

**Date:** March 11, 2024  
**To:** HB 2727 Work Group  
**From:** DLCD; ECONW; SEA  
**Subject:** HB 2727 Child Care Barriers: DRAFT Background Memo for Work Group Meeting #1

---

## Introduction & Context

In 2023, the Oregon Legislature passed Oregon House Bill (HB) 2727 directing the Department of Land Conservation and Development (DLCD) to convene a work group to examine strategies for expanding early learning and care facilities in Oregon. Per the requirements of HB 2727, the Department has convened this work group to review specific barriers to siting, building or renovating childcare facilities and prepare a report summarizing its findings. This report must also include recommendations to:

- ◆ Reduce barriers to expanding early learning and care (ECE) facilities.
- ◆ Support the expansion of ECE facilities in Oregon.
- ◆ Reduce disproportionate racial and regional disparities in access ECE facilities.

The Department hired ECONorthwest to support the work group by conducting research, facilitating community engagement, and preparing the final report. Throughout the course of the project, the work group will meet up to five times to provide guidance on the research and engagement, along with feedback on the proposed recommendations that will be included in the final report. This memo has been prepared prior to the first work group meeting to provide context and establish a shared understanding of:

- ◆ The different types of ECE facilities and providers.<sup>1</sup>
- ◆ The role of different agencies in regulating and permitting the development of ECE facilities.




---

<sup>1</sup> In this report, we will use ECE to refer to the range of childcare provider types, including home- and center-based providers.

## WORK GROUP AND REPORT SCOPE

---

While there are many different types of barriers to establishing and operating an ECE facility, HB 2727 tasks the work group and final report with understanding barriers and impacts specifically related to the following:

-  **Zoning Regulations:** Standards that determine how land can be used and specific site and building characteristics as they relate to a particular site and zone (e.g., height, lot size, and parking requirements).
-  **Building Codes:** Standards that ensure the building and lot are structurally sound, appropriately built, and safe for its intended occupants (e.g., requirements for fire or earthquake resistance).
-  **Permitting and Procedures:** Standards that determine which approvals are required for construction and how to obtain them (e.g., building, plumbing, or electrical permits).

## Access to Child Care in Oregon

A childcare desert is defined as a community with more than three children for every regulated childcare slot. Childcare deserts are related to the supply of childcare facilities; with insufficient ECE facilities, there are fewer provider jobs available and slots open, creating increased competition for existing slots which are often too expensive for the broad range of parents in need of childcare. A 2018 study by the Center for American Progress found that 60% of Oregon residents live in a childcare desert.<sup>2</sup> However, while childcare access is an issue across the state, access issues become more acute within certain communities and populations, including by:

- ◆ **Age of Child:** A 2021 study by the Oregon Child Care Research Partnership determined every county in Oregon is a childcare desert for families with infants and toddlers (under three years), and 25 of 36 Oregon counties are childcare deserts for families with preschool-age children (ages three to five).<sup>3</sup>
- ◆ **Race and ethnicity:** The Center for American Progress study found 62% of Oregon Hispanic and Latino residents live in childcare deserts, compared to 60% of non-Hispanic White residents who live in childcare deserts, and 53% of non-Hispanic Black residents.<sup>4</sup>
- ◆ **Location:** The Center for American Progress study found 68% of rural Oregon residents live in childcare deserts, compared to 59% of urban residents and 50% of suburban residents.<sup>5</sup>

---

<sup>2</sup> The Center for American Progress, [America's Child Care Deserts in 2018](#) (2018)

<sup>3</sup> Oregon State University College of Public Health and Human Sciences, Oregon Child Care Research Partnership, [Oregon's Child Care Deserts 2020: Mapping Supply by Age Group and Percentage of Publicly Funded Slots](#) (2021)

<sup>4</sup> The Center for American Progress, [America's Child Care Deserts in 2018](#) (2018)

<sup>5</sup> The Center for American Progress, [America's Child Care Deserts in 2018](#) (2018)



- ◆ **Income:** The Center for American Progress study found 60% of neighborhood residents earning the lowest 20% of incomes in each census tract live in childcare deserts, compared to 52% of neighborhood residents with the highest 20% of incomes.<sup>6</sup>

It is also worth noting that proximity and availability of childcare slots are not the only barriers to ECE access. Even if residents live near an ECE facility with slots available, they may face financial barriers, transportation or schedule constraints, a lack of culturally relevant care, or language differences. Like childcare deserts, these barriers do not affect all residents in the same way, with more marginalized communities facing greater obstacles.

