

WSR 12-01-113
PROPOSED RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
(Aging and Disability Services Administration)
[Filed December 21, 2011, 9:43 a.m.]

Supplemental Notice to WSR 11-17-134.

Preproposal statement of inquiry was filed as WSR 11-13-094.

Title of Rule and Other Identifying Information: The department intends to amend WAC 388-78A-2020 Definitions and 388-78A-2030 Applicability.

The department intends to add WAC 388-78A-2032 Boarding home license not required and 388-78A-2035 Disclosure statement to nonresident individuals.

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html>, or by calling (360) 664-6094), on February 7, 2012, at 10:00 a.m.

Date of Intended Adoption: Not earlier than February 8, 2012.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 1115 Washington Street S.E., Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on February 7, 2012.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by January 18, 2012, TTY (360) 664-6178 or (360) 664-6094 or by e-mail jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is filing a supplemental CR-102 to revise the proposed rules in an effort to provide more clarity. The department is making the revisions in response to comments and feedback received from residents, nonresident individuals, and providers, after the public hearing.

ESSB 5708, passed by the 2011 legislature, changes provisions in chapter 18.20 RCW to allow boarding homes to provide some services to nonresident individuals.

Reasons Supporting Proposal: See above.

Statutory Authority for Adoption: Chapter 18.20 RCW.

Statute Being Implemented: Chapter 18.20 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting: Judy Johnson, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2501; Implementation and Enforcement: Lori Melchiori, P.O. Box 45600, Olympia, WA 98504-5600, (360) 725-2404.

No small business economic impact statement has been prepared under chapter 19.85 RCW. Under RCW 19.85.025 (3), a small business economic impact statement is not required for rules adopting or incorporating, by reference without material change, Washington state statutes or regulations.

A cost-benefit analysis is not required under RCW 34.05.328. Under RCW 34.05.328 (5)(b), a cost-benefit analysis is not required for rules adopting or incorporating, by reference without material change, Washington state statutes or regulations.

December 14, 2011

Katherine I. Vasquez

Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-05-099, filed 2/15/08, effective 3/17/08)

WAC 388-78A-2020 Definitions. "Abandonment" means action or inaction by a person with a duty of care for a vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

"Abuse" means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a resident. In instances of abuse of a resident who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish. Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a resident, which have the following meanings:

(1) **"Mental abuse"** means any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a resident from family, friends, or regular activity, and verbal assault that includes ridiculing, intimidating, yelling, or swearing;

(2) **"Physical abuse"** means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, prodding, or the use of chemical restraints or physical restraints;

(3) **"Sexual abuse"** means any form of nonconsensual sexual contact, including, but not limited to, unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual contact may include interactions that do not involve touching, including but not limited to sending a resident sexually explicit messages, or cuing or encouraging a resident to perform sexual acts. Sexual abuse includes any sexual contact between a staff person and a resident, whether or not it is consensual;

(4) **"Exploitation"** means an act of forcing, compelling, or exerting undue influence over a resident causing the resident to act in a way that is inconsistent with relevant past behavior, or causing the resident to perform services for the benefit of another.

"Activities of daily living" means the following tasks related to basic personal care: Bathing; toileting; dressing; personal hygiene; mobility; transferring; and eating.

"Adult day services" means care and services provided to a nonresident individual by the boarding home on the boarding home premises, for a period of time not to exceed ten continuous hours, and does not involve an overnight stay.

"Ambulatory" means capable of walking or traversing a normal path to safety without the physical assistance of another individual:

(1) **"Nonambulatory"** means unable to walk or traverse a normal path to safety without the physical assistance of another individual;

(2) **"Semiambulatory"** means physically and mentally capable of traversing a normal path to safety with the use of mobility aids, but unable to ascend or descend stairs without the physical assistance of another individual.

"Applicant" means the person, as defined in this section, that has submitted, or is in the process of submitting, an application for a boarding home license.

"Basic services" means housekeeping services, meals, nutritious snacks, laundry, and activities.

"Bathing fixture" means a bathtub, shower or sit-down shower.

"Bathroom" means a room containing at least one bathing fixture.

"Boarding home" means any home or other institution, however named, which is advertised, announced, or maintained for the express or implied purpose of providing housing, basic services, and assuming general responsibility for the safety and well-being of the residents, and may also provide domiciliary care, consistent with this chapter to seven or more residents after July 1, 2000. However, a boarding home that is licensed for three to six residents prior to or on July 1, 2000, may maintain its boarding home license as long as it is continually licensed as a boarding home. "Boarding home" does not include facilities certified as group training homes pursuant to RCW 71A.22.040, nor any home, institution or section thereof which is otherwise licensed and regulated under the provisions of state law providing specifically for the licensing and regulation of such home, institution or section thereof. Nor shall it include any independent senior housing, independent living units in continuing care retirement communities, or other similar living situations including those subsidized by the Department of Housing and Urban Development. "Boarding home" may also include persons associated with the boarding home to carry out its duties under this chapter.

"Building code" means the building codes and standards adopted by the Washington state building code council.

"Caregiver" means anyone providing hands-on personal care to another person including, but not limited to: Cuing, reminding or supervision of residents, on behalf of a boarding home, except volunteers who are directly supervised. Direct supervision means oversight by a person who has demonstrated competency in the basic training (and specialty training if required), or who has been exempted from the basic training requirements, is on the premises, and is quickly and easily available to the caregiver.

"Construction review services" means the office of construction review services within the Washington state department of health.

"Continuing care contract" means, as stated in RCW 70.38.025, a contract providing a person, for the duration of that person's life or for a term in excess of one year, shelter along with nursing, medical, health-related, or personal care services, which is conditioned upon the transfer of property,

the payment of an entrance fee to the provider of such services, or the payment of periodic charges for the care and services involved. A continuing care contract is not excluded from this definition because the contract is mutually terminable or because shelter and services are not provided at the same location.

"Continuing care retirement community" means, as stated in RCW 70.38.025, an entity which provides shelter and services under continuing care contracts with its members and which sponsors or includes a health care facility or a health service.

"Contractor" means an agency or person who contracts with a licensee to provide resident care, services or equipment.

"Crimes relating to financial exploitation" means the same as "crimes relating to financial exploitation" as defined in RCW 43.43.830 or 43.43.842.

"Department" means the Washington state department of social and health services.

"Dietitian" means an individual certified under chapter 18.138 RCW.

"Document" means to record, with signature, title, date and time:

(1) Information about medication administration, medication assistance or disposal, a nursing care procedure, accident, occurrence or change in resident condition that may affect the care or needs of a resident; and

(2) Processes, events or activities that are required by law, rule or policy.

"Domiciliary care" means:

(1) Assistance with activities of daily living provided by the boarding home either directly or indirectly; or

(2) Health support services, if provided directly or indirectly by the boarding home; or

(3) Intermittent nursing services, if provided directly or indirectly by the boarding home.

"Enforcement remedy" means one or more of the department's responses to a boarding home's noncompliance with chapter 18.20 RCW and this chapter, as authorized by RCW 18.20.190.

"Financial exploitation" means the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the vulnerable adult by any person or entity for any person's or entity's profit or advantage other than for the vulnerable adult's profit or advantage. Some examples of financial exploitation are given in RCW 74.34.-020(6).

"Food service worker" means according to chapter 246-217 WAC an individual who works (or intends to work) with or without pay in a food service establishment and handles unwrapped or unpackage food or who may contribute to the transmission of infectious diseases through the nature of his/her contact with food products and/or equipment and facilities. This does not include persons who simply assist residents with meals.

"General responsibility for the safety and well-being of the resident" means the provision of the following:

(1) Prescribed general low sodium diets;

(2) Prescribed general diabetic diets;

(3) Prescribed mechanical soft foods;

- (4) Emergency assistance;
- (5) Monitoring of the resident;
- (6) Arranging health care appointments with outside health care providers and reminding residents of such appointments as necessary;
- (7) Coordinating health care services with outside health care providers consistent with WAC 388-78A-2350;
- (8) Assisting the resident to obtain and maintain glasses, hearing aids, dentures, canes, crutches, walkers, wheelchairs, and assistive communication devices;
- (9) Observation of the resident for changes in overall functioning;
- (10) Blood pressure checks as scheduled;
- (11) Responding appropriately when there are observable or reported changes in the resident's physical, mental, or emotional functioning; or
- (12) Medication assistance as permitted under RCW 69.41.085 and as described in RCW 69.41.010 and chapter 246-888 WAC.

"Harm" means a physical or mental or emotional injury or damage to a resident including those resulting from neglect or violations of a resident's rights.

"Health support services" means any of the following optional services:

- (1) Blood glucose testing;
- (2) Puree diets;
- (3) Calorie controlled diabetic diets;
- (4) Dementia care;
- (5) Mental health care; or
- (6) Developmental disabilities care.

"Independent living unit" means:

- (1) Independent senior housing;
- (2) Independent living unit in a continuing care retirement community or other similar living environments;
- (3) Boarding home unit where domiciliary services are not provided; or
- (4) Boarding home unit where one or more items listed under "general responsibilities" are not provided.

"Independent senior housing" means an independent living unit occupied by an individual or individuals sixty or more years of age.

"Infectious" means capable of causing infection or disease by entrance of organisms into the body, which grow and multiply there, including, but not limited to, bacteria, viruses, protozoans, and fungi.

"Licensee" means the person, as defined in this chapter, to whom the department issues the boarding home license.

"Licensed resident bed capacity" means the resident occupancy level requested by the licensee and approved by the department. All residents receiving domiciliary care or the items or services listed under general responsibility for the safety and well-being of the resident as defined in this section count towards the licensed resident bed capacity. Adult day services clients do not count towards the licensed resident bed capacity.

"Majority owner" means any person that owns:

- (1) More than fifty percent interest; or
- (2) If no one person owns more than fifty percent interest, the largest interest portion; or

(3) If more than one person owns equal largest interest portions, then all persons owning those equal largest interest portions.

"Manager" means the person defined in this chapter, providing management services on behalf of the licensee.

"Management agreement" means a written, executed agreement between the licensee and the manager regarding the provision of certain services on behalf of the licensee.

"Mandated reporter":

(1) Is an employee of the department, law enforcement officer, social worker, professional school personnel, individual provider, an employee of a facility, an operator of a facility, an employee of a social service, welfare, mental health, adult day health, adult day care, home health, home care, or hospice agency, county coroner or medical examiner, Christian Science practitioner, or health care provider subject to chapter 18.130 RCW; and

(2) For the purpose of the definition of mandated reporter, "Facility" means a residence licensed or required to be licensed under chapter 18.20 RCW (boarding homes), chapter 18.51 RCW (nursing homes), chapter 70.128 RCW (adult family homes), chapter 72.36 RCW (soldiers' homes), chapter 71A.20 RCW (residential habilitation centers), or any other facility licensed by the department.

"Maximum facility capacity" means the maximum number of individuals that the boarding home may serve at any one time, as determined by the department.

(1) The maximum facility capacity includes all residents and respite care residents and adult day services clients.

(2) The maximum facility capacity is equal to the lesser of:

(a) The sum of the number of approved bed spaces for all resident rooms (total number of approved bed spaces), except as specified in subsection (3); or

(b) Twice the seating capacity of the dining area(s) consistent with WAC 388-78A-2300 (1)(h); or

(c) The number of residents permitted by calculating the ratios of toilets, sinks, and bathing fixtures to residents consistent with WAC 388-78A-3030; or

(d) For boarding homes licensed on or before December 31, 1988, the total day room area in square feet divided by ten square feet, consistent with WAC 388-78A-3050; or

(e) For boarding homes licensed after December 31, 1988, the total day room area in square feet divided by twenty square feet, consistent with WAC 388-78A-3050.

(3) For the purposes of providing adult day services consistent with WAC 388-78A-2360, one additional adult day services client may be served, beyond the total number of approved bed spaces, for each additional sixty square feet of day room area greater than the area produced by multiplying the total number of approved bed spaces by twenty square feet, provided that:

(a) There is ~~((a-[at]))~~ at least one toilet and one hand washing sink accessible to adult day services clients for every eight adult day services clients or fraction thereof;

(b) The total number of residents and adult day services clients does not exceed twice the seating capacity of the dining area(s) consistent with WAC 388-78A-2300 (1)(h); and

(c) The adult day services program area(s) and building do not exceed the occupancy load as determined by the local building official or state fire marshal.

"Medication administration" means the direct application of a prescribed medication whether by injection, inhalation, ingestion, or other means, to the body of the resident by an individual legally authorized to do so.

"Medication assistance" means assistance with self-administration of medication rendered by a nonpractitioner to a resident of a boarding home in accordance with chapter 246-888 WAC.

"Medication organizer" means a container with separate compartments for storing oral medications organized in daily doses.

"Medication service" means any service provided either directly or indirectly by a boarding home related to medication administration, medication administration provided through nurse delegation, medication assistance, or resident self-administration of medication.

"Neglect" means:

(1) A pattern of conduct or inaction resulting in the failure to provide the goods and services that maintain physical or mental health of a resident, or that fails to avoid or prevent physical or mental harm or pain to a resident; or

(2) An act or omission that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the resident's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100.

"Nonresident individual" means an individual who resides in independent senior housing, independent living units in continuing care retirement communities, or in other similar living environments or in an unlicensed room located within a boarding home ~~((and may receive one or more of the services listed in WAC 388-78A-2030 (2)(a) through (g)))~~. A nonresident individual may not receive from the boarding home:

(1) Domiciliary care ~~((as defined in this section,)) directly or indirectly ((by the boarding home, and may not receive)); or~~

(2) The items or services listed ((under)) in the definition of "general responsibility for the safety and well-being of the resident" ((as defined in this section)), except ((during the time)) as allowed under WAC 388-78A-2032 or when the person is receiving adult day services ((as defined in this section)).

"Nonpractitioner" means any individual who is not a practitioner as defined in WAC 388-78A-2020 and chapter 69.41 RCW.

"Nurse" means an individual currently licensed under chapter 18.79 RCW as either a:

(1) **"Licensed practical nurse"** (LPN); or

(2) **"Registered nurse"** (RN).

"Over-the-counter (OTC) medication" means any medication that may be legally purchased without a prescriptive order, including, but not limited to, aspirin, antacids, vitamins, minerals, or herbal preparations.

"Person" means any individual, firm, partnership, corporation, company, association, joint stock association or any other legal or commercial entity.

"Physician" means an individual licensed under chapter 18.57 or 18.71 RCW.

"Practitioner" includes a licensed physician, osteopathic physician, podiatric physician, pharmacist, licensed practical nurse, registered nurse, advanced registered nurse practitioner, dentist, and physician assistant. Refer to chapter 69.41 RCW for a complete listing of practitioners.

"Prescribed medication" means any medication (legend drug, controlled substance, and over-the-counter) that is prescribed by an authorized practitioner.

"Prescriber" means a health care practitioner authorized by Washington state law to prescribe drugs.

"Problem" means a violation of any WAC or RCW applicable to the operation of a boarding home:

(1) **"Recurring problem"** means, for all purposes other than those described in RCW 18.20.400, that the department has cited the boarding home for a violation of WAC or RCW and the circumstances of (a) or (b) of this subsection are present:

(a) The department previously imposed an enforcement remedy for a violation of the same section of WAC or RCW for substantially the same problem following any type of inspection within the preceding thirty-six months; or

(b) The department previously cited a violation under the same section of WAC or RCW for substantially the same problem following any type of inspection on two occasions within the preceding thirty-six months.

