing and other hygiene practices must be enforced. Toxics and weapons must be child-safety locked. Safe sleep and safe bottle-feeding rules must be enforced.
- Schools should follow the ratio/group sizes for Center-based care as follows:

Age	Caregiver to Child ratio	Max children in group
6 weeks – 23 months	1:4	8
24 months – 35 months	1:5	10
36 months – Kindergarten	1:10	10
Attending Kindergarten and older	1:10	10

Additional requirements are found in the April 2020 Guidance to School Districts on Emergency Child Care, available [here](#).

b. Application Information for School-Based Emergency Child Care

School-based Emergency Child Care includes any type of child care provided by a school, including those types that, absent the Governor’s Emergency Declaration, would not be subject to standards and regulation by the OCC. New applications for Emergency Child Care at a school will not be accepted, unless the school demonstrates a capacity need in the area. A school that wants to provide Emergency Child Care must submit an Emergency Child Care Facility application to OCC whereby the facility agrees to follow the applicable rules including the group size and priority enrollment requirements, and COVID-19 safety requirements.

For school districts, ODE/ELD staff will review the application and provide direct follow-up.

The Early Learning Division is working with the Governor’s Office to develop a plan to appropriately transition children to care that is licensed under existing statute and rule that was directed by Executive Order 20-08.

2. Social Distancing

The Governor’s early directive on social distancing was strengthened by her “Stay Home, Save Lives” Executive Order, available [here](#), and later her “Safe and Strong Oregon” Executive Order, available [here](#). Social distancing requirements have been adapted for child care and are included in this order, the COVID-19 Safety Requirements, and the OHA/ELD Specific Guidance for Child Care Sector.

Any individual or entity conducting child care that is not required to be approved as an Emergency Child Care Facility before providing care because they are license-exempt must still adhere to all social distancing requirements. An example of this type of child care is drop-in care, such as that offered at retail stores where the parents remain on site. Drop-in child care is specifically prohibited in the OHA Specific Guidance for Fitness-related Organizations. Because the required social distancing cannot be maintained in a drop-in care setting, this type of care may not operate.

3. Licensed Care Exceptions on a Case-by-Case Basis

OCC will consider case-by-case exceptions to current licensing requirements, as is already provided for in law, on an expedited timeframe. Examples could include allowing mixed-age groupings in Certified Center facilities, or allowing existing child care centers to open additional temporary rooms without seeking approval from local jurisdictions or other state agencies.

Approval of an exception will be based on the size of facility, staffing, compliance history, and guidance from public health officials.

4. Expedited Training

OCC will adapt training requirements so that staff can begin working more quickly, without sacrificing safety. OCC will grant extensions to rule requirements for completing training for license renewals. OCC will also allow online training for most subjects including those that ordinarily require in-person training. For example, staff who have unsupervised access to children will complete online training that addresses health and safety, child abuse reporting, First Aid/CPR, and safe sleep practices.

5. Emergency Background Check

To expedite filling the child care needs of the essential workforce during this declared emergency, and due to the significant time required to achieve enrollment in the Central Background Registry (CBR), OCC is establishing an emergency background check process for those not currently enrolled in the CBR. Applicants will be subject to LEDS (Law Enforcement Data System) check for Oregon criminal and sex offender registry, Child and Protective Services check for child abuse, National Sex Offender Registry Public website check, and run against the CBR.

Emergency Child Care Facilities located at public schools and staffed by school district employees may continue using their existing background checks to qualify staff.

OCC will work with organizations that are filling the child care gap during this public health emergency—child care providers, Child Care Resource and Referral (CCR&R) agencies, 211 Info, and others—to supply information on applicants who have passed the emergency background check. OCC may cancel or revoke an emergency background authorization at any time, due to any concern that the person poses a risk to children. Once the emergency declaration is lifted, the authorization provided by this emergency background check is canceled. That person will need to be enrolled in the CBR to continue work in child care.

Child care must operate in a safe manner, while being made accessible to Oregonians in the essential workforce.

So ordered by  on June 2, 2020.
Miriam Calderon, Early Learning System Director