## Barriers to ECE Facility Development

While this report focuses on regulatory barriers specifically related to developing or expanding ECE facilities (via zoning regulations, building codes, and permitting practices), it is worth noting that providers can face many compounding barriers to establishing ECE facilities. Lack of access to capital and financing (including small business loans, grants, and tax incentives), difficulty obtaining required insurances, land or real estate availability, staffing challenges, and licensing requirements can all also pose significant barriers to development.

## Types of Child Care Providers

### Licensed Providers

Licensed Providers are licensed through the Department of Early Learning and Care Child Care Licensing Division (CCLD). For licensed providers, there are two main types of providers and three types of licenses:

**Home-based Providers** care for children within a residential home. There are two types of licenses available for this type of provider:

- ◆ **Registered Family Child Care** licenses are for providers caring for a small group of up to ten children in a home setting, usually cared for by one person.
- ◆ **Certified Family Child Care** licenses are for providers caring for a larger group of up to 16 children in a home setting, usually cared for by one or more people.

### ECE FACILITY TYPES

#### Family Child Care Homes

An ECE facility in a dwelling that is caring 16 children or less and has either a Registered Family Child Care license or a Certified Family Child Care license, if required.

#### Child Care Centers

An ECE facility, other than a family childcare home, that has a Certified Child Care Center License.

<sup>6</sup> The Center for American Progress, [America's Child Care Deserts in 2018](#) (2018)



**Center-based Providers** care for children within a commercial building, including a nursery, dedicated childcare center, or outdoor childcare program.

- ◆ These providers must have a Certified Child Care Center license, in which licensed capacity is determined by floor space and number of staff.

## License Exempt Providers

Certain types of providers and ECE programs are not required to be licensed through the Care Child Care Licensing Division.

**License Exempt** caregivers provide childcare in their homes on an informal basis for three children or fewer. These providers are often friends, neighbors, or relatives. License exempt providers can become **Regulated Subsidy Providers** who are eligible to care for families receiving Employment Related Day Care, a subsidy program that pays part of the childcare costs for families who are working, in school, or receiving Temporary Assistance for Needy Families. To become eligible for payment through Employment Related Day Care, license exempt providers must complete a background check, complete certain trainings and pass a site visit to ensure the provider's home meets all health and safety requirements; however, these requirements are generally related to operating procedures.<sup>7</sup>

**Recorded Programs** are recorded (but not licensed) with the Care Child Care Licensing Division and include preschool programs that operate less than four hours a day and youth development activities for school aged children (such as religious institution programs or after school tutoring, music lessons or sports programs). These programs have just two requirements: all staff and volunteers must be enrolled in the Central Background Registry, and providers must notify parents about a provider's recorded status.

License exempt providers and recorded programs play an important role in ECE access and community-based care. However, while these provider types can often face unique barriers to licensing and operating, because they generally do not engage with the development process they will largely fall outside the scope of this project.

## Childcare Patterns by Race and Ethnicity

A study by the Urban Institute on the childcare patterns of White, Black and Hispanic children found differences in the types of ECE used by the three groups. According to the study, Black children are the most likely of the three groups to be enrolled in ECE and are much more likely to be enrolled in a childcare *center* than White or Hispanic children. On the flipside, Hispanic children are much less likely to be enrolled in a center than White and Black children, and are the most likely to attend home-based childcare of the three groups.

---

<sup>7</sup> The Urban Institute, [Caring for Children of Color: The Child Care Patterns of White, Black, and Hispanic Children under 5](#) (2006)



## Department of Early Learning and Care

Administering, licensing, and monitoring ECE facilities in Oregon falls under the Department of Early Learning and Care. This department was established in July 2023 to consolidate ECE policy and program administration in Oregon, bringing together the Oregon Early Learning Division (previously under the Department of Education) and the Employment Related Day Care program (previously under the Department of Human Services).<sup>8</sup> Per ORS 329A.010, the Department of Early Learning and Care has four main mandates:

- ◆ Issue licenses for providers and facilities, including regional Child Care Resource and Referral programs to recruit and support ECE programs and providers.
- ◆ Provide technical assistance, support communication and referrals between local agencies, data collection and monitoring related to childcare.
- ◆ Establish and maintains a Central Background Registry for ECE providers.
- ◆ Implement and administers state ECE licensing requirements and rules.