(c) If the previous violation in (a) or (b) of this subsection was pursuant to WAC or RCW that has changed at the time of the new violation, citation to the equivalent current WAC or RCW section is sufficient.

(d) When there is a change in licensees between the first and the second or third citations, the new licensee must accept, and the department will consider, the prior licensee's compliance and enforcement record as part of the new licensee's compliance record at that boarding home if any person affiliated with the new licensee was affiliated with the prior licensee at the same boarding home. A person is considered affiliated with the licensee if the person is an applicant for the boarding home license, or is listed on the license application as a partner, officer, director, or majority owner of the applicant.

(2) **"Serious problem"** means:

(a) There has been a violation of a WAC or RCW; and

(b) Significant harm has actually occurred to a resident;

or

(c) It is likely that significant harm or death will occur to a resident.

(3) **"Uncorrected problem"** means the department has cited a violation of WAC or RCW following any type of inspection and the violation remains uncorrected at the time the department makes a subsequent inspection for the specific purpose of verifying whether such violation has been corrected. When a change in licensees occurs, the new licensee is responsible for correcting any remaining violations that may exist, including complying with any plan of correction in effect immediately prior to the change in licensees.

"Prospective resident" means an individual who is seeking admission to a licensed boarding home and who has

completed and signed an application for admission, or such application for admission has been completed and signed in their behalf by their legal representative if any, and if not, then the designated representative if any.

"Reasonable accommodation" and **"reasonably accommodate"** have the meaning given in federal and state antidiscrimination laws and regulations which include, but are not limited to, the following:

(1) Reasonable accommodation means that the boarding home must:

(a) Not impose admission criteria that excludes individuals unless the criteria is necessary for the provision of boarding home services;

(b) Make reasonable modification to its policies, practices or procedures if the modifications are necessary to accommodate the needs of the resident;

(c) Provide additional aids and services to the resident.

(2) Reasonable accommodations are not required if:

(a) The resident or individual applying for admission presents a significant risk to the health or safety of others that cannot be eliminated by the reasonable accommodation;

(b) The reasonable accommodations would fundamentally alter the nature of the services provided by the boarding home; or

(c) The reasonable accommodations would cause an undue burden, meaning a significant financial or administrative burden.

"RCW" means Revised Code of Washington.

"Records" means:

(1) **"Active records"** means the current, relevant documentation regarding residents necessary to provide care and services to residents; or

(2) **"Inactive records"** means historical documentation regarding the provision of care and services to residents that is no longer relevant to the current delivery of services and has been thinned from the active record.

"Resident" means an individual who:

(1) Chooses to reside in a boarding home, including an individual receiving respite care;

(2) Is not related by blood or marriage to the operator of the boarding home;

(3) Receives basic services; and

(4) Receives one or more of the services listed ~~((under))~~ in the definition of "general responsibility for the safety and well-being of the resident", and may receive domiciliary care or respite care provided directly, or indirectly, by the boarding home. A nonresident individual may receive services that are permitted under WAC 388-78A-2032.

"Resident's representative" means:

(1) The legal representative who is the person or persons identified in RCW 7.70.065 and who may act on behalf of the resident pursuant to the scope of their legal authority. The legal representative shall not be affiliated with the licensee, boarding home, or management company, unless the affiliated person is a family member of the resident; or

(2) If there is no legal representative, a person designated voluntarily by a competent resident in writing, to act in the resident's behalf concerning the care and services provided by the boarding home and to receive information from the boarding home if there is no legal representative. The resi-

dent's representative may not be affiliated with the licensee, boarding home, or management company, unless the affiliated person is a family member of the resident. The resident's representative under this subsection shall not have authority to act on behalf of the resident once the resident is no longer competent. The resident's competence shall be determined using the criteria in RCW 11.88.010 (1)(e).

"Respite care" means short-term care for any period in excess of twenty-four continuous hours for a resident to temporarily relieve the family or other caregiver of providing that care.

"Restraint" means any method or device used to prevent or limit free body movement, including, but not limited to:

(1) Confinement, unless agreed to as provided in WAC 388-78A-2370;

(2) **"Chemical restraint"** which means a psychopharmacologic drug that is used for discipline or convenience and not required to treat the resident's medical symptoms; and

(3) **"Physical restraint"** which means a manual method, obstacle, or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that restricts freedom of movement or access to his or her body, is used for discipline or convenience, and not required to treat the resident's medical symptoms.

"Room" means a space set apart by floor to ceiling partitions on all sides with all openings provided with doors or windows.

(1) **"Sleeping room"** means a room where a resident is customarily expected to sleep and contains a resident's bed.

(2) **"Resident living room"** means the common space in a resident unit that is not a sleeping room, bathroom or closet.

"Significant change" means a change in the resident's physical, mental, or psychosocial status that causes either life-threatening conditions or clinical complications.

"Special needs" means a developmental disability, mental illness, or dementia.

"Staff person" means any boarding home employee or temporary employee or contractor, whether employed or retained by the licensee or any management company, or volunteer.

"State fire marshal" means the director of fire protection under the direction of the chief of the Washington state patrol.

"Toilet" means a disposal apparatus used for urination and defecation, fitted with a seat and flushing device.

"Volunteer" means an individual who interacts with residents without reimbursement.

"Vulnerable adult" includes a person:

(1) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself; or

(2) Found incapacitated under chapter 11.88 RCW; or

(3) Who has a developmental disability as defined under RCW 71A.10.020; or

(4) Admitted to any facility, including any boarding home; or

(5) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW; or

(6) Receiving services from an individual provider.

(7) For the purposes of requesting and receiving background checks pursuant to RCW 43.43.832, it shall also include adults of any age who lack the functional, mental, or physical ability to care for themselves.

"WAC" means Washington Administrative Code.

"Willful" means the deliberate, or nonaccidental, action or inaction by an alleged perpetrator that he/she knows or reasonably should have known could cause a negative outcome, including harm, injury, pain or anguish.

"WISHA" means the Washington Industrial Safety and Health Act, chapter 49.17 RCW administered by the Washington state department of labor and industries.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2030 ((Applicability)) Boarding home license required. (1) A ~~((person must have a))~~ boarding home license ~~((issued by the department under chapter 18.20 RCW and this chapter, except as otherwise exempted by RCW 18.20.170 and subsection (2) of this section, if the person advertises as, or operates, or maintains a facility that meets the definition of a "boarding home" in this chapter, within Washington state and provides housing, one or more basic services, and one or more of the following))~~ is required to operate or maintain a boarding home as defined in chapter 18.20 RCW and this chapter.

(2) A boarding home license is required when any person other than a family member provides housing, one or more basic services, and one or more of the following:

(a) Assumes general responsibility for the safety and well-being of the residents except as provided in WAC 388-78A-2032;

(b) Provides domiciliary care which includes:

(i) Providing assistance with activities of daily living, either directly or indirectly as defined in this chapter and described in WAC 388-78A-2190;

~~((e) Provides))~~ (ii) Providing health support services, either directly or indirectly as defined in this chapter and described in WAC 388-78A-2200; or

~~((d) Provides))~~ (iii) Providing intermittent nursing services, either directly or indirectly as described in WAC 388-78A-2310.

~~((2))~~ (3) A boarding home license is ((not required for one or more of the following services that may be provided to a nonresident individual. These services may not include continual care or supervision of a nonresident individual without a boarding home license:

~~(a) Emergency assistance provided on an intermittent or nonroutine basis to any nonresident individual; or~~

~~(b) Systems employed by independent senior housing, or independent living units in continuing care retirement communities, to respond to the potential need for emergency services for nonresident individuals; or~~

~~(c) Infrequent, voluntary, and nonscheduled blood pressure checks for nonresident individuals; or~~

~~(d) Nurse referral services provided at the request of a nonresident individual to determine whether referral to an outside health care provider is recommended; or~~

~~(e) Making health care appointments at the request of nonresident individuals; or~~

~~(f) Preadmission assessment, at the request of the nonresident individual; or~~

~~(g) Services customarily provided under landlord tenant agreements governed by the Residential Landlord Tenant Act, chapter 59.18 RCW; or~~

~~(h) Housing nonresident individuals who, without ongoing assistance from the boarding home, initiate and arrange for services with a practitioner licensed under Title 18 RCW or a home health, hospice, or home care agency licensed under chapter 70.127 RCW, or other persons as permitted by the boarding home.~~

~~(3) This section does not prohibit a boarding home from furnishing written information concerning available community resources to nonresident individuals or the individual's family members or legal representatives. However, the boarding home may not require the use of any particular service provider)~~ required if the provision of items and services to a nonresident individual requires ongoing evaluation or assessment, ongoing care and service planning, ongoing intervention or ongoing monitoring of a nonresident individual's well-being as specified in this chapter.

NEW SECTION

WAC 388-78A-2032 Boarding home license not required. (1) A boarding home license is not required for the housing, or services, customarily provided under landlord tenant agreements governed by the residential tenant act, chapter 59.18 RCW, or when housing nonresident individuals who chose to participate in the programs or services in subsection (2) of this section when offered by the boarding home licensee or the licensee's contractor.

(2) A boarding home license is not required for one or more of the following items and services that may, upon request of the nonresident individual, be provided to a nonresident individual:

(a) Emergency assistance provided on an intermittent or nonroutine basis;

(b) Systems including technology-based monitoring devices employed by independent senior housing, or independent living units in continuing care retirement communities, to respond to the potential need for emergency services;

(c) Scheduled and nonscheduled blood pressure checks;

(d) Nursing assessment services to determine whether referral to an outside health care provider is recommended;

(e) Making and reminding of health care appointments;

(f) Preadmission assessment, for the purposes of transitioning to a licensed care setting;

(g) Medication assistance which may include reminding or coaching the nonresident individual, opening the nonresident individuals's medication container, using an enabler, and handing prefilled insulin syringes to the nonresident individual;

(h) Prefilling insulin syringes which must be performed by a nurse licensed under chapter 18.79 RCW;

(i) Assessment to determine cause of a fall;

(j) Nutrition management and education services;

(k) Dental services;

- (l) Wellness programs; or
- (m) Services customarily provided under the landlord tenant agreements governed by the residential landlord-tenant act, chapter 59.18 RCW.
- (3) This section does not prohibit a boarding home from furnishing written information concerning available community resources to nonresident individuals or the individual's family members or legal representatives. However, the boarding home may not require the use of any particular service provider.

NEW SECTION

WAC 388-78A-2035 Disclosure statement to nonresident individuals. (1) A boarding home must provide each nonresident individual a disclosure statement upon admission and at the time that additional services are requested by the nonresident individual.

(2) The disclosure statement must notify the nonresident individual that:

- (a) The resident rights of chapter 70.129 RCW do not apply to nonresident individuals;
- (b) Licensing requirements for boarding homes under this chapter do not apply to nonresident units; and
- (c) The jurisdiction of the long-term care ombudsman does not apply to nonresident individuals and nonresident units.

WSR 12-02-002
PROPOSED RULES
DEPARTMENT OF LICENSING
 [Filed December 21, 2011, 3:06 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-14-070.

Title of Rule and Other Identifying Information: Chapter 196-30 WAC, Fees for on-site wastewater treatment designers and inspectors.

Hearing Location(s): Department of Licensing, Business and Professions Division, 405 Black Lake Boulevard, Room 2209, Olympia, WA 98502, on February 7, 2012, at 1:00 p.m.

Date of Intended Adoption: March 6, 2012.

Submit Written Comments to: George A. Twiss, PLS, Executive Director, Board of Professional Engineers and Land Surveyors, P.O. Box 9025, Olympia, WA 98507-9025, e-mail engineers@dol.wa.gov, fax (360) 664-2551, by February 6, 2012.

Assistance for Persons with Disabilities: Contact Kim King, executive assistant, by February 6, 2012, TTY (360) 664-8885 or (360) 664-1564.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This existing rule needs to be revised to reflect passage of HB 1061, signed by the governor on May 5, 2011. The adoption of this rule will lower the existing renewal fees from \$325 a year to \$116 for a two-year renewal.

Reasons Supporting Proposal: This fee change reduces the renewal fee for on-site designers and inspectors.

Statutory Authority for Adoption: RCW 18.43.035, 43.24.086, and 18.210.050.

Statute Being Implemented: Chapter 18.210 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Board of registration for professional engineers and land surveyors, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: George Twiss, 405 Black Lake Boulevard, Olympia, WA 98502, (360) 664-1565.

No small business economic impact statement has been prepared under chapter 19.85 RCW. A small business economic impact statement was not prepared as this does not have a negative impact on the licensees. Renewal fees are being lowered from \$325 per year for designers and \$150 per year for inspectors to \$116 for a two-year renewal.

A cost-benefit analysis is not required under RCW 34.05.328. There is not a negative economic impact to licensees.

December 21, 2011
 Damon G. Monroe
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 07-10-126, filed 5/2/07, effective 6/2/07)

WAC 196-30-020 On-site wastewater treatment designer and inspector fees. The business and professions division of the department of licensing shall assess the following fees:

Title of Fee	Amount (\$)
Designer license application	((F)200.00(F))
Designer license application (comity)	((F)75.00(F))
Designer license renewal	((F 325.00(F)) <u>116.00</u>)
Designer license re-examination	((F)140.00(F))
Late renewal penalty	((F 100.00(F)) <u>58.00</u>)
Certificate of competency (inspector)	
Application	((F)175.00(F))
Certificate of competency renewal	((F 150.00(F)) <u>116.00</u>)
<u>Late renewal penalty</u>	<u>58.00</u>)
Certificate of competency re-examination	((F)140.00(F))

AMENDATORY SECTION (Amending WSR 07-10-126, filed 5/2/07, effective 6/2/07)

WAC 196-30-030 License renewals. (1) Licenses and certificates of competency that expire on or after March 1, 2012, shall be for a two-year period due on the individual's birth date.

(2) The initial designer license and certificate of competency will expire on the licensee's or certificate holder's next birth date. However, if the licensee's or certificate holder's next birth date is within three months of the initial date of issuing the license or certificate, the original license or certificate will expire on his or her second birthday following issuance of the original license or certificate. All subsequent renewals shall be for a ~~((one-year))~~ two-year period due on the ~~((individuals))~~ individual's birth date. No refunds will be made, or payments accepted for a partial year.

~~((2))~~ (3) It shall be the licensee's or certificate holder's responsibility to pay the prescribed renewal fee to the department of licensing on or before the date of expiration.

~~((3))~~ (4) Licensees who fail to pay the prescribed renewal fee within ninety days of the license expiration date will be subject to a late penalty fee ~~((of \$100.00))~~ equivalent to the fee for a one-year renewal. However, the license or certificate is invalid the date of expiration (if not renewed) even though an additional ninety days is granted to pay the renewal fee without penalty. After ninety days, the base renewal fee plus the penalty fee must be paid before the license or certificate can be renewed to a valid status.

~~((4))~~ (5) Any designer license that remains expired for more ~~((that))~~ than two years would be canceled. After cancellation, a new application must be made in accordance with chapter 18.210 RCW to obtain another license.

**WSR 12-02-011
PROPOSED RULES**

**BOARD OF REGISTRATION
FOR PROFESSIONAL ENGINEERS
AND LAND SURVEYORS**

[Filed December 23, 2011, 1:36 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-15-040.

Title of Rule and Other Identifying Information: Chapter 196-34 WAC, Continuing education of licensed professional on-site wastewater treatment.

