

Mind Your Business – Tia’s Tips for Better Rental Management

By Tia Politi

Child Care Regulations for Oregon Landlords

With the passage of **SB 599**, effective January 1, 2024, landlords are now required to allow child care in their rental homes:

<https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/SB599/Enrolled>

What I hope you may find reassuring is that your tenant can’t just open their door and watch however many children or babies they want under any circumstances. There are strict state requirements they must meet.

The Early Learning Division of the Office of Child care oversees the licensing and statutory requirements for licensed child care in Oregon. The new law allows residents to perform child care as either a Certified or Registered Family Child care Home. There are different rules for each type. Registered child care homes have somewhat less stringent requirements than Certified child care homes, and you’ll need to know which type your renter is wanting to provide.

329A.290 Qualifications of applicant for certification. 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 building construction, sanitation, plumbing, heating, lighting, ventilation, maintenance, indoor and outdoor activity areas, and fire protection.
 - (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. [Formerly 657A.290]

All child care providers must be checked for criminal history through the FBI’s nationwide criminal records check through the Federal Bureau of Investigation and must be continually registered in the Central Background Registry.

The rules for both types cover everything from application, registration, background checks, training, supervision of children, guidance and positive discipline, activity programs, mandatory abuse reporting nutrition, health, safety, sanitation, record keeping, and night care. There are rules for handwashing, nutrition, napping, field trips, playing, checking children in and out, parental notification, supervision, fire safety, providing emergency evacuation routes, reporting death or injuries of children under care and much more. Providers may not consume or be impaired by drugs or alcohol while caring for children. No illegal drugs may be stored on the premises. None of the child care children may be younger than six weeks of age.

Registered Family Child care Home Requirements Guidebook

<https://oregonearlylearning.com/wp-content/uploads/2017/03/OCC-0086-Rules-for-Registered-Family-Child-Care-Homes-EN.pdf>

- One provider per household.
- Must be the provider's principal residence.
- A registered family child care home may care for up to 10 children, not including the provider's own children when establishing capacity or adult to child ratio requirements if the children are between 10 and 12 years of age, unless a child has special needs or disabilities and requires a level of care that is above normal for the child's age.
- Of the 10 children, no more than six may be younger than school age, and no more than two may be 24 months of age or younger.
- The provider may not hold a medical marijuana card, may not grow, or distribute marijuana, but may possess marijuana or derivatives if kept locked away from children.
- A provider may have only two children under 24 months in care. This number includes the provider's own children under 24 months.
- The provider must display license and all serious valid complaint and serious non-compliance letters for 12 calendar months.
- No square footage requirement.
- Federal background checks for all applicable persons over the age of 18.
- 10 hours of training within 2 years for renewal of license.
- Minimum of 1 unannounced visit annually.
- Must possess and maintain current certification in first aid and infant and child cardiopulmonary resuscitation (CPR). The certifications must be current with practical hands-on instruction. CPR courses that involve an on-line component with hands-on instruction may be accepted. Strictly online CPR training is not acceptable.
- Must complete a minimum of two hours of training on child abuse and neglect specific to Oregon law.
- Must possess and maintain current food handler's certification, if preparing or serving food to children.
- Must complete Introduction to Child care Health & Safety Training.
- Must complete OCC-approved safe sleep training.
- Must complete OCC-approved child development training.
- Biennial renewal requires a minimum of eight hours of training related to child care during the most recent registration period.

Certified Family Child care Home Requirements Guidebook

<https://oregonearlylearning.com/wp-content/uploads/2017/03/OCC-0085-Rules-for-Certified-Family-Child-Care-Homes-EN.pdf>

Certified providers operate under more stringent requirements.

- One certified child care license per single family home.
- An owner can have multiple sites under the following conditions:
 - If the owner is the provider/operator in one of the homes, the owner can have two certified family child care homes.
 - If the owner does not directly care for any children, the owner can have more than two certified family child care homes.
 - If the owner is the provider/operator in a home certified for more than 12 children, the owner may be the provider for only that certified family child care home. The provider may be the owner of other facilities. See OAR 414-350-0030(5)
- May care for up to 16 children not including the provider's own children when establishing capacity or adult to child ratio requirements if the children are between 10 and 12 years of age, unless a child has special needs or disabilities and requires a level of care that is above normal for the child's age.
- The home itself is subject to more intense requirements for zoning and fire safety and specific square footage requirements.
- The ratio of ages of children allowed is dependent on the number of qualified caregivers.
- Zoning approval is sometimes required.
- Qualifying experience needed.
 - The provider shall be:
 - a) At least 18 years of age if the facility is certified for 12 children; or at least 21 years of age if the facility is certified for more than 12 children; and
 - b) Responsible for the operation of the certified family child care home, including those duties ordinarily considered to be administrative. These include, but are not limited to, financial management, maintaining records, maintenance of the building and grounds, meal planning and preparation, compliance with certification requirements, communication with OCC, and correcting deficiencies.
 - The provider shall have:
 - a) At least one year of qualifying teaching experience, as specified in **OAR 414-350-0010(28)** in the care of a group of children in an ongoing group setting such as a kindergarten, preschool, child care center, certified family child care home, registered family child care home, or Head Start program; or prior to applying to be certified for up to 16 children, completed one year of successful operation as a certified family child care facility for 12 children if the qualifying teaching experience is based on registered family child care; or
 - b) Completion of 20 credits (semester system) or 30 credits (quarter system) of training in a college or university in early childhood education or child development; or
 - c) Documentation of attaining at least step eight in the Oregon Registry.
 - The provider shall provide evidence of the following training prior to being certified:

- a) A current certification in first aid and infant and child cardiopulmonary resuscitation. CPR training must have practical hands-on instruction; therefore, strictly online training is not acceptable. CPR courses that involve an on-line component with hands-on instruction may be acceptable.
 - b) A current food handler certification.
 - c) Have completed a minimum of two hours of training on child abuse and neglect that is specific to Oregon law.
 - d) Completed OCC approved safe sleep training.
 - Prior to a facility providing care to more than two children under 24 months of age, the provider shall have at least 30 clock hours of training specific to infant and toddler care.
 - a) The provider of facilities certified on or after October 15, 2002, who are providing care for more than two children under 24 months of age must have documentation of 30 hours of prior training in infant and toddler care or a plan, approved by OCC, that shows how the training will be attained.
 - The provider/operator shall be on-site at least half of the hours of operation that are reflected on the certificate. If the facility is certified for more than 12 children, the provider shall be on site at least 2/3 of the hours of operation that are reflected on the certificate. The hours shall be calculated on a weekly basis, except for planned vacations and emergency absences.
 - The provider shall have no other employment, either in or out of the home, during the hours the provider is directly caring for children.
 - The provider, or a substitute caregiver, shall be present during all the hours the certified family child care business is conducted and substitute caregiver qualifications are also strictly regulated.
- Annual training requirements vary based on position.
 - The provider must display license and all serious valid complaint and serious non-compliance letters for 12 calendar months.
 - Minimum of 1 unannounced visit annually.
 - Annual environmental health inspection.
 - Annual renewal.

Other requirements

A tenant who wishes to use the rental property as a family child care home, must pay in advance for costs of any modifications necessary or desirable for the tenant's use, certification, or registration of the dwelling as a family child care home that are not required of the landlord under **ORS 90.320** or the rental agreement.

The tenant must also provide at the election of Owner/Agent one of the following:

- Require parents or guardians of children under the care of the family child care home sign a document in which they agree for themselves and their children that the landlord, owner or association, as defined in **ORS 94.550** or **100.005**, is not liable for losses from injuries to their children or their guests connected with the operation of the family child care facility; and acknowledge that the family home care provider does not maintain liability coverage for losses

from injuries to their children or their guests connected with the operation of the family child care facility; or,

- Require Tenant(s) to carry and maintain a surety bond or liability policy covering injuries to their children and guests that provides coverage of claims for injuries sustained on account of the negligence of the tenant or its employees. Names the landlord, owner, or association, as defined in **ORS 94.550** or **100.005** as an additional insured and provides coverage in an amount no less than the amount established by rule by the Early Learning Division in consultation with the Department of Consumer and Business services.

All the attorneys I've spoken with about which option is best lean toward the insurance. Then the question is, how much insurance? So far, the Early Learning Division (ELD) has declined to provide any limits on the amount of insurance a landlord can require, or "reasonable requirements for landlords" but I did have a conversation with my insurance guy who says that most companies limit the number of children to six or it goes to a commercial policy. What's enough coverage? \$500,000? \$1,000,000? \$5,000,000? There's no guidance available and he wasn't even aware of the bill. He said a bond doesn't make sense because those are not for injury, only financial issues. How much would a Liability Waiver protect you? I don't know. But interestingly, he did say that any insurance company he knows of would still want waivers signed! Guess the legislators didn't consult with the insurance industry when they were crafting the bill.

I hope that landlords around the state are somewhat reassured by the regulatory burden and oversight of child care homes. Only the most dedicated and responsible renters will be able to meet the requirements. And remember, you may revoke permission and terminate the agreement with cause if the tenant falls out of compliance that is not remedied within the timeframes imposed by the Office of Child Care. It falls on you to be aware of the requirements.

We have a new form available ***Child Care Agreement – ORHA form MO6*** developed by Eugene attorney **Brian Cox** that clarifies the allowance and provides you with the ability to select which type of liability protection you feel is best for you.

If you have any questions about the requirements of either registered or certified child care homes in Oregon, reach out to:

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This column offers general suggestions only and is no substitute for professional legal counsel. Please consult an attorney for advice related to your specific situation.

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