### Department of Early Learning and Care Facility Requirements

In addition to operating and licensing, the Department of Early Learning and Care also has its own facility requirements for licensing that often overlap with building codes requirements. As part of the licensing application, facilities must show proof of compliance via:

**Fire Inspections:** Center-based facilities must pass a fire inspection, completed by the local fire marshal. The fire marshal will check that the building meets the Oregon Structural Specialty Code, has clear exits and stairwells, and sufficient fire extinguishers and smoke detectors.<sup>9</sup>

**Sanitation Inspections:** Both center- and home-based facilities must pass a sanitation inspection, completed by the local environmental health specialist. Inspectors will check the water supply, heat and ventilation systems, waste disposal and cleaning practices in the facility, as well as ensure bathrooms and kitchens have the required number of toilets and sinks for how many children will be enrolled. These requirements typically extend beyond the requirements of the general building code.<sup>10</sup>

**Lead testing:** Both center- and home-based facilities must have the building's water tested for lead by an accredited drinking water laboratory.<sup>11</sup>

---

<sup>8</sup> DELC was established by House Bill 3073, passed by the Oregon Legislature in 2021.

<sup>9</sup> DELC [Rules for Certified Centers](#), page 101 (2024)

<sup>10</sup> DELC [Rules for Certified Centers](#), pages 111-121 (2024)

<sup>11</sup> DELC [Lead Testing Instructions](#) (2024)



# Development Regulations for ECE Facilities

While the Department of Early Learning and Care oversees many of the licensing and operating requirements for ECE facilities, other agencies oversee the development of these facilities related to land use, zoning and building code compliance, and permitting. In Oregon, both state and local governments have a role in regulating the development of ECE facilities.

## KEY TERMS & CONCEPTS

---



### Zoning Regulations

Zoning regulations determine where different types of ECE facilities can and can't be located (e.g., residential or commercial zone), along with their scale and appearance. In general, zoning regulations determine:

**Land use:** Determines how land can be used in different zones; for example, whether certain types of residential development (such as single-family homes or apartments) or commercial businesses (such as ECE centers) are allowed.

**Building and site characteristics:** Regulates building size, including height and square footage as well as any required parking, landscaping, and architectural style guidelines.



### Building Codes

Building codes are standards that ensure the building and lot are structurally sound, appropriately built, energy efficient, and safe for its intended occupants.

At a high level, building codes can include requirements for building exits and accessibility, mitigating fire risk, plumbing and sanitation in kitchens and bathrooms, and energy efficiency and insulation.



### Permits and Procedures

Standards that determine which approvals are required for construction and how to obtain them.

**Permits** are official approvals that allow for construction or remodeling projects. Developments may require a few different permits, including building and zoning permits (verifying compliance with building and zoning codes), plumbing permits, electrical, mechanical, and grading permits. Applicants may also need additional permits approving any code variances, conditional use permits, zoning ordinance amendments, or other permits that require additional studies (e.g., traffic, environmental, or cultural resource studies). Permits require a range of fees to obtain, and the fees vary substantially between different jurisdictions.

**Procedures** are the processes required for obtaining any necessary permits, including various levels of documentation, rounds of review and plan revisions.



These different types of regulations are imposed by both the state and local governments through various layers of processes. The section below outlines the roles state and local governments play in regulating the development of ECE facilities.

## State Regulations

In general, state regulations set broad requirements for how and where ECE facilities can be developed locally. When state requirements are updated, jurisdictions must amend their relevant municipal code chapters to comply with new regulations within a determined time frame.

## Zoning Regulations

In Oregon at the state level, the Department of Land Conservation and Development sets statewide rules for local zoning regulation decisions and reviews local plan amendments for compliance with statewide planning goals. This department also provides technical assistance and grants to local jurisdictions for land use planning support.

### STATE-LEVEL ZONING REQUIREMENTS FOR ECE FACILITIES

---

#### House Bill 3109 (ORS 329A.440)

This bill became effective on January 1, 2022, and implemented several changes for both childcare centers and family childcare homes to streamline local regulations and processes for ECE zoning. The bill set forth several new requirements for local jurisdictions:

- » Require local governments to allow residential dwellings located in an area zoned for residential or commercial uses to be used as a family childcare home. Home-based ECE facilities are be considered residential uses for zoning purposes.
- » Require local governments to allow childcare centers as a permitted use in all areas zoned for commercial or industrial use, except areas specifically designated by the local government for heavy industrial use or farm use.
- » Prohibits local governments from imposing land use regulations, special fees, or conditions on the establishment or maintenance of an ECE facility in an allowed zone that are more restrictive than those imposed for other uses in the same zone.