Hearing Location(s): Department of Licensing, Business and Professions Division, 405 Black Lake Boulevard, Room 2209, Olympia, WA 98502, on February 7, 2012, at 1:00 p.m.

Date of Intended Adoption: March 6, 2012.

Submit Written Comments to: George A. Twiss, PLS, Executive Director, Board of Professional Engineers and Land Surveyors, P.O. Box 9025, Olympia, WA 98507-9025, e-mail engineers@dol.wa.gov, fax (360) 664-2551, by February 6, 2012.

Assistance for Persons with Disabilities: Contact Kim King, executive assistant, by February 6, 2012, TTY (360) 664-8885 or (360) 664-1564.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: This existing rule needs to be revised to reflect passage of HB 1061, signed by the governor on May 5, 2011. With the passage of HB 1061,

certified inspectors are no longer required to obtain professional development hours.

Statutory Authority for Adoption: Chapters 18.43 and 18.210 RCW.

Statute Being Implemented: Chapter 18.210 RCW.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Board of registration for professional engineers and land surveyors, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: George Twiss, 405 Black Lake Boulevard, Olympia, WA 98502, (360) 664-1565.

No small business economic impact statement has been prepared under chapter 19.85 RCW. No economic impact to licensees.

A cost-benefit analysis is not required under RCW 34.05.328. No economic impact to licensees.

December 23, 2011

George A. Twiss

Executive Director

Chapter 196-34 WAC

CONTINUING EDUCATION OF LICENSED PROFESSIONAL ON-SITE WASTEWATER TREATMENT SYSTEM DESIGNERS ~~((AND CERTIFIED INSPECTORS))~~

AMENDATORY SECTION (Amending WSR 06-11-118, filed 5/19/06, effective 7/1/06)

WAC 196-34-100 Purpose and effective date. The purpose of the ~~((continuing education))~~ professional development hours requirement is to encourage licensed on-site wastewater treatment system designers (designers) ~~((and certificate of competency holders (inspectors)))~~, under chapter 18.210 RCW, to maintain competency in their practice. ~~((On July 1, 2007 and thereafter,))~~ All designers ~~((and inspectors))~~ must meet these requirements as a condition of continued licensure ~~((/certification))~~ under chapter 18.210 RCW.

AMENDATORY SECTION (Amending WSR 06-11-118, filed 5/19/06, effective 7/1/06)

WAC 196-34-105 Definitions. Terms used in this chapter are defined as follows:

(1) Professional development hour (PDH)~~((—))~~ - An hour engaged in a qualifying activity.

(2) ~~((Continuing education unit (CEU)—Unit of credit customarily used for continuing education courses. One continuing education unit equals ten professional development hours.~~

~~((3))~~ (3) College/unit semester/quarter hour~~((—))~~ - Completion of courses in college level curriculums satisfactory to the board.

~~((4))~~ (3) Qualifying activity~~((—))~~ - Any activity that is related to on-site wastewater treatment systems or will help the designer ~~((or inspector))~~ to maintain their competency as an on-site wastewater treatment system professional.

~~((5))~~ Year That twelve month period between the renewal and expiration of a credential for a designer or inspector.

~~(6))~~ (4) Board~~((—))~~— The board of registration for professional engineers and land surveyors.

AMENDATORY SECTION (Amending WSR 06-11-118, filed 5/19/06, effective 7/1/06)

WAC 196-34-110 Requirements. ~~((Starting July 1, 2006;))~~ All designers ~~((and inspectors;))~~ wishing to maintain active practice must accumulate ~~((forty-five))~~ thirty PDH for any given ~~((three-year))~~ two-year period. ~~((Starting July 1, 2007;))~~ The PDH accumulated by designers ~~((and inspectors))~~ are subject to audit by the board. ~~((Those individuals, who practice as both a designer and inspector, need only accumulate a total of forty-five PDH for the three-year period.))~~

AMENDATORY SECTION (Amending WSR 06-11-118, filed 5/19/06, effective 7/1/06)

WAC 196-34-115 Qualifying activities. The board believes that designers ~~((and inspectors))~~ under provisions of chapter 18.210 RCW should have the discretion to make independent choices on what activities help them to be improved practitioners. The board will not provide advance approvals for selected activities or vendors. The board expects designers ~~((and inspectors))~~ to seek out qualifying activities that can be demonstrated to the board as relevant to his or her ~~((continuing education))~~ professional development as a designer ~~((or inspector)).~~

AMENDATORY SECTION (Amending WSR 06-11-118, filed 5/19/06, effective 7/1/06)

WAC 196-34-120 Units. Qualifying activities earned and applied to one of the following categories may not be applied to another category.

1. College hours:
 - a. Completion of 1 college semester hour 45 PDH
 - b. Completion of 1 college quarter hour 30 PDH
- ~~((2-1 Continuing education unit 40 PDH~~
- 3-)) 2. For publication or presentation of each:
 - a. Authored technical paper or article 10 PDH
 - b. Authored book 30 PDH
- ~~((4-))~~ 3. Obtaining a patent 10 PDH
- ~~((5-))~~ 4. Membership in professional/technical societies or government committees or boards. (Not to exceed a total of 5 PDH/year) 2 1/2 PDH
- ~~((6-))~~ 5. For each hour of attendance in a professional or technical society meetings with an informational program. (Not to exceed a total of 5 PDH/year) 1 PDH
- ~~((7-))~~ 6. For each hour of attendance at meetings or hearings of the board ~~((or On-site Advisory Committee)).~~ (Not to exceed a total of 7 1/2 PDH/year) 1 PDH

~~((8-))~~ 7. For each hour of preparation and subsequent presentation (*) of a professional development program at seminars, professional/technical meetings, conventions or conferences. (Not to exceed 10 PDH/year) (*) *This credit does not apply to full-time faculty.* 1 PDH

~~((9-))~~ 8. Completion of the continuing education requirements for maintaining a credential as a registered sanitarian. 10 PDH

~~((10-))~~ 9. For each hour of participation in committees of organizations whose purpose is to develop codes, standards, examinations and regulations. 1 PDH

~~((11-))~~ 10. For each hour of participation in an activity involving substantial and organized peer interaction, excluding time spent during regular employment. (Not to exceed a total of 5 PDH/year) 1 PDH

~~((12-))~~ 11. For each hour of participation in organized courses, including employer provided courses, on environmental health topics/first aid/safety, technical or management skills. 1 PDH

~~((13-))~~ 12. For each hour of participation in sessions or courses, sponsored by technical or professional societies, organizations or the board. 1 PDH

~~((14-))~~ 13. For each hour of self-study. (Not to exceed a total of 5 PDH/year) 1 PDH

~~((15-))~~ 14. For each hour of work, outside normal duties of employment that involves participation in other recognized professional activities. (i.e. a designer working with a land surveyor) (Not to exceed a total of 2 PDH/year) 1 PDH

AMENDATORY SECTION (Amending WSR 06-11-118, filed 5/19/06, effective 7/1/06)

WAC 196-34-130 Determination of credit. The board is the final authority with respect to claimed qualifying activities and the respective PDH credit. Qualifying activity becomes eligible for credit upon completion of the given activity. ~~((Credits gained in excess of the fifteen PDH annual requirement may be carried forward to the next renewal period.))~~

AMENDATORY SECTION (Amending WSR 06-11-118, filed 5/19/06, effective 7/1/06)

WAC 196-34-135 Recordkeeping and audits. The designer ~~((or inspector))~~ is responsible for maintaining records to be used to support credits claimed. Records should include date of activity, instructor's name, description of activity, number of contact hours and location. The designer ~~((or inspector))~~ is required to keep their records of ~~((continuing education))~~

~~ing education~~) professional development covering the cumulative time in the current renewal period plus the ~~((three))~~ two years before the last renewal. All ~~((continuing education))~~ professional development records and supporting documentation must be furnished to the board upon request.

If an audit disqualifies credits that were reported to the board by a designer ~~((or inspector))~~ and results in the licensee failing to complete the PDH requirements, the board may require the shortage to be made up over a period of time established by the board.

AMENDATORY SECTION (Amending WSR 06-11-118, filed 5/19/06, effective 7/1/06)

WAC 196-34-140 Noncompliance with ~~((continuing education))~~ professional development. (1) A designer ~~((or inspector))~~ who fails to comply with the requirements of this chapter is subject to disciplinary action by the board.

(2) A designer ~~((or inspector))~~ who, through the course of an audit, is discovered to have falsified ~~((continuing education))~~ professional development documentation to the board is subject to disciplinary action by the board.

AMENDATORY SECTION (Amending WSR 06-11-118, filed 5/19/06, effective 7/1/06)

WAC 196-34-145 Waiver. The board may grant a waiver to the time requirement for collection of ~~((continuing education))~~ professional development to designers ~~((or inspectors))~~ who qualify. A request for a waiver must be made in writing and clearly state the justification and include any necessary documentation required by the board. All waivers expire on the next date of license~~((certificate))~~ renewal unless the board grants an extension.

The board may grant waivers for:

~~((a))~~ (1) Physical disability, prolonged illness, or other extenuating circumstances that pose a personal hardship.

~~((b))~~ (2) Individuals who have been placed on active military duty for at least one hundred twenty days.

AMENDATORY SECTION (Amending WSR 06-11-118, filed 5/19/06, effective 7/1/06)

WAC 196-34-150 Exemption. Designers ~~((or inspectors))~~ who have been approved for "Inactive Status" as provided in WAC 196-34-155 are exempt from the requirement of collecting ~~((continuing education))~~ professional development hours.

AMENDATORY SECTION (Amending WSR 06-11-118, filed 5/19/06, effective 7/1/06)

WAC 196-34-155 Inactive status. Any designer ~~((or inspector))~~ who signs a board approved affirmation that they are not engaged in the practice as an on-site wastewater treatment system ~~((professional))~~ designer is eligible for inactive status. Those with inactive status are prohibited from any practice as an on-site wastewater treatment system ~~((professional))~~ designer as provided in chapter 18.210 RCW. A designer ~~((or inspector))~~ on inactive status may reinstate their license to active status by written request to the board and

payment of any applicable fees. In the first year of reactivated practice the designer ~~((or inspector))~~ may be required by the board to collect an additional fifteen PDH.

AMENDATORY SECTION (Amending WSR 06-11-118, filed 5/19/06, effective 7/1/06)

WAC 196-34-160 Comity/out-of-jurisdiction resident. The ~~((continuing education))~~ professional development requirements, as provided for in this chapter, may be satisfied when the board can verify that a designer ~~((or inspector))~~ has satisfied ~~((continuing education))~~ professional development requirements in another jurisdiction recognized by the board, as being equivalent to the requirements of this chapter.

WSR 12-02-056
PROPOSED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
 [Filed January 3, 2012, 8:30 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-22-081.

Title of Rule and Other Identifying Information: Board of boiler rules—Substantive (chapter 296-104 WAC), specifically WAC 296-104-700 What are the inspection fees—Examination fees—Certificate fees—Expenses?

Hearing Location(s): Department of Labor and Industries (L&I), 950 Broadway, Suite 200, Tacoma, WA 98402, on February 15, 2012, at 10:00 a.m.

Date of Intended Adoption: April 17, 2012.

Submit Written Comments to: Sally Elliott, Department of Labor and Industries, P.O. Box 44400, Olympia, WA 98504-4400, e-mail sally.elliott@lni.wa.gov, fax (360) 902-5292, by 5:00 p.m. on February 15, 2012.

Assistance for Persons with Disabilities: Contact Sally Elliott by February 1, 2012, sally.elliott@lni.wa.gov or (360) 902-6411.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The boiler program's budget and projected revenue indicate a fee increase is necessary to help cover the cost of ongoing services. The boiler program was given the authority by 2ESHB 1087, which passed the 2011 legislature, to increase fees to cover the program's expenditures.

The purpose of this rule making is to increase the fees for the boiler program. Fee increases are necessary to cover the costs for ongoing service delivery.

Reasons Supporting Proposal: See Purpose statement above.

Statutory Authority for Adoption: Chapter 70.79 RCW and chapter 50, Laws of 2011 (2ESHB 1087).

Statute Being Implemented: Chapter 70.79 RCW and chapter 50, Laws of 2011 (2ESHB 1087).

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: L&I, governmental.

Name of Agency Personnel Responsible for Drafting: Board of Boiler Rules, Tumwater, Washington, (360) 902-5270; Implementation and Enforcement: Tony Oda, Tumwater, Washington, (360) 902-5270.

No small business economic impact statement has been prepared under chapter 19.85 RCW. L&I is exempt from preparing a small business economic impact statement under RCW 19.85.025 referencing RCW 34.05.310 (4)(f), since the purpose of this rule making is to set and adjust fees authorized by the passed statute.

A cost-benefit analysis is not required under RCW 34.05.328. L&I is exempt from preparing a cost-benefit analysis under RCW 34.05.328 (5)(b)(vi) because rule making is setting and adjusting fees authorized by the passed statute.

January 3, 2012

Robert Olson, Chair
Board of Boiler Rules

AMENDATORY SECTION (Amending WSR 10-06-049, filed 2/24/10, effective 4/1/10)

WAC 296-104-700 What are the inspection fees—Examination fees—Certificate fees—Expenses? The following fees shall be paid by, or on behalf of, the owner or user upon the completion of the inspection. The inspection fees apply to inspections made by inspectors employed by the state.

Boiler and pressure vessel installation/reinstallation permit (excludes inspection and certificate of inspection fee): \$50.00.

Certificate of inspection fees: For objects inspected, the certificate of inspection fee per object is \$((20.70)) 21.50.

Hot water heaters per RCW 70.79.090, inspection fee: \$((6.50)) 6.70.

Heating boilers:	Internal	External
Cast iron—All sizes	\$((34.80))	\$((27.80))
	<u>36.30</u>	<u>29.00</u>
All other boilers less than 500 sq. ft.		\$((27.80))
	<u>\$36.30</u>	<u>29.00</u>
500 sq. ft. to 2500 sq. ft.	\$((69.40))	\$((34.80))
	<u>72.40</u>	<u>36.30</u>
Each additional 2500 sq. ft. of total heating surface, or any portion thereof	\$((27.80))	\$((13.70))
	<u>29.00</u>	<u>14.20</u>
Power boilers:	Internal	External
Less than 100 sq. ft.	\$((34.80))	\$((27.80))
	<u>36.30</u>	<u>29.00</u>
100 sq. ft. to less than 500 sq. ft.	\$((42.10))	\$((27.80))
	<u>43.90</u>	<u>29.00</u>
500 sq. ft. to 2500 sq. ft.	\$((69.40))	\$((34.80))
	<u>72.40</u>	<u>36.30</u>
Each additional 2500 sq. ft. of total heating surface, or any portion thereof	\$((27.80))	\$((13.70))
	<u>29.00</u>	<u>14.20</u>

Pressure vessels:

Square feet shall be determined by multiplying the length of the shell by its diameter.

	Internal	External
Less than 15 sq. ft.	\$((27.80))	\$((20.70))
	<u>29.00</u>	<u>21.50</u>
15 sq. ft. to less than 50 sq. ft.	\$((41.30))	\$((20.70))
	<u>43.00</u>	<u>21.50</u>
50 sq. ft. to 100 sq. ft.	\$((48.10))	\$((27.80))
	<u>50.10</u>	<u>29.00</u>
For each additional 100 sq. ft. or any portion thereof	\$((48.10))	\$((13.70))
	<u>50.10</u>	<u>14.20</u>

Nonnuclear shop inspections, field construction inspections, and special inspection services:

For each hour or part of an hour up to 8 hours	\$((42.10))
	<u>43.90</u>
For each hour or part of an hour in excess of 8 hours	\$((62.80))
	<u>65.50</u>

Nuclear shop inspections, nuclear field construction inspections, and nuclear triennial shop survey and audit:

For each hour or part of an hour up to 8 hours	\$((62.80))
	<u>65.50</u>
For each hour or part of an hour in excess of 8 hours	\$((98.20))
	<u>102.40</u>

Nonnuclear triennial shop survey and audit:

When state is authorized inspection agency:	
For each hour or part of an hour up to 8 hours	\$((42.10))
	<u>43.90</u>
For each hour or part of an hour in excess of 8 hours	\$((62.80))
	<u>65.50</u>
When insurance company is authorized inspection agency:	
For each hour or part of an hour up to 8 hours	\$((62.80))
	<u>65.50</u>
For each hour or part of an hour in excess of 8 hours	\$((98.20))
	<u>102.40</u>

Examination fee: A fee of \$((77.70)) 81.00 will be charged for each applicant sitting for an inspection examination(s).

Special inspector commission: An initial fee of \$((26.30)) 27.40 and an annual renewal fee of \$((10.50)) 10.90 along with an annual work card fee of \$((15.80)) 16.40.

Expenses shall include:

Travel time and mileage: The department shall charge for its inspectors' travel time from their offices to the

inspection sites and return. The travel time shall be charged for at the same rate as that for the inspection, audit, or survey. The department shall also charge the current Washington office of financial management accepted mileage cost fees or the actual cost of purchased transportation. Hotel and meals: Actual cost not to exceed the office of financial management approved rate.

Requests for Washington state specials and extensions of inspection frequency: For each vessel to be considered by the board, a fee of \$((390.50)) 407.40 must be paid to the department before the board meets to consider the vessel. The board may, at its discretion, prorate the fee when a number of vessels that are essentially the same are to be considered.

WSR 12-02-072

WITHDRAWAL OF PROPOSED RULES GAMBLING COMMISSION

(By the Code Reviser's Office)

[Filed January 4, 2012, 8:43 a.m.]

WAC 230-16-015, 230-16-035 and 230-16-195, proposed by the gambling commission in WSR 11-13-018 appearing in issue 11-13 of the State Register, which was distributed on July 6, 2011, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 12-02-073

WITHDRAWAL OF PROPOSED RULES DEPARTMENT OF REVENUE

(By the Code Reviser's Office)

[Filed January 4, 2012, 8:43 a.m.]

WAC 458-20-19404, proposed by the department of revenue in WSR 11-13-051 appearing in issue 11-13 of the State Register, which was distributed on July 6, 2011, is withdrawn by the code reviser's office under RCW 34.05.335(3), since the proposal was not adopted within the one hundred eighty day period allowed by the statute.

Kerry S. Radcliff, Editor
Washington State Register

WSR 12-02-077

PROPOSED RULES DEPARTMENT OF EARLY LEARNING

[Filed January 4, 2012, 10:33 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-12-076 and 10-15-116.

Title of Rule and Other Identifying Information: The department is proposing to revise rules in chapter 170-290 WAC, Working connections and seasonal child care subsidy programs; chapter 170-151 WAC, School age child care center minimum licensing requirements; chapter 170-295 WAC, Minimum licensing requirements for child care centers; and chapter 170-296A WAC, Licensed family home child care standards.

Hearing Location(s): Department of Early Learning (DEL), Tumwater Office, Nisqually Room, 6860 Capitol Boulevard S.E., Building 2, Tumwater, WA 98501, on Tuesday, February 7, 2012, at 6:00 p.m.; and at the Northeast Washington Educational Services District 101, 4202 South Regal, Spokane, WA 99223, on Saturday, February 11, 2012, at 11:00 a.m.

Individuals may arrive after the posted start time and still participate in these hearing[s]. However, the presiding officer may close the hearing if there are no public participants in attendance, or after all persons who indicated they wish to testify have done so. The public is encouraged to give input in writing.

The deadline for sending written comments on the proposed rules is midnight on Monday, February 13, 2012. See the "Submit Written Comments to" section of this notice about how to submit written input on this proposal.

DEL encourages the public to use of the department Facebook and DEL blog pages on the internet to post input about DEL programs and initiatives. However, for a written comment to be considered part of the official record for this proposal, the comment must be received at the on-line, e-mail, fax or postal mail locations as described in this notice under "Submit Written Comments to."

Everyone who comments on the proposed rules either in writing as provided in this notice or at a public hearing will receive the department's combined written response, called a *concise explanatory statement*. This statement is also available to anyone who requests it, by writing to the DEL Rules Coordinator, P.O. Box 40970, Olympia, WA 98504-0970, or by e-mailing Rules@del.wa.gov.

Date of Intended Adoption: Not earlier than February 14, 2012.

Submit Written Comments to: Department of Early Learning, Rules Coordinator, P.O. Box 40970, Olympia, WA 98504-0970, on-line at <https://apps.del.wa.gov/PolicyProposalComment/Detail.aspx>, e-mail Rules@del.wa.gov, fax (360) 413-3482, by February 13, 2012.

Assistance for Persons with Disabilities: Contact the DEL rules coordinator by February 2, 2012, (360) 725-4424.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed rules are intended to update the rules for several purposes, including to:

- Improve child care subsidy program efficiencies, and to reduce potential fraud, waste and abuse by addressing issues identified in federal and state audits of the state's child care subsidy programs,
- Implement applicable provisions of ESSB 5921 (chapter 42, Laws of 2011 1st sp. sess.),

- Improve the quality of child care by extending certain health and safety requirements to license-exempt in-home/relative providers who provide subsidized child care in their home or the home of the child, as a condition of receiving subsidy payments, and
- Otherwise improve clarity of existing child care subsidy requirements.

Audits by the joint legislative audit and review committee,¹ state auditor's office,² and United States General Accounting Office,³ indicate that Washington and other states need to improve eligibility and payment verification rules and procedures to increase accountability and reduce potential fraud and abuse in child care subsidy programs.

Specifically, the state auditor recommended: *"DEL and DSHS (should) strengthen administrative rules to compel all licensed, certified and exempt providers to make records available immediately upon request. This would include allowing DSHS and DEL access to original child care attendance records and on-site visits of licensed child care centers, licensed family homes, and license exempt providers for the purpose of investigating suspected overpayments and fraud. In addition, incentives should be built into the rules to compel provider to provide immediate access, such as immediate suspension of the provider's subsidy payments."*

Some of the changes recommended by these audits were made in DEL child care subsidy rules adopted on August 24, 2011, (filing number WSR 11-18-001). This proposal further implements subsidy program improvements identified in the audits, including but not limited to:

- Verifying consumers' information supplied at initial application or reapplication for child care subsidy benefits;
- Strengthening background check requirements for license exempt in-home/relative providers;
- Strengthening rules regarding child attendance records in subsidized child care, and providing sanctions for providers who don't keep accurate attendance records to support their subsidy invoices to the state;
- Requiring child providers to allow state auditors or investigators access to provider records related to children receiving subsidized child care;
- Clarifying that licensed providers may bill for not more children than their license capacity allows;
- Increasing child safety and health requirements for in-home/relative child care providers who are otherwise exempt from state licensing; and
- Clarifying requirements regarding monthly child care copayments and the consumers' obligation to pay the copayment to their child care provider.

Section 11 of SB 5921 requires a parent or guardian receiving or applying for WCCC or seasonal child care (SCC) seek department of social and health services (DSHS) division of child support enforcement services as a condition of receiving child care subsidy benefits, unless the parent/guardian has good cause not to. The department revised WCCC rules in chapter 170-290 WAC consistent with SB 5921 in August 2011 - see permanent rules filed as WSR 11-

18-001. The proposed rules revise SCC eligibility requirements to align with SB 5921 as well as clarify for both WCCC and SCC when a consumer may qualify for a "good cause" exemption.

Section 12 of SB 5921 also directed DEL to study the use of electronic systems for recording child attendance in subsidized child care. The proposed rules allow, but do not require, providers who are paid for providing subsidized child care to use either paper or electronic attendance records, provided that any electronic system meets the requirements in the proposed rules. This proposal includes new and amended sections of chapter 170-151 WAC, School-age center programs; chapter 170-295 WAC, Child care centers; and chapter 170-296A WAC, Family home child care, regarding paper and electronic child attendance records.

Proposal of this rule is consistent with state office of financial management guidance regarding implementation of Executive Order 10-06 suspending noncritical rule making (extended by Executive Order 11-03), but allowing rules to proceed that are:

"Required by federal or state law or required to maintain federally delegated or authorized programs;" or

"Necessary to protect public health, safety, and welfare or necessary to avoid an immediate threat to the state's natural resources ..."

DEL is the state's lead agency for receiving federal Child Care and Development Funds (CCDF), and for assuring state compliance with CCDF rules under Title 45 Code of Federal Regulations, chapter 98. The proposed rules are anticipated to help Washington state maintain accountability for CCDF funds and compliance with rules for this federally authorized program. The rules also implement applicable provisions of SB 5921, chapter 42, Laws of 2011 1st sp. sess.

Revised sections in this proposal increase health and safety requirements for nonlicensed providers of state-subsidized child care. These requirements are necessary to protect the safety, health and welfare of children in these nonlicensed care environments.

¹Department of Early Learning Review, Proposed Final Report June 21, 2011.

²Audit of State Payments to Child Care Providers, Report No. 1006484, September 21, 2011.

³Report to Congressional Addressees, September 2010 Child Care Development Fund, Undercover Tests Show Five State Programs Are Vulnerable to Fraud and Abuse. GAO-10-1062.

Reasons Supporting Proposal: The proposed rules are expected to increase accountability for receipt of federal moneys under the CCDF, reduce the potential for fraud, abuse or waste of child care subsidy funds, and improve safety and health for children in subsidized but license-exempt in-home/relative child care.

Statutory Authority for Adoption: RCW 43.215.070 and 43.215.060; chapter 43.215 RCW.

Statute Being Implemented: Chapter 43.215 RCW as amended by chapter 42, Laws of 2011 1st sp. sess.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fis-

cal Matters: The WCCC and SCC programs are operated jointly by DEL and DSHS. Under section 501 (uncodified) of chapter 265, Laws of 2006, DEL adopts rules and determines other policy for WCCC. DSHS accepts consumer applications for WCCC, determines each family's eligibility and manages payments to providers of subsidized child care. As of July 2011, these same roles apply to DEL and DSHS for the SCC program.

Name of Proponent: DEL, governmental.

Name of Agency Personnel Responsible for Drafting: Lynne Shanafelt, Licensing Admin., DEL State Office, P.O. Box 40970, Olympia, WA 98504, (360) 725-2829; Implementation and Enforcement: DEL licensing offices, statewide.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules are not expected to create new costs for child care businesses that would be "more than minor" as defined in chapter 19.85 RCW. New and revised health and safety requirements in this proposal that may impose new costs that apply to license-exempt in-home/relative child care providers. In-home/relative providers - typically a relative, friend or neighbor of the parent or guardian needing child care - do not provide child care as a business; if they operated as a business they would need to be licensed. Licensed child care providers must already comply with the requirements in this proposal that are being extended to license-exempt in-home/relative child care providers.

A cost-benefit analysis is not required under RCW 34.05.328. DEL is not among the agencies listed as required to comply with RCW 34.05.328.

January 4, 2012
Elizabeth M. Hyde
Director

AMENDATORY SECTION (Amending WSR 08-08-012, filed 3/19/08, effective 4/19/08)

WAC 170-151-020 Who needs to be licensed? (1) The person or organization operating a school-age child care center must receive a license from the department to provide school-age child care, in accordance with chapter 43.215 RCW.

(2) The department does not need to license the person or organization operating a school-age child care center if chapter 43.215 RCW exempts the person or organization from the licensing requirements. The person or organization claiming an exemption from the licensing requirements must provide the department proof of entitlement to the exemption at the licensor's request.

(3) You may use the following matrix to determine whether or not you are exempt from licensing:

Child care	Recreational
The child care facility assumes responsibility for the child and his welfare.	Children are free to come and go as they choose.

Child care	Recreational
Children are signed in and can only be released to an authorized adult.	No responsibility is assumed in lieu of parent.
A specific registration procedure and required forms must be completed.	No registration form or procedure.
Must adhere to DEL standards; has specific requirements regarding staff-child ratio and group size.	No required staff-child ratio or group size requirements.
Specific DEL requirements regarding policies and procedures are in a parent handbook.	No specific detailed policies and procedures. General "house rules" apply at each site.
There are specific program goals and activities; calendars of activities are posted and available.	Activities occur on a daily basis; no long-term goals or activities exist.

(4) The person or organization that serves state-paid children must:

- (a) Be licensed or certified;
- (b) Follow billing policies and procedures in *Child Care Subsidies, a ((brochure for providers, DEL 22-877)) Booklet for Licensed and Certified Providers, revised 2012*; and
- (c) Bill the department at the person's or organization's customary rate or the state rate, whichever is less.

AMENDATORY SECTION (Amending WSR 08-08-012, filed 3/19/08, effective 4/19/08)

WAC 170-151-460 ((What program)) Child care records ((must I maintain?)), ((You)) Licensees must maintain the following ((documentation)) child care records on the premises for at least five years after the child leaves enrollment in care as provided in WAC 170-151-461:

- (1) The daily attendance record:
 - (a) The parent, or other person authorized by the parent to take the child to or from the center, must sign in the child on arrival and must sign out the child at departure, using a full((,-legal)) signature;
 - (b) When the child leaves the center to attend school or other offsite activity as authorized by the parent, ((your)) a staff person must sign out the child and sign in the child on return to the center; and
 - (c) Signed agreements between a program director and a parent where school-age child is allowed to leave the center on his or her own, must be verified by signature and dated by the director and parent. Staff may sign a child in/out whose parent has agreed in writing to let the child leave the center((-));
- (2) Electronic attendance records if the child's attendance is recorded using an electronic system under WAC 170-151-462;
- (3) A copy of the report sent to the department about any illness or injury to the child in care requiring medical treatment or hospitalization;

~~((3))~~ (4) The twelve-month record indicating the date and time ~~((you))~~ the licensee conducted the required monthly fire evacuation drills;

~~((4))~~ (5) A written plan for staff development specifying the content, frequency, and manner of planned training;

~~((5))~~ (6) Activity program plan records;

~~((6))~~ (7) A list of each child's allergies and dietary restrictions, if any;

~~((7))~~ (8) Any incident involving the use of physical restraint;

~~((8))~~ (9) A record of medication ~~((your))~~ staff gives to any child; ~~(and~~

~~(9))~~ (10) A record of accidents and injuries~~((:)); and~~

~~((10))~~ (11) Personnel records as described in WAC 170-151-470(4).

NEW SECTION

WAC 170-151-461 Recordkeeping—Records available to the department. The licensee must keep all records required in this chapter for a minimum of five years:

(1) Current records (including records from the previous twelve months) must be kept in the licensed space and be available for the department's review.

(2) Records older than twelve months to five years old must be provided to the department within two weeks of the date of the department's written request.

NEW SECTION

WAC 170-151-462 Electronic attendance records—Records retention. (1) Licensees may use an electronic system to record attendance in lieu of a paper sign-in record.

(2) If an electronic system is used to record attendance, it must record either an electronic signature, swipe card, personal identification number (PIN), biometric reader, or similar action by the parent or designee when signing the child in and out of the licensee's care.