#### Senate Bill 599 (ORS 90.385)

This bill became effective on January 1, 2024, requiring landlords to allow tenants to operate licensed or registered family day care uses in rental units.

In Oregon, each city is surrounded by an urban growth boundary which delineates where the city can expand over a 20-year period. Inside the urban growth boundary, growth can occur through building new housing, industrial facilities, businesses or public infrastructure. Outside the



boundary, restrictions protect farmlands and forests, prohibiting urban development. Land use regulations for any kind of development, including ECE facilities, vary greatly depending on whether the zoning is an urban or rural designation and whether it's in or outside of an urban growth boundary. This has caused some complexity for local jurisdictions implementing HB 3109.

## Building Codes

ECE facilities in Oregon are governed by a model building code generated and adopted by the State Building Code Division. One relevant commercial code is based on the International Building Code with Oregon amendments, known as the Oregon Structural Specialty Code and the Oregon Energy Efficiency Specialty Code. Home based ECE facilities are permitted to comply with the construction standards of the Oregon Residential Specialty Code, based on the International Residential Code, where specific parameters of the Structural Specialty Code are met. Together, these two codes provide minimum design and performance standards for safety and sanitation components in the building. These include:

- ◆ **Building egress design**, including stairs, hallways, doors and hardware, exit courts, and exterior paths to a safe dispersal area away from the building in case of a fire or other emergency.
- ◆ **Fire safety components**, including fire alarm and sprinkler design, building material flammability ratings, smoke propagation and mitigation measures.
- ◆ **Minimum health and sanitation requirements**, including toilet, sink, and plumbing requirements.
- ◆ **Minimum standards for energy performance**, including insulation and energy efficiency standards to regulate building temperatures and reduce operating costs.

Building code requirements vary between home- and center-based ECE facilities. For example, in April 2021 the Oregon Building Code Division updated its code to align with the national standard of care for in-home care facilities, requiring new home-based ECE providers to install sprinkler systems for fire safety. However, following additional community engagement during the public process, the Division amended the rule in January 2022 allowing home-based providers alternative options for meeting the fire safety requirements, including locating childcare areas of the home at grade level with an exit, preventing access to kitchen appliances.

## Permits and Procedures

While permitting procedures and review timelines are generally set by local jurisdictions, the Oregon legislature and the Land Use Board of Appeals have passed several laws limiting permitting timelines. State law requires that cities and counties make a final decision on permit





applications, limited land use decisions or zone changes within 120 days after the application is completed.<sup>12 13 14 15</sup>

## Local Regulations

While the state has established some standards for how local jurisdictions can or cannot regulate the development of ECE facilities, local jurisdictions still have substantial influence over the development process when it comes to accessibility, time, and cost. On one end of the spectrum, local governments can broadly allow ECE facilities by right across many zones, limit permitting requirements and shorten permit approval timelines as much as possible. On the other end, local governments might impose conditional use requirements or design standards, adhere to stricter building code regulations, or other procedures that can increase waiting periods for permit approvals.

## Zoning Regulations

At the local level, local governments (including cities and counties) establish zoning codes that align with the Division of Land Conservation and Development statewide land use goals. However, while local governments generally follow state guidance, their city departments and city councils can maintain significant influence over local land use and development decisions. Because HB 3109 only became effective in early 2022, many cities in Oregon have yet to update their permitted use tables and procedures to reflect new state requirements, which can create administrative challenges for both city staff processing applications and providers researching the feasibility of opening a new center or home-based care facility. In addition, while HB 3109 limits local jurisdictions from imposing *more* stringent conditional use requirements on ECE facilities specifically, if local jurisdictions rely on the conditional use process across uses, ECE facilities can still be subject to lengthy and expensive approval processes.

## Building Codes

While most ECE building code requirements originate at the state level, some jurisdictions (cities and counties) add additional building code requirements at the local level to address location-specific building safety and sanitation requirements.