(3) The electronic system selected must ensure the authenticity, confidentiality, integrity, security, accessibility, and protection against repudiation of the electronic records, and must be able to:

(a) Produce an authentic, verifiable written record for each transaction upon demand that complies with all legal and other requirements regarding the record's structure, content, and time of creation or receipt;

(b) Authenticate (prove the identity of) the sender of the record and ensure that the electronic record has not been altered;

(c) Uniquely identify each record;

(d) Capture an electronic record for each transaction conducted;

(e) Maintain the integrity of electronic records as captured or created so that they can be accessed, displayed, and managed as a unit;

(f) Retain electronic records in an accessible form for their legal minimum retention period;

(g) Search and retrieve electronic records in the normal course of business throughout their entire legal minimum retention period;

(h) Produce authentic copies of electronic records and supply them in useable formats, including hard copies, for business purposes and all public access purposes;

(i) Develop an approach to maintain the authenticity and integrity of electronically signed electronic records;

(j) Ensure that the electronic system performs in an accurate, reliable, and consistent manner in the normal course of business; and

(k) Limit system access to authorized individuals and for authorized purposes, and maintain physical and environmental security controls.

(4) Electronic attendance records must contain all of the information necessary to reproduce the entire electronic record and associated signatures in a form that permits the person viewing or printing the entire electronic record to verify:

(a) The contents of the electronic record;

(b) The method used to sign the electronic record, if applicable;

(c) The person signing the electronic record; and

(d) The date when the signature was executed.

(5) As used in this section:

"Electronic record" means a record generated, communicated, received, or stored by electronic means for use in an information system or for transmission from one information system to another.

"Electronic signature" means a signature in electronic form attached to or logically associated with an electronic record including, but not limited to, a digital signature. An electronic signature is a paperless way to sign a document using an electronic sound, symbol, or process, attached to or logically associated with a record, and executed or adopted by a person with the intent to sign the record.

"Sign" includes signing by physical signature, if available, or electronic signature.

AMENDATORY SECTION (Amending WSR 11-12-078, filed 5/31/11, effective 7/1/11)

WAC 170-290-0003 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

~~((+))~~ **"Able"** means being physically and mentally capable of caring for a child in a responsible manner.

~~((2))~~ **"Authorization"** means the documentation that DSHS gives to providers specifying units of full-day, half-day or hourly child care a family may receive during their eligibility period, which may be adjusted based on the family's need for care or changes in eligibility.

~~((3))~~ **"Available"** means being free to provide care when not participating in an approved work activity under WAC 170-290-0040, 170-290-0045, 170-290-0050, or 170-290-0055 during the time child care is needed.

~~((4))~~ **"Calendar year"** means those dates between and including January 1st and December 31st.

~~((5))~~ **"Collective bargaining agreement"** or **"CBA"** means the most recent agreement that has been negotiated and entered into between the exclusive bargaining representative for all licensed and license-exempt family child care providers as defined in chapter 41.56 RCW.

~~((6))~~ **"Consumer"** means the person receiving:

(a) WCCC benefits as described in part II of this chapter;

or

(b) SCC benefits as described in part III of this chapter.

~~((7))~~ **"Copayment"** means the amount of money the consumer is responsible to pay the child care provider toward the cost of child care each month.

~~((8))~~ **"DEL"** means the department of early learning.

~~((9))~~ **"DSHS"** means the department of social and health services.

~~((10))~~ **"Days"** means calendar days unless otherwise specified.

~~((11))~~ **"Eligibility"** means that a consumer has met all of the requirements of:

(a) Part II of this chapter to receive WCCC program subsidies; or

(b) Part III of this chapter to receive SCC program subsidies.

"Employment" or **"work"** means engaging in any legal, income generating activity that is taxable under the United States Tax Code or that would be taxable with or without a treaty between an Indian Nation and the United States. This includes unsubsidized employment, as verified by an employee's pay stubs or DSHS employer verification form, and subsidized employment, such as:

(a) Working in a federal or state paid work study program; or

(b) VISTA volunteers, AmeriCorps, JobCorps, and Washington Service Corps (WSC) if the income is taxed.

~~((12))~~ **"Eligibility"** means that a consumer has met all of the requirements of:

(a) Part II of this chapter to receive WCCC program subsidies; or

(b) Part III of this chapter to receive SCC program subsidies.

~~((13))~~ **"In-home/relative provider(~~(s)~~)" or "license-exempt provider."** referred to in the collective bargaining agreement as (~~"license-exempt provider,"~~) **"family, friends and neighbors provider"** or **"FFN provider."** means (~~those~~) a provider(~~s~~) who meets the requirements in WAC 170-290-0130 through 170-290-0167.

~~((14))~~ **"In loco parentis"** means the adult caring for an eligible child in the absence of the biological, adoptive, or step-parents, and who is not a relative, court-ordered guardian, or custodian, and is responsible for exercising day-to-day care and control of the child.

~~((15))~~ **"Night shift"** means employment for a minimum of six hours between the hours of 8 p.m. and 8 a.m.

"SCC" means the seasonal child care program, which is a child care subsidy program described in part III of this chapter that assists eligible families who are seasonally employed in agriculturally related work outside of the consumer's home to pay for licensed or certified child care.

~~((16))~~ **"Seasonally available labor"** or **"seasonally available agricultural related work"** means work that is available only in a specific season during part of the calendar year. The work is directly related to the cultivation, production, harvesting or processing of fruit trees or crops.

~~((17))~~ **"Self-employment"** means engaging in any legal income generating activity that is taxable under the

United States Tax Code or that would be taxable with or without a treaty between an Indian Nation and the United States, as verified by Washington state business license, or a tribal, county, or city business or occupation license, as applicable, and a uniform business identification (UBI) number for approved self-employment activities that occur outside of the home. Incorporated businesses are not considered self-employment enterprises.

~~((18))~~ **"Waiting list"** means a list of families who are currently working and waiting for child care subsidies when funding is not available to meet the requests from all eligible families.

~~((19))~~ **"WCCC"** means the working connections child care program, which is a child care subsidy program described in part II of this chapter that assists eligible families in obtaining child care subsidies for approvable activities that enable them to work, attend training, or enroll in educational programs outside the consumer's home.

AMENDATORY SECTION (Amending WSR 11-18-001, filed 8/24/11, effective 9/24/11)

WAC 170-290-0012 Verifying consumers' information. (1) A consumer must complete the DSHS application for WCCC benefits and provide all required information to DSHS to determine eligibility when:

(a) The consumer initially applies for benefits; or

(b) The consumer reapplies for benefits(~~(;~~

~~(c) The consumer reports)~~);

(2) A consumer must provide verification to DSHS to determine if he or she continues to qualify for benefits during his or her eligibility period when there is a change of circumstances(~~(;~~

~~(d) DSHS finds out that the consumer's circumstances may have changed; or~~

~~(e) The information DSHS has is inconsistent, conflicting, or outdated)~~ under WAC 170-290-0031.

~~((2) The)~~ (3) All verification that ((the consumer gives)) is provided to DSHS must:

(a) Clearly relate to the information DSHS is requesting;

(b) Be from a reliable source; and

(c) Be accurate, complete, and consistent(~~(; and~~

~~(d) As applicable, include, but not be)~~);

(4) If DSHS has reasonable cause to believe that the information is inconsistent, conflicting or outdated, DSHS may:

(a) Ask the consumer to provide DSHS with more verification or provide a collateral contact (a "collateral contact" is a statement from someone outside of the consumer's residence that knows the consumer's situation); or

(b) Send an investigator from the DSHS office of fraud and accountability (OFA) to make an unannounced visit to the consumer's home to verify the consumer's circumstances. See WAC 170-290-0025(9).

(5) The verification that the consumer gives to DSHS includes, but is not limited to, the following:

~~((+))~~ (a) A current WorkFirst IRP for consumers receiving TANF;

~~((+))~~ (b) Employer name, address, and phone number;

~~((iii))~~ (c) State business registration and license, if self-employed;

~~((iv))~~ (d) Work, school, or training schedule (when requesting child care for non-TANF activities);

~~((v))~~ (e) Hourly wage or salary;

~~((vi))~~ (f) Either the:

~~((A))~~ (i) Gross income for the last three months;

~~((B))~~ (ii) Federal income tax return for the preceding calendar year; or

~~((C))~~ (iii) DSHS employment verification form;

~~((vii))~~ (g) Monthly unearned income the consumer receives, such as child support or Supplemental Security Income (SSI) benefits;

~~((viii))~~ (h) If the other parent is in the household, the same information for them;

~~((ix))~~ (i) Proof that the child belongs to one of the following groups as defined in WAC 388-424-0001:

~~((A))~~ (i) A U.S. citizen;

~~((B))~~ (ii) A U.S. national;

~~((C))~~ (iii) A qualified alien; or

~~((D))~~ (iv) A nonqualified alien who meets the Washington state residency requirements as listed in WAC 388-468-0005;

~~((x))~~ (i) Proof of child enrollment in a head start, early head start or early childhood education and assistance program for twelve-month eligibility;

~~((xi))~~ (k) Name and phone number of the licensed child care provider; and

~~((xii))~~ (l) For the in-home/relative child care provider, a:

~~((A))~~ (i) Completed and signed criminal background check form;

~~((B))~~ (ii) Legible copy of the proposed provider's photo identification, such as a driver's license, Washington state identification, or passport;

~~((C))~~ (iii) Legible copy of the proposed providers' valid Social Security card; and

~~((D))~~ (iv) All other information required by WAC 170-290-0135.

~~((3))~~ (6) If DSHS requires verification from a consumer that costs money, DSHS must pay for the consumer's reasonable costs.

~~((4))~~ If the verification that a consumer provides to DSHS is inconsistent, conflicting, or outdated, DSHS may:

(a) Ask the consumer to provide DSHS with more verification or provide a collateral contact (a "collateral contact" is a statement from someone outside of the consumer's residence that knows the consumer's situation); or

(b) Send an investigator from the division of fraud investigations (DFI) to make an unannounced visit to the consumer's home to verify the consumer's circumstances. See WAC 170-290-0025(9).

~~((5))~~ (7) DSHS does not pay for a self-employed consumer's state business registration or license, which is a cost of doing business.

(8) If a consumer does not provide all of the verification requested, DSHS will determine if a consumer is eligible based on the information already available to DSHS.

AMENDATORY SECTION (Amending WSR 11-18-001, filed 8/24/11, effective 9/24/11)

WAC 170-290-0025 Consumers' rights. When a consumer applies for or receives WCCC benefits, the consumer has the right to:

(1) Be free from discrimination in accordance with all applicable federal and state nondiscrimination laws, regulations, and policies;

(2) Have WCCC eligibility determined within thirty days from his or her application date per WAC 170-290-0095;

(3) Be informed, in writing, of his or her legal rights and responsibilities related to WCCC benefits;

(4) Receive a written notice at least ten days before DSHS makes changes to lower or stop benefits except as stated in WAC 170-290-0120;

(5) Ask for an administrative hearing if he or she does not agree with DSHS about a decision per WAC 170-290-0280;

(6) Ask a supervisor or administrator to review a decision or action affecting the consumer's benefits without affecting the right to an administrative hearing;

(7) Have an interpreter or translator service provided by DSHS within a reasonable amount of time and at no cost to the consumer;

(8) Choose a provider as long as the provider meets the requirements in WAC 170-290-0125;

(9) Ask the fraud early detection (FRED) investigator from the ~~((division))~~ DSHS office of fraud ~~((investigations (DFI)))~~ and accountability (OFA) to come back at another time. A consumer does not have to let an investigator into his or her home. This request will not affect the consumer's eligibility for benefits. If the consumer refuses to cooperate (provide the information requested) with the investigator, it could affect his or her benefits;

(10) Access his or her child at all times while the child is in child care;

(11) Terminate child care without cause and without notice to the provider. Notice must be given to DSHS within five days of termination;

(12) Not be charged by the consumer's licensed ~~((or)),~~ certified, or license-exempt provider, or be made to pay for ~~((=~~ the ~~))~~ the difference between the provider's private rate and the state maximum rate, when the provider's private rate for child care ((or the registration fee)) is higher than the maximum state rate;

(13) Not be charged by the consumer's licensed or certified provider, or be made to pay for:

(a) The difference between the provider's registration fee and the state's maximum registration fee, when the provider's registration fee is higher;

(b) Any day when the consumer's child is absent;

(c) Vacation days when the provider chooses to close;

(d) A higher amount than the state allows for field trips. If the consumer requests, and the provider has a written policy in place, the consumer may voluntarily pay the difference between the amount that the state allows and the actual field trip cost;

(e) A preschool tuition fee in addition to regular child care services; or

(f) Child care services after the final day of care, when the provider (~~chooses to~~) stops caring for the consumer's children.

AMENDATORY SECTION (Amending WSR 11-18-001, filed 8/24/11, effective 9/24/11)

WAC 170-290-0030 Consumers' responsibilities.

When a person applies for or receives WCCC benefits, the applicant or consumer must, as a condition of receiving those benefits:

(1) Give DSHS correct and current information so DSHS can determine eligibility and authorize child care payments correctly;

(2) Choose a provider who meets requirements of WAC 170-290-0125;

(3) Pay ~~(, or make a plan to have someone pay, the WCCC)~~ the copayment directly to the child care provider or arrange for a third party to pay the copayment directly to the provider;

(4) In cases of overdue or past due copayments, the consumer, as a condition of maintaining his or her eligibility, must do one or more of the following:

(a) Pay past or overdue copayments;

(b) Give DSHS a written agreement between the provider and consumer to verify that copayment arrangements include one or more of the following:

(i) An installment payment plan;

(ii) A collection agency payment plan;

(iii) In-kind services in lieu of paying the copayment; or

(iv) Forgiveness of the copayment from the provider; or

(c) Provide proof that the consumer has attempted to pay a copayment to a licensed provider who is no longer in business or a license-exempt provider who is no longer providing child care. "Proof" includes, but is not limited to, a return receipt that was signed for and not responded to, or a returned document that was not picked up;

(5) Only use WCCC benefits while the consumer is working or in WCCC approved activities outside the consumer's home(-);

~~((5))~~ (6) Pay the provider for child care services when he or she requests additional child care for personal reasons other than working or participating in WCCC approved activities that have been authorized by DSHS;

~~((6))~~ (7) Pay the provider for optional child care programs that he or she requests. The provider must have a written policy in place charging all families for these optional child care programs;

~~((7))~~ (8) Pay the provider the same late fees that are charged to other families, if the consumer pays a copayment late or picks up the child late;

~~((8))~~ (9) Ensure that care is provided in the correct home per WAC 170-290-130 if the consumer uses an in-home/relative provider, and monitor the in-home/relative provider's quality of care to ensure that the child's environmental, physical, nutritional, emotional, cognitive, safety, and social needs are being met;

~~((9))~~ (10) Cooperate (provide the information requested) with the ~~((quality assurance review))~~ child care subsidy audit process to remain eligible for WCCC. A con-

sumer becomes ineligible for WCCC benefits upon a determination of noncooperation ~~((by quality assurance))~~ and remains ineligible until he or she meets ~~((quality assurance))~~ child care subsidy audit requirements. If DSHS determines that a consumer is not cooperating, the consumer will not be eligible for WCCC benefits. The consumer may become eligible again when he or she meets WCCC requirements in part II of this chapter;

~~((10))~~ (11) Provide the information requested by ~~((DSHS's WCCC staff or))~~ the fraud early detection (FRED) investigator from the DSHS office of fraud and accountability (OFA). If the consumer refuses to provide the information requested within fourteen days, it could affect his or her benefits;

~~((11))~~ (12) Document ~~((the children's attendance as described in WAC 170-290-0138, 170-295-7030, 170-296-0520, or 170-151-460, as applicable, for that type of provider))~~ their child's attendance in subsidized child care by having the consumer or other person authorized by the consumer to take the child to or from the child care;

(a) If the provider uses a paper attendance record, sign the child in on arrival and sign the child out at departure, using their full signature and writing the time of arrival and departure; or

(b) Record the child's attendance using an electronic system if used by the provider;

~~((12))~~ (13) Provide to his or her in-home/relative provider the names, addresses, and telephone numbers of persons who are authorized to pick up the child from care; ~~((and~~

~~(13))~~ (14) Seek child support enforcement services from the DSHS division of child support, unless DSHS finds that the applicant or consumer has good cause not to cooperate as defined under WAC 388-422-0020 or as provided in (a) of this subsection.

(a) For the purposes of this subsection, "good cause" also includes the following:

(i) The applicant or consumer has a current court or administrative order showing the child support amount ordered on behalf of the child who will receive the child care subsidy benefits;

(ii) The applicant or consumer already complies with child support enforcement services, either voluntarily or to meet other public assistance requirements;

(iii) The applicants or consumers are married parents, or unmarried two-parent families with a child in common needing child care living in the same household;

(iv) The applicant or consumer is a single-parent family when the other parent is deceased;

(v) The applicant or consumer is a single-parent family when the other parent is incarcerated for one year or longer;

(vi) The applicants or consumers are both minor parents; or

(vii) The DSHS division of child support does not have jurisdiction over the child support case, such as for tribal child support cases, child support cases in other states, or cases outside of the United States, whether or not the division of child support has a reciprocal agreement with that jurisdiction.

(b) Child support ordered on behalf of a child who will receive child care subsidy benefits does not affect the other

children in the family who are not receiving child support. All other family size rules in WAC 170-290-0015 apply; and

(15) Ensure that their children who receive subsidized child care outside of their own home are current on all immunizations required under WAC 246-105-030, except when the parent or guardian provides:

(a) A department of health (DOH) medical exemption form signed by a health care professional; or

(b) A DOH form or similar statement signed by the child's parent or guardian expressing a religious, philosophical or personal objection to immunization.

AMENDATORY SECTION (Amending WSR 11-01-090, filed 12/14/10, effective 1/14/11)

WAC 170-290-0031 Notification of changes. When a consumer applies for or receives WCCC benefits, he or she must:

(1) Notify (~~(DSHS's WCCC staff)~~) DSHS, within five days, of any change in providers;

(2) Notify the consumer's provider within ten days when DSHS changes his or her child care authorization;

(3) Notify (~~(DSHS's WCCC staff)~~) DSHS within ten days of any change in:

(a) The number of child care hours the consumer needs (more or less hours);

(b) The consumer's countable income, including any TANF grant or child support increases or decreases, only if the change would cause the consumer's countable income to exceed the maximum eligibility limit as provided in WAC 170-290-0005 (~~((2)(d))~~). A consumer may notify (~~(DSHS's WCCC staff)~~) DSHS at any time of a decrease in the consumer's household income, which may lower the consumer's copayment under WAC 170-290-0085;

(c) The consumer's household size such as any family member moving in or out of his or her home;

(d) Employment, school or approved TANF activity (starting, stopping or changing);

(e) The address and telephone number of the consumer's in-home/relative provider;

(f) The consumer's home address and telephone number; and

(g) The consumer's legal obligation to pay child support;

(4) Report to (~~(DSHS's WCCC staff)~~) DSHS, within twenty-four hours, any pending charges or conviction information the consumer learns about his or her in-home/relative provider; and

(5) Report to (~~(DSHS's WCCC staff)~~) DSHS, within twenty-four hours, any pending charges or conviction information the consumer learns about anyone sixteen years of age and older who lives with the provider when care occurs outside of the child's home.

AMENDATORY SECTION (Amending WSR 11-01-090, filed 12/14/10, effective 1/14/11)

WAC 170-290-0032 Failure to report changes. A consumer's failure to report changes as required in WAC 170-290-0031 within the stated time frames may cause:

(1) A copayment error. The consumer may be required to pay a higher copayment as stated in WAC 170-290-0085; or

(2) A WCCC payment error. If an overpayment occurs, the consumer may receive an overpayment for what the provider is allowed to bill, including billing for absent days (see publication *Child Care Subsidies, A Booklet for Licensed and Certified Child Care Providers*, (~~(DEL 22-877,))~~ revised (~~(2010))~~ 2012).

NEW SECTION

WAC 170-290-0034 Providers' responsibilities. Child care providers who accept child care subsidies must do the following:

(1) Comply with:

(a) All of the DEL child care licensing or certification requirements as provided in chapter 170-295, 170-296A, or 170-151 WAC, for child care providers who are licensed or certified; or

(b) All of the requirements in WAC 170-290-0130 through 170-290-0167, 170-290-0250, and 170-290-0268, for child care providers who provide in-home/relative care;

(2) Report pending charges or convictions to DSHS as provided in:

(a) Chapter 170-295, 170-296A, or 170-151 WAC, for child care providers who are licensed or certified; or

(b) WAC 170-290-0138 (2) and (3), for child care providers who provide in-home/relative care;

(3) Keep complete and accurate daily attendance records for children in their care, and allow access to DEL or DSHS to inspect attendance records during all hours in which authorized child care is provided as follows:

(a) Current attendance records (including records from the previous twelve months) must be available immediately for review upon request by DSHS or DEL.

(b) Attendance records older than twelve months to five years old must be provided to DSHS or DEL within two weeks of the date of a written request from either department.

(c) Failure to make available attendance records as provided in this subsection may:

(i) Result in the immediate suspension of the provider's subsidy payments; and

(ii) Establish a provider overpayment as provided in WAC 170-290-0268;

(4) Allow consumers access to their child at all times while the child is in care;

(5) Collect copayments directly from the consumer or the consumer's third-party payor, and report to DSHS if the consumer has not paid a copayment to the provider within the previous sixty days;

(6) Follow billing procedures:

(a) As described in "*Child Care Subsidies: A Booklet for Licensed and Certified Child Care Providers*," revised 2012, for licensed and certified providers, including billing only for actual hours of child care both authorized and provided or allowed under WCCC billing guidelines; or

(b) As described in "*In-Home/Relative Child Care Providers: Information to Help You*," revised 2012, for in-home/relative providers, including billing only for actual hours of child care both authorized and provided;

(7) Not claim a payment in any month in which a child has not attended at least one day in that month;

(8) Invoice the state no later than one calendar year after the actual date of service;

(9) For both licensed and certified providers and in-home/relative providers, not charge subsidized families the difference between the provider's customary rate and the maximum allowed state rate; and

(10) For licensed and certified providers, not charge subsidized families for:

(a) Registration fees in excess of what is paid by subsidy program rules;

(b) Absence days in excess of five days per month, regardless of whether the child attended or not;

(c) Handling fees to process consumer copayments, child care services payments, or paperwork;

(d) Fees for materials, supplies, or equipment required to meet licensing rules and regulations; or

(e) Child care or fees related to subsidy billing invoices that are in dispute between the provider and the state.

AMENDATORY SECTION (Amending WSR 11-18-001, filed 8/24/11, effective 9/24/11)

WAC 170-290-0035 DSHS's responsibilities to consumers. (~~DSHS's WCCC staff~~) DSHS is responsible to:

(1) Treat consumers in accordance with all applicable federal and state nondiscrimination laws, regulations, and policies;

(2) Determine a consumer's eligibility within thirty days from the date the consumer applied (application date as described in WAC 170-290-0095);

(3) Allow a consumer to choose his or her provider as long as the provider meets the requirements in WAC 170-290-0125;

(4) Review a consumer's chosen in-home/relative provider's background check results;

(5) Authorize payments only to child care providers who allow a consumer to access his or her children whenever they are in care;

(6) Only authorize payment when no adult in a consumer's family (under WAC 170-290-0015) is able or available (under WAC 170-290-0003) to care for the consumer's children;

(7) Inform a consumer of:

(a) His or her rights and responsibilities under the WCCC program at the time of application and reapplication;

(b) The types of child care providers DSHS can pay;

(c) The community resources that can help a consumer select child care when needed; and

(d) Any change in a consumer's copayment during the authorization period except under WAC 170-290-0120(5).

(8) Respond to a consumer within ten days if the consumer reports a change of circumstance that affects the consumer's:

(a) WCCC eligibility;

(b) Copayment; or

(c) Providers.

(9) Provide prompt child care payments to a consumer's child care provider;

(10) Provide an interpreter or translator service within a reasonable amount of time and at no cost to the consumer; (~~and~~)

(11) Ensure that Social Security cards, driver's licenses, or other government-issued identification for in-home/relative providers are valid and verified; and

(12) For providers who care for children in states bordering Washington, verify that they are currently complying with their state's licensing regulations.

AMENDATORY SECTION (Amending WSR 11-18-001, filed 8/24/11, effective 9/24/11)

WAC 170-290-0040 Approved activities for ~~(TANF)~~ consumers participating in WorkFirst. (~~If a consumer receives a temporary assistance for needy families (TANF) grant, he or she~~) Applicants and consumers who participate in WorkFirst activities may be eligible for WCCC benefits(~~(s)~~) for the following approved activities in (~~his or her~~) their individual responsibility plans (IRPs), for up to a maximum of sixteen hours per day, including:

(1) An approved WorkFirst activity under WAC 388-310-0200, with the following exception: In-home/relative providers who are paid child care subsidies to care for children receiving WCCC benefits may not receive those benefits for their own children during the hours in which they provide subsidized child care. These consumers may be eligible for other approved activities in their IRPs;

(2) Employment as defined in WAC 170-290-0003;

(3) Self-employment as defined in WAC 170-290-0003 and as described in the consumer's current WorkFirst IRP;

(4) Transportation time between the location of child care and the consumer's place of employment or approved activity;

(5) Up to ten hours per week of study time for approved classes; and

(6) Up to eight hours (~~(per day)~~) of sleep time (~~(when it is needed, such as if the consumer works nights and sleeps days)~~) before or after a night shift.

AMENDATORY SECTION (Amending WSR 11-18-001, filed 8/24/11, effective 9/24/11)

WAC 170-290-0045 Approved activities for consumers not ~~(receiving TANF)~~ participating in WorkFirst. (~~If a consumer does not receive TANF,~~) This section applies to applicants and consumers of WCCC who do not participate in WorkFirst activities:

(1) General requirements for employment or self-employment. He or she may be eligible for WCCC benefits for(~~(s)~~)

(~~H~~) up to a maximum of sixteen hours per day, including travel, study, and sleep time(~~(, for the hours of his or her participation in the following)~~) before or after a night shift, when he or she is:

(a) (~~(Employment as defined in)~~) Employed under WAC 170-290-0003; or

(b) (~~(Self-employment as defined in)~~) Self-employed under WAC 170-290-0003(~~(s)~~).

(2) Special requirements for education and training.

~~(a) An applicant or consumer who is under twenty-two years of age may be eligible for WCCC benefits for high school (HS) or general ((equivalency diploma)) educational development (GED) program ((until the consumer reaches his or her twenty-second birthday (the consumer may be enrolled in a HS or GED program without a minimum number of employment hours);~~

~~(d) Approved WorkFirst activities according to WAC 388-310-0200 or 388-310-0700 if the consumer is a TANF applicant; or~~

~~(e) Food stamp employment and training program under chapter 388-444 WAC.~~

~~(2) If a consumer is participating in an activity listed in subsections (3) through (8) of this section, he or she may be eligible for)) without a minimum number of employment hours.~~

~~(b) An applicant or consumer who is twenty-two years of age or older:~~

~~(i) May be eligible to receive the benefits under this subsection only once during his or her lifetime. In order to qualify for the general education and training benefits under this subsection, he or she must work either:~~

~~(A) Twenty or more hours per week of unsubsidized employment; or~~

~~(B) Sixteen or more hours per week in a paid federal or state work study program;~~

~~(ii) Is limited to up to twenty-four consecutive months of WCCC benefits for participation in:~~

~~(A) Adult basic education (ABE);~~

~~(B) English as a second language (ESL);~~

~~(C) High school/general educational development (GED) completion; or~~

~~(D) Food stamp employment and training program under chapter 388-444 WAC; and~~

~~(iii) Is limited to up to thirty-six consecutive months of WCCC benefits ((as described in subsection (1) of this section if the consumer is actually working either:~~

~~(a) Twenty or more hours per week; or~~

~~(b) Sixteen or more hours per week in a paid federal or state work study program.~~

~~(3) Adult basic education (ABE).~~

~~(4) English as a second language (ESL).~~

~~(5) High school or GED completion if the consumer is twenty-two years of age or older.~~

~~(6)) for participation in vocational education (Voc Ed). The ((Voc Ed)) vocational education program must((:~~

~~(a)) lead to a degree or certificate in a specific occupation((;~~

~~(b) Cannot include prerequisite classes or programs; and~~
~~(e)) and be offered by the following accredited entities only:~~

~~((i)) (A) Public and private technical college or school;~~

~~((ii)) (B) Community college; or~~

~~((iii)) (C) Tribal college.~~

~~((7) Job skills training: For no more than fourteen consecutive days. Job skills training is not tied to a specific occupation but is training in specific skills directly related to employment, such as CPR/First Aid, keyboarding, computer programs, project management, and oral and written communication skills. Training offered or required by a current~~

~~employer, at or off the consumer's job site, may extend past the fourteen consecutive day limit.~~

~~(8) Post-employment services under WAC 388-310-1800.~~

~~(9) Child care for participation in Voc Ed is limited to thirty-six months regardless of the length of the educational program. The thirty-six months includes the months in which the following occurred at the same time:~~

~~(a) WCCC benefits were paid to support the consumer's participation in a Voc Ed program; or~~

~~(b) The consumer or someone in his or her household received TANF benefits.~~

~~(10) WCCC may be approved for activities listed in WAC 170-290-0040 (4), (5), and (6), when needed.))~~

AMENDATORY SECTION (Amending WSR 11-18-001, filed 8/24/11, effective 9/24/11)

WAC 170-290-0060 Countable income. DSHS counts income as money an applicant or consumer earns or receives from:

(1) A TANF grant, except when the grant is for the first three consecutive calendar months after the consumer starts a new job. The first calendar month is the month in which he or she starts working;

(2) The following child support payment amounts:

(a) For applicants or consumers who are not receiving DSHS division of child support services because they are exempt for good cause under WAC 170-290-0030 ~~((13))~~ (14)(a)~~((13))~~, the amount as shown on a current court or administrative order; or

(b) For applicants or consumers who are receiving DSHS division of child support services, the amount as verified by the DSHS division of child support;

(3) Supplemental Security Income (SSI);

(4) Other Social Security payments, such as SSA and SSDI;

(5) Refugee assistance payments;

(6) Payments from the Veterans' Administration, disability payments, or payments from labor and industries (L&I);

(7) Unemployment compensation;

(8) Other types of income not listed in WAC 170-290-0070;

(9) VISTA volunteers, AmeriCorps, and Washington Service Corps (WSC) if the income is taxed;

(10) Gross wages from employment or self-employment as defined in WAC 170-290-0003. Gross wages includes any wages that are taxable;

(11) Corporate compensation received by or on behalf of the consumer, such as rent, living expenses, or transportation expenses;

(12) Lump sums as money a consumer receives from a one-time payment such as back child support, an inheritance, or gambling winnings; and

(13) Income for the sale of property as follows:

(a) If a consumer sold the property before application, DSHS considers the proceeds an asset and does not count as income;

(b) If a consumer sold the property in the month he or she applies or during his or her eligibility period, DSHS counts it

as a lump sum payment as described in WAC 170-290-0065(2);

(c) Property does not include small personal items such as furniture, clothes, and jewelry.