---

<sup>12</sup> ORS 227.178

<sup>13</sup> ORS 215.427

<sup>14</sup> [https://oregon.public.law/statutes/ors\\_215.427](https://oregon.public.law/statutes/ors_215.427)

<sup>15</sup> Under this state law, if the local jurisdiction fails to issue a decision within this period, the applicant has three options: 1) Receive a refund of 50% of any application fees and deposits paid and withdraw the application. 2) Receive a refund of 50% of any application fees and deposits paid and continue with the application. 3) File a "writ of mandamus" to compel the local government to approve the permit or prove to the circuit court that approval would violate its land use regulations.



## EXAMPLE

---

### Local Building Code Regulations

Within the City of Portland, all repurposed commercial buildings are subject to more stringent seismic criteria to account for older buildings in the City that may be more at risk of earthquake damage. Any change in a building's occupancy could trigger seismic retrofit requirements, which can be cost prohibitive for many providers.

### Permitting and Procedures

Within the state-mandated timeframes for procedures, local jurisdictions have influence over permitting timelines and requirements. Local jurisdictions can establish requirements that can impact permit review timelines such as neighborhood meetings, public hearings, appeal periods, conditional use procedures. Local governments can also choose to streamline processes and increase transparency and reporting in an effort to reduce permitting timelines and procedures. Requirements can vary significantly between jurisdictions and navigating the different requirements between state and local requirement can be a significant deterrent to development, especially for smaller or less resourced applicants.

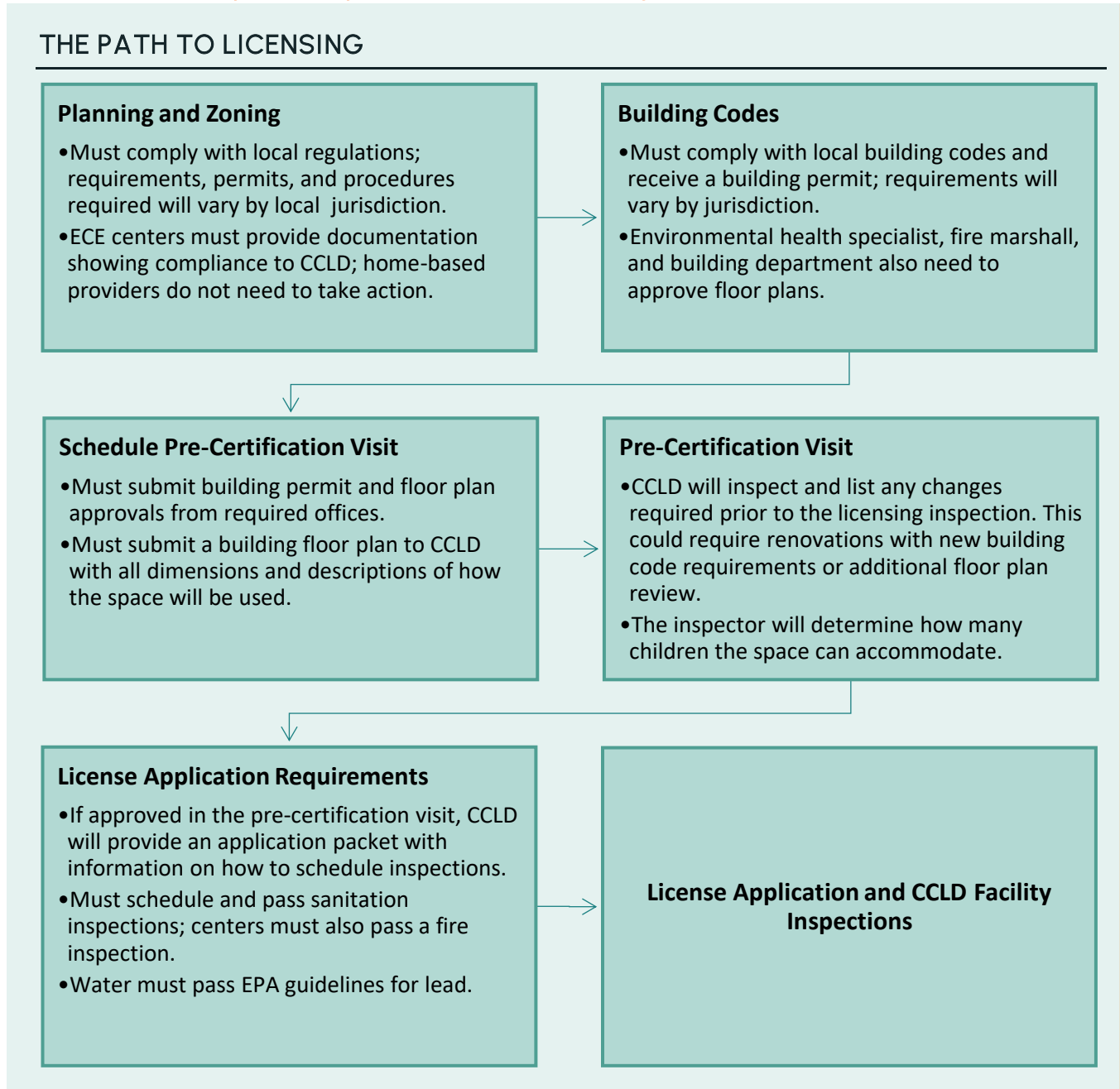
The required permits and procedures a provider will be required to follow is based on the type of ECE facility they are looking to open or expand, as well as the type of property and project they are working with. For example, providers are likely to be subject to land use review processes for new construction projects, whereas projects that utilize existing buildings or tenant spaces may only be subject to building permit requirements. The types of permits and review procedure and their associated requirements vary greatly between jurisdictions.