AMENDATORY SECTION (Amending WSR 11-18-001, filed 8/24/11, effective 9/24/11)

WAC 170-290-0070 Excluded income and deductions. (1) The WCCC program does not count the following income types when determining a consumer's income eligibility and copayment:

(a) Income types as defined in WAC 388-450-0035, 388-450-0040, and 388-450-0055;

(b) Compensatory awards, such as an insurance settlement or court-ordered payment for personal injury, damage, or loss of property;

(c) Adoption support assistance and foster care payments;

(d) Reimbursements, such as an income tax refund;

(e) Diversion cash assistance;

(f) Military housing and food allowance;

(g) The TANF grant for the first three consecutive calendar months after the consumer starts a new job. The first calendar month is the month in which he or she starts working;

(h) Payments to the consumer from his or her employer for benefits such as medical plans;

(i) Earned income of a WCCC family member defined under WAC 170-290-0015(2);

(j) Income of consumers described in WAC 170-290-0005 (1)(c)(iii) through ((~~(h)~~) (ix));

(k) Earned income from a minor child who DSHS counts as part of the consumer's WCCC household; and

(l) Benefits received by children of Vietnam War veterans who are diagnosed with any forms of manifestations of spina bifida except spina bifida occulta.

(2) WCCC deducts the amount a consumer pays for child support under court order, division of child support administrative order, or tribal government order, from the consumer's other countable income when figuring his or her eligibility and copayment for the WCCC program.

AMENDATORY SECTION (Amending WSR 11-18-001, filed 8/24/11, effective 9/24/11)

WAC 170-290-0085 Change in copayment. (1) ~~((Once DSHS determines that a consumer is eligible for WCCC benefits, his or her))~~ A consumer's copayment may change when:

(a) The consumer's monthly income decreases;

(b) The consumer's family size increases;

(c) DSHS makes an error in the consumer's copayment computation;

(d) The consumer did not report all income, activity and household information at the time of ~~((eligibility determination or))~~ application(~~(/)~~), reapplication, or when reporting a change in circumstances;

(e) The consumer is no longer eligible for the minimum copayment under WAC 170-290-0090;

(f) DEL makes a mass change in benefits due to a change in law or program funding;

(g) The consumer is approved for a new eligibility period; or

(h) The consumer is approved for the fourteen-day wait period or twenty-eight-day gap period as provided in WAC 170-290-0055.

(2) ~~((If a consumer's))~~ Copayment changes ~~((during his or her eligibility period, the change is))~~ are effective on the first day of the month immediately following ((DSHS becoming aware of the change)) the date the copayment change was made.

(3) DSHS does not increase a consumer's copayment during his or her current eligibility period when his or her countable income remains at or below the maximum eligibility limit as provided in WAC 170-290-0005, and:

(a) The consumer's monthly countable income increases; or

(b) The consumer's family size decreases.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0090 Minimum copayment. (1) The minimum copayment is paid when the consumer has countable monthly income at or below eighty-two percent of the federal poverty guidelines.

(2) **First application.** The consumer pays the minimum copayment when he or she first applies for WCCC, and benefits are paid. The consumer pays the minimum copayment beginning in the month that DSHS pays for WCCC child care services, and the first full calendar month thereafter.

(3) **Reapplication.** The consumer pays the minimum copayment when the consumer reapplies for WCCC after a break of at least thirty days in his or her approved activity. The consumer pays the minimum copayment beginning in the month that DSHS pays for WCCC child care services, and the first full calendar month thereafter.

(4) The consumer pays the minimum copayment when he or she is a minor parent, and:

(a) Receives TANF; or

(b) Is part of the parent's or relative's TANF assistance unit.

(5) Two-parent families automatically qualify for the minimum copayment during a twenty-eight-day gap period in WAC 170-290-0055 only if both parents meet the gap requirements. Otherwise, eligibility workers must determine the change in copayment based on the family's countable income and family size, as specified in WAC 170-290-0065 and 170-290-0085.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0110 Termination of and redetermining eligibility for benefits. (1) DSHS stops a consumer's eligibility for WCCC benefits when:

(a) The consumer's monthly copayment is higher than the state maximum monthly rate for all of the consumer's children in care under WAC 170-290-0005; or

(b) The consumer does not:

(i) ~~((Pay copayment fees assessed by DSHS and the consumer does not make mutually acceptable arrangements with~~

~~his or her child care provider to pay the copayment.)~~ Comply with the copayment requirements of WAC 170-290-0030 (3) and (4);

(ii) Complete the requested application or reapplication before the deadline noted in WAC 170-290-0109 (2)(a);

(iii) Meet other WCCC eligibility requirements related to family size, income and approved activities; or

(iv) Cooperate with the ~~((quality assurance review))~~ child care subsidy audit process or with the DSHS ~~((division of fraud investigations))~~ office of fraud and accountability (OFA).

(2) A consumer may be eligible for WCCC again ~~((when))~~ beginning on the date that the consumer:

(a) ~~Meets all WCCC eligibility requirements((, and-~~

~~(a) The consumer paid back copayment fees);~~

(b) ~~((The consumer made mutually acceptable payment arrangements with his or her child care provider; or))~~ Complies with the copayment requirements of WAC 170-290-0003 (3) and (4); and

(c) ~~((The consumer cooperated))~~ Cooperates with the ~~((quality assurance review))~~ child care subsidy audit process or with the DSHS ~~((division))~~ office of fraud ~~((investiga-tions))~~ and accountability (OFA).

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0135 In-home/relative providers—Information provided to DSHS. (1) When a consumer chooses in-home/relative child care, the consumer and the provider must give DSHS the following information:

(a) The in-home/relative provider's legal name, address, and telephone number;

(b) A copy of the provider's valid Social Security card;

(c) A copy of the provider's photo identification;

(d) A completed, signed and dated background check form; and

(e) A completed WCCC application form, signed and dated by the consumer and the provider, in which they both attest that the provider is:

(i) Of suitable character and competence;

(ii) Of sufficient physical and mental health to be a safe child care provider and meet the needs of the children in care;

(iii) Able to work with the children without using corporal punishment or psychological abuse;

(iv) Able to accept and follow instructions;

(v) Able to maintain personal cleanliness;

(vi) Prompt and regular in job attendance; and

(vii) Informed about basic health practices, prevention and control of infectious disease, and immunizations.

(2) If DSHS requests it, the consumer and/or the provider must provide written medical or legal evidence that the in-home/relative provider is of sufficient physical and mental health to provide safe, reliable and developmentally appropriate child care services.

(3) When a consumer chooses in-home/relative child care, the provider must give DSHS information as to whether an individual sixteen years of age or older living with the provider is a registered sex offender.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0138 In-home/relative providers—Responsibilities. An in-home/relative provider must:

(1) Provide care, supervision, and daily activities based on the child's developmental needs;

(2) Report to DSHS within ten days any changes to their legal name, address or telephone number;

(3) Report to DSHS within twenty-four hours any pending charges or convictions they have;

(4) Report to DSHS within twenty-four hours any pending charges or convictions for anyone sixteen years of age and older who lives with the provider, including any person sixteen years of age or older who newly resides with the provider, when the provider cares for the child in the provider's home. Background checks must be completed for these persons as provided in WAC 170-290-0143;

(5) Bill only for actual hours of care provided. Those hours must be authorized by DSHS, and used by the consumer for his or her DSHS approved activities;

(6) Bill for no more than six children at one time during the same hours of care;

~~(7)(a) If paper attendance records are used, have the consumer sign and date the attendance records at least weekly, verifying the accuracy of the dates and times.~~

(b) Providers may use an electronic attendance system as provided in WAC 170-290-0139 to record attendance in lieu of a paper sign-in record.

(c) Providers must keep attendance records for five years documenting the days and hours of care provided;

~~(8) ((Have the consumer sign and date the records at least weekly, verifying the accuracy of the dates and times;~~

~~(9)))~~ Repay any overpayments under WAC 170-290-0268; and

~~((10) Provide any of the records in subsections (7) and (8) of this section that are requested by DSHS or DEL, within fourteen consecutive calendar days of the request.))~~ (9) Have at least one working telephone accessible in the home for incoming and outgoing calls during all times that subsidized child care is provided. The telephone must have 911 emergency services calling access.

NEW SECTION

WAC 170-290-0139 In-home/relative providers—Electronic attendance records—Records retention. (1) In-home/relative providers must record attendance as provided in WAC 170-290-0138(7).

(2) If an electronic system is used to record attendance, it must record either an electronic signature, swipe card, personal identification number (PIN), biometric reader, or similar action by the parent or designee when signing the child in and out of the in-home/relative provider's care.

(3) The electronic system selected must ensure the authenticity, confidentiality, integrity, security, accessibility, and protection against repudiation of the electronic records, and must be able to:

(a) Produce an authentic, verifiable written record for each transaction upon demand that complies with all legal and other requirements regarding the record's structure, content, and time of creation or receipt;

- (b) Authenticate (prove the identity of) the sender of the record and ensure that the electronic record has not been altered;
- (c) Uniquely identify each record;
- (d) Capture an electronic record for each transaction conducted;
- (e) Maintain the integrity of electronic records as captured or created so that they can be accessed, displayed, and managed as a unit;
- (f) Retain electronic records in an accessible form for their legal minimum retention period;
- (g) Search and retrieve electronic records in the normal course of business throughout their entire legal minimum retention period;
- (h) Produce authentic copies of electronic records and supply them in useable formats, including hard copies, for business purposes and all public access purposes;
- (i) Develop an approach to maintain the authenticity and integrity of electronically signed electronic records;
- (j) Ensure that the electronic system performs in an accurate, reliable, and consistent manner in the normal course of business; and
- (k) Limit system access to authorized individuals and for authorized purposes, and maintain physical and environmental security controls.

(4) Electronic attendance records must contain all of the information necessary to reproduce the entire electronic record and associated signatures in a form that permits the person viewing or printing the entire electronic record to verify:

- (a) The contents of the electronic record;
 - (b) The method used to sign the electronic record, if applicable;
 - (c) The person signing the electronic record; and
 - (d) The date when the signature was executed.
- (5) As used in this section:

"Electronic record" means a record generated, communicated, received, or stored by electronic means for use in an information system or for transmission from one information system to another.

"Electronic signature" means a signature in electronic form attached to or logically associated with an electronic record including, but not limited to, a digital signature. An electronic signature is a paperless way to sign a document using an electronic sound, symbol, or process, attached to or logically associated with a record, and executed or adopted by a person with the intent to sign the record.

"Sign" includes signing by physical signature, if available, or electronic signature.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0160 In-home/relative providers—Background checks—Disqualified providers. (1) ~~((#))~~ DSHS permanently disqualifies the person as an in-home/relative provider for WCCC if:

(a) A consumer's provider or an individual listed in WAC 170-290-0143(2) has a background containing a permanently disqualifying conviction for crimes on the DEL

director's list in WAC 170-06-0120(1) ~~((DSHS permanently disqualifies the person as an in-home/relative provider for WCCC)); or~~

(b) The in-home/relative provider intentionally or knowingly gives DSHS incorrect or misleading information or withholds information as to whether an individual sixteen years of age or over living with the provider is a registered sex offender.

(2) If the conditions in WAC 170-290-0167 (1)(a) and (b) are met, the disqualifying background of an individual sixteen years of age or over living with the provider may not permanently disqualify the provider. This subsection does not apply to subsection (1)(b) of this section.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0200 Daily child care rates—Licensed or certified child care centers and DEL contracted seasonal day camps. (1) **Base rate.** DSHS pays the lesser of the following to a licensed or certified child care center or DEL contracted seasonal day camp:

- (a) The provider's private pay rate for that child; or
- (b) The maximum child care subsidy daily rate for that child as listed in the following table:

		Infants (One month - 11 mos.)	Toddlers (12 - 29 mos.)	Preschool (30 mos. - 5 yrs)	School-age (5 - 12 yrs)
Region 1	Full-Day	\$28.53	\$23.99	\$22.67	\$21.34
	Half-Day	\$14.28	\$12.00	\$11.34	\$10.67
Spokane County	Full-Day	\$29.18	\$24.54	\$23.19	\$21.83
	Half-Day	\$14.61	\$12.28	\$11.61	\$10.91
Region 2	Full-Day	\$28.81	\$24.05	\$22.30	\$19.73
	Half-Day	\$14.41	\$12.03	\$11.15	\$9.88
Region 3	Full-Day	\$38.13	\$31.79	\$27.46	\$26.67
	Half-Day	\$19.07	\$15.89	\$13.73	\$13.34
Region 4	Full-Day	\$44.38	\$37.06	\$31.09	\$28.00
	Half-Day	\$22.63	\$18.54	\$15.55	\$14.00
Region 5	Full-Day	\$32.54	\$28.00	\$24.65	\$21.88
	Half-Day	\$16.26	\$14.00	\$12.32	\$10.95
Region 6	Full-Day	\$31.99	\$27.46	\$23.99	\$23.46
	Half-Day	\$16.01	\$13.73	\$12.00	\$11.74

- (i) Centers in Clark County are paid Region 3 rates.
- (ii) Centers in Benton, Walla Walla, and Whitman counties are paid Region 6 rates.

(2) The child care center WAC 170-295-0010 allows providers to care for children from one month up to and including the day before their thirteenth birthday. The provider must obtain a child-specific and time-limited ~~((waiver))~~ exception from their child care licensor to provide care for a child outside the age listed on the center's license. If the provider has ~~((a waiver))~~ an exception to care for a child who has reached his or her thirteenth birthday, the payment rate is the same as subsection (1) of this section, and the five to twelve year age range column is used for comparison.

(3) If the center provider cares for a child who is thirteen or older, the provider must have a child-specific and time-limited ~~((waiver))~~ exception and the child must meet the special needs requirement according to WAC 170-290-0220.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0205 Daily child care rates—Licensed or certified family home child care providers. (1) **Base rate.** DSHS pays the lesser of the following to a licensed or certified family home child care provider:

- (a) The provider's private pay rate for that child; or
- (b) The maximum child care subsidy daily rate for that child as listed in the following table.