## Process Overview

Below, Exhibit 1 shows the development steps an ECE facility must complete prior to applying for licensing. Applicants must submit all licensing requirements at least 45 days prior to when they plan to operate.

**Exhibit 1: ECE Development Requirements Prior to Licensing**



Source: DELC Application Process for [Centers](#) and [Home-Based Providers](#)

Note: CCLD stands for the Department of Early Learning and Care's Child Care Licensing Division



## Other Regulatory Agencies

Beyond the agencies discussed above, ECE providers will likely need to engage with additional agencies while establishing an ECE facility, including:

- ◆ Americans with Disabilities Act: Requirements for making facilities and services accessible to children with disabilities.
- ◆ Oregon Department of Revenue: Filing business taxes; also offers a tax credit for ECE agencies.
- ◆ United States Department of Agriculture: Guidelines for snacks and meals<sup>16</sup>. Food subsidy programs are available through the Oregon Department of Education.
- ◆ Oregon Health Authority: Health and safety requirements for immunizations and childcare restrictable diseases.
- ◆ Oregon Department of Human Services: Child abuse and neglect reporting requirements for providers.
- ◆ Oregon Department of Transportation: Vehicle child safety systems and seat belt requirements for transporting children, as well as bicycle safety and helmet laws.
- ◆ Bureau of Labor and Industries: Anti-discrimination laws protecting enrollees and employees.

## Next Steps

Building on the findings provided in this memo and the work group's initial meeting, we will move into the next phase of our research, which will include:

**Community engagement** via the following methods: focus groups, interviews with key community members (including current planners and permit technicians for local jurisdictions and ECE providers), an online survey, along with continual engagement with this work group. Recognizing Oregon's diverse population, we will work with Department of Land Conservation and Development staff to ensure language accessibility for our engagement methods.

**Identifying barriers to ECE development** via research and case studies on various Oregon jurisdictions, reviewing individual zoning and building codes pertaining to both home- and center-based ECE facilities. During this research, we will also evaluate and document the disparate impacts on ECE providers based on diversity factors, including but not limited to race, ethnicity, language, provider type and geographic location.

---

<sup>16</sup> Children must be fed snacks and meals regularly per Or. Admin. R. 414-305-1110.



**Identifying promising practices and opportunities**, building off of prior research and community engagement. These findings will be used to **develop recommendations** for:

- ◆ Expansion of ECE facilities in the cities or counties represented in the work group.
- ◆ Expansion of ECE facilities in cities and counties throughout Oregon.
- ◆ The Legislative Assembly to consider legislative changes the work group deems necessary or advisable in support of expansion efforts.
- ◆ The Office of the Governor and relevant state agencies for possible administrative improvements.

Recommendations will be developed and reviewed through an equity lens and may relate to:

- ◆ Statewide Land Use Law.
- ◆ Building codes.
- ◆ Local land use and zoning practices.
- ◆ Capacity building for technical assistance programs.
- ◆ Equitable distribution of resources.
- ◆ Opportunities for coordination among other state agencies related to their work, grant programs, and federal funding opportunities.