		Infants (Birth - 11 mos.)	Enhanced Toddlers (12 - 17 mos.)	Toddlers (18 - 29 mos.)	Preschool (30 mos. - 5 yrs)	School-age (5 - 11 yrs)
Region 1	Full-Day	\$24.29	\$24.29	\$21.12	\$21.12	\$18.78
	Half-Day	\$12.14	\$12.14	\$10.56	\$10.56	\$9.39
Spokane County	Full-Day	\$24.84	\$24.84	\$21.60	\$21.60	\$19.21
	Half-Day	\$12.42	\$12.42	\$10.80	\$10.80	\$9.60
Region 2	Full-Day	\$25.65	\$25.65	\$22.30	\$19.95	\$19.95
	Half-Day	\$12.82	\$12.82	\$11.15	\$9.97	\$9.97
Region 3	Full-Day	\$34.03	\$34.03	\$29.33	\$25.81	\$23.46
	Half-Day	\$17.02	\$17.02	\$14.67	\$12.91	\$11.74
Region 4	Full-Day	\$40.04	\$40.04	\$34.81	\$29.33	\$28.16
	Half-Day	\$20.03	\$20.03	\$17.42	\$14.67	\$14.08
Region 5	Full-Day	\$26.99	\$26.99	\$23.46	\$22.30	\$19.95
	Half-Day	\$13.50	\$13.50	\$11.74	\$11.15	\$9.97
Region 6	Full-Day	\$26.99	\$26.99	\$23.46	\$23.46	\$22.30
	Half-Day	\$13.50	\$13.50	\$11.74	\$11.74	\$11.15

(2) The family home child care WAC 170-296-0020 and 170-296-1350 allows providers to care for children from birth up to and including the day before their twelfth birthday. The provider must obtain a child-specific and time-limited ~~((waiver))~~ exception from their child care licensor to provide care for a child outside the age listed on their license. If the provider has ~~((a waiver))~~ an exception to care for a child who has reached their twelfth birthday, the payment rate is the same as subsection (1) of this section, and the five to eleven year age range column is used for comparison.

(3) If the family home provider cares for a child who is thirteen or older, the provider must have a child-specific and time-limited ~~((waiver))~~ exception and the child must meet the special needs requirement according to WAC 170-290-0220.

(4) DSHS pays family home child care providers at the licensed home rate regardless of their relation to the children (with the exception listed in subsection (5) of this section). Refer to subsection (1) and the five to eleven year age range column for comparisons.

(5) DSHS cannot pay family home child care providers to provide care for children in their care if the provider is:

- (a) The child's biological, adoptive or step-parent;
- (b) The child's legal guardian or the guardian's spouse or live-in partner; or
- (c) Another adult acting in loco parentis or that adult's spouse or live-in partner.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0220 Special needs rates—Qualification and required documentation. (1) **Qualification.** To qualify for ~~((the))~~ a special needs ~~((daily))~~ rate ~~((your))~~ in addition to the base rate, the consumer must request a special needs rate review for his or her child. The child must either:

- ~~((+))~~ (a) Be thirteen up to nineteen years old and be under court supervision; or
- ~~((2))~~ (b) Be less than nineteen years old~~((; and~~

~~((+))~~ and have a verified physical, mental, emotional, or behavioral condition that requires a higher level of care ~~((while in the care of a licensed or certified facility, a DEL contracted seasonal day camp or an in-home/relative provider; and~~

~~((b))~~ needed in the child care setting.

(2) Required documentation. Documentation must:

(a) Support the severity of the condition and level of care required to meet that child's need;

(b) Describe the child's needs in addition to the daily routine care required under chapter 170-295, 170-296A, or 170-151 WAC, for child care providers who are licensed or certified, or WAC 170-290-0130 and 170-290-0138 for child care providers who provide in-home/relative care;

(c) Address relevant areas, such as ambulatory assistance, feeding, hygiene assistance, communication, or behavior as applicable and as needed by the child;

(d) Include the DEL special needs request form completed by the consumer and the provider; and

(e) Have ~~((their))~~ the child's condition and need for higher level of care verified by an individual who is not employed by the child care facility nor a relative of the provider or the child's family, and is either a:

(i) Health, mental health, education or social service professional with at least a master's degree; or

(ii) Registered nurse;

(f) Include one or more of the following completed forms from a person listed in (e) of this subsection:

(i) Individualized education plan (IEP);

(ii) Individual habilitation plan (IHP);

(iii) Individual family plan (IFP);

(iv) Basic health records from his or her health care provider;

(v) Comprehensive assessments from a mental health professional; or

(vi) Medical or psychological reports from a mental health professional.

(3) Special needs review.

(a) DSHS processes all Level 1 special needs cases.

(b) DEL and DSHS jointly process Level 2 and Level 3 special needs cases.

(c) All requests for Levels 1, 2, and 3 special needs additional rates are decided within fifteen consecutive days of the initial request. The fifteen-day time limit begins on the day after the date that the consumer and provider provide all of the required verification for that case as provided in this section.

(4) **Purpose of special needs rate.** WCCC does not pay for the provider's training needs to care for a specific child or for the child's equipment needs while in the child care setting. The special needs rate is for care provided in addition to the daily routine care required under chapter 170-295, 170-296A, or 170-151 WAC, for child care providers who are licensed or certified, or WAC 170-290-0130 and 170-290-0138 for child care providers who provide in-home/relative care.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0225 Special needs rates—Licensed or certified child care centers and seasonal day camps. (1) In addition to the base rate for licensed or certified child care centers and seasonal day camps listed in WAC 170-290-0200, DSHS may authorize(s) the following additional special needs daily rates ((to licensed or certified child care centers or DEL contracted seasonal day camps after a consumer has verified that his or her child has a special need and requires a higher level of care according to)) which are reasonable and verifiable as provided in WAC 170-290-0220((; according to whichever of the following is greater)):

(a) ((The provider's reasonable documented additional cost associated with the care of the child; or

(b)) **Level 1.** The daily rate listed in the table below:

		Infants (One month - 11 mos.)	Toddlers (12 - 29 mos.)	Preschool (30 mos. - 5 yrs)	School-age (5 - 12 yrs)
Region 1	Full-Day	\$7.30	\$6.14	\$5.80	\$5.45
	Half-Day	\$3.65	\$3.07	\$2.90	\$2.73
Region 2	Full-Day	\$7.36	\$6.15	\$5.70	\$5.05
	Half-Day	\$3.68	\$3.08	\$2.85	\$2.52
Region 3	Full-Day	\$9.75	\$8.13	\$7.02	\$6.82
	Half-Day	\$4.88	\$4.06	\$3.51	\$3.41
Region 4	Full-Day	\$11.35	\$9.48	\$7.95	\$7.16
	Half-Day	\$5.67	\$4.74	\$3.98	\$3.58
Region 5	Full-Day	\$8.32	\$7.16	\$6.30	\$5.59
	Half-Day	\$4.16	\$3.58	\$3.15	\$2.80
Region 6	Full-Day	\$8.18	\$7.02	\$6.14	\$6.00
	Half-Day	\$4.09	\$3.51	\$3.07	\$3.00

(i) Centers in Clark County are paid Region 3 rates((-));

(ii) Centers in Benton, Walla Walla, and Whitman counties are paid Region 6 rates;

(b) **Level 2.** A rate greater than Level 1, not to exceed \$15.89 per hour; or

(c) **Level 3.** A rate that exceeds \$15.89 per hour.

(2) ((The child care provider must verify the child's additional care needs when they request a rate above that listed in subsection (1)(b) of this section. The verification should include details about all of the child's additional needs in rel-

evant areas such as environmental accommodations, ambulation, eating, personal hygiene, communication, and behavior.

(3)) If a provider is requesting one-on-one supervision or direct care for the child with special needs the person providing the one-on-one care must ((be)):

(a) Be at least eighteen years of age; and

(b) Meet the requirements for being an assistant under chapter 170-295 WAC and maintain daily records of one-on-one care provided, to include the name of the employee providing the care.

((4)) (3) If the provider has ((a waiver)) an exception to care for a child who:

(a) Is thirteen years or older; and

(b) Has special needs according to WAC 170-290-0220, DSHS authorizes the special needs payment rate as described in subsection (1) of this section using the five to twelve year age range for comparison.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0230 Special needs rates—Licensed or certified family home child care providers. (1) In addition to the base rate for licensed or certified family home child care providers listed in WAC 170-290-0205, DSHS may authorize(s) the following additional special needs daily rates ((to licensed or certified family home child care providers after the consumer has verified that his or her child has a special need and requires a higher level of care according to)) which are reasonable and verifiable as provided in WAC 170-290-0220((; according to whichever of the following is greater)):

(a) ((The provider's reasonable documented additional cost associated with the care of the child; or

(b)) **Level 1.** The daily rate listed in the table below:

		Infants (Birth - 11 mos.)	Toddlers (12 - 29 mos.)	Preschool (30 mos. - 5 yrs)	School-age (5 - 11 yrs)
Region 1	Full-Day	\$6.00	\$5.40	\$5.40	\$4.80
	Half-Day	\$3.00	\$2.70	\$2.70	\$2.40
Region 2	Full-Day	\$6.00	\$5.70	\$5.10	\$5.10
	Half-Day	\$3.00	\$2.85	\$2.55	\$2.55
Region 3	Full-Day	\$8.70	\$7.50	\$6.60	\$6.00
	Half-Day	\$4.35	\$3.75	\$3.30	\$3.00
Region 4	Full-Day	\$9.00	\$8.90	\$7.50	\$7.20
	Half-Day	\$4.50	\$4.45	\$3.75	\$3.60
Region 5	Full-Day	\$6.60	\$6.00	\$5.70	\$5.10
	Half-Day	\$3.30	\$3.00	\$2.85	\$2.55
Region 6	Full-Day	\$6.60	\$6.00	\$6.00	\$5.70
	Half-Day	\$3.30	\$3.00	\$3.00	\$2.85

(b) **Level 2.** A rate greater than Level 1, not to exceed \$15.89 per hour; or

(c) **Level 3.** A rate that exceeds \$15.89 per hour.

(2) ((A family home child care provider must verify the child's additional care needs when they request a rate above that listed in subsection (1)(b) of this section. The verification should include details about all of the child's additional needs in relevant areas such as environmental accommodations, ambulation, eating, personal hygiene, communication, and behavior.

~~(3))~~ If the provider has ~~((a waiver))~~ an exception to care for a child who:

(a) Is twelve years or older; and
 (b) Has special needs according to WAC 170-290-0220, DSHS authorizes the special needs payment rate as described in subsection (1) of this section using the five to eleven year age range for comparison.

~~((4))~~ (3) If a provider is requesting one-on-one supervision/direct care for the child with special needs, the person providing the one-on-one care must ~~((be))~~:

(a) Be at least eighteen years old; and
 (b) Meet the requirements for being an assistant under chapter 170-296 WAC and maintain daily records of one-on-one care provided, to include the name of the employee providing the care.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0235 Special needs rates—In-home/relative providers. (1) ~~((DSHS authorizes a base rate of two dollars and twenty cents an hour for in-home/relative child care when a child has verified special needs and requires a higher level of care according to WAC 170-290-0220.~~

~~(2))~~ In addition to the base rate as provided in WAC 170-290-0240(1), the state may authorize~~((s whichever of))~~ the following ~~((is greater))~~ additional special needs rate which is reasonable and verifiable as provided in WAC 170-290-0220:

(a) Level 1. Sixty-two cents per hour, for a total of two dollars and eighty-two cents per hour; ~~((or))~~

(b) ~~((The provider's reasonable documented additional cost associated with the care for that child))~~ Level 2. A rate greater than Level 1, but not to exceed \$9.41 per hour; or

(c) Level 3. A rate that exceeds \$9.41 per hour.

~~((3))~~ ~~The in-home/relative provider must verify the child's additional care needs when they request a rate above that listed in subsection (2)(a) of this section. The verification must include details about all the child's additional needs in relevant areas such as environmental accommodations, ambulation, eating, personal hygiene, communication, and behavior.~~

~~(4))~~ (2) If other children in the home are also authorized for in-home/relative care with the same provider, DSHS authorizes two dollars and twenty cents per hour for the child who needs the greatest number of hours of care and two dollars and seventeen cents per hour for the care of each additional child in the family.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0240 Child care subsidy rates—In-home/relative providers. (1) **Base rate.** When a consumer employs an in-home/relative provider, ~~((the maximum))~~ DSHS pays the lesser of the following to an eligible in-home/relative provider for child care ~~((is))~~:

(a) The provider's private pay rate for that child; or

(b) The maximum child care subsidy rate of two dollars and twenty cents per hour for the child who needs the greatest

number of hours of care and two dollars and seventeen cents per hour for the care of each additional child in the family.

(2) DSHS may pay above the maximum hourly rate for children who have special needs under WAC 170-290-0235.

(3) DSHS makes the WCCC payment directly to a consumer's eligible provider.

(4) When ~~((appropriate))~~ applicable, DSHS pays the employer's share of the following:

(a) Social Security and medicare taxes (FICA) up to the wage limit;

(b) Federal Unemployment Taxes (FUTA); and

(c) State unemployment taxes (SUTA) ~~((when applicable)).~~

(5) If an in-home/relative provider receives less than the wage base limit per family in a calendar year, DSHS refunds all withheld taxes to the provider.

NEW SECTION

WAC 170-290-0250 Eligible provider capacity and payment. (1) DSHS may pay:

(a) Licensed and certified providers for authorized care up to the provider's licensed capacity as determined under WAC 170-151-080, 170-295-0080, or 170-296A-5700, as appropriate; and

(b) In-home/relative providers for authorized care up to a maximum of six eligible children as provided in WAC 170-290-0138(6).

(2) Licensed providers may not bill the state for more than the number of children they have in their licensed capacity and who are authorized to receive child care subsidies.

(3) A violation of subsection (2) of this section may:

(a) Result in the immediate suspension of the provider's subsidy payments; and

(b) Establish a provider overpayment as provided in WAC 170-290-0268.

(4) As used in this section, "capacity" has the same meaning as defined in WAC 170-151-010, 170-295-0010, and 170-296A-0010.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0268 Payment discrepancies—Provider overpayments. (1) An overpayment occurs when a provider receives payment that is more than the provider is eligible to receive. Provider overpayments are established when that provider:

(a) Bills and receives payment for services not provided;

(b) Bills without attendance records that support their billing;

(c) Bills and receives payment for more than they are eligible to bill; ~~((or))~~

(d) With respect to license-exempt providers, bills the state for more than six children at one time during the same hours of care; or

(e) With respect to licensed or certified providers ~~((only));~~

(i) Bills the state for more than the number of children they have in their licensed capacity; or

(ii) Is caring for a WCCC child outside their licensed allowable age range without ((a waiver)) a DEL-approved exception; or

(f) With respect to certified providers caring for children in a state bordering Washington:

(i) Is determined not to be in compliance with their state's licensing regulations; or

(ii) Fails to notify DSHS within ten days of any suspension, revocation, or change to their license.

(2) ~~((DEL's or DSHS's WCCC program staff))~~ DEL or DSHS may request documentation from a provider when preparing to establish an overpayment. The provider has fourteen consecutive calendar days to supply any requested documentation.

(3) Providers are required to repay any payments that they were not eligible to receive.

(4) If an overpayment was made through departmental error, the provider is still required to repay that amount.

AMENDATORY SECTION (Amending WSR 09-22-043, filed 10/28/09, effective 12/1/09)

WAC 170-290-0271 Payment discrepancies—Consumer overpayments. (1) DSHS establishes overpayments for past or current consumers when the consumer:

(a) Received benefits when he or she was not eligible;

(b) Used care for an unapproved activity or for children not in his or her WCCC household;

(c) Failed to report information to DSHS resulting in an error in determining eligibility, amount of care authorized, or copayment;

(d) Used a provider that was not eligible per WAC 170-290-0125; or

(e) Received benefits for a child who was not eligible per WAC 170-290-0015 or 170-290-0020.

(2) ~~((DEL's or DSHS's staff))~~ DEL or DSHS may request documentation from a consumer when preparing to establish an overpayment. The consumer has fourteen consecutive calendar days to supply any requested documentation.

(3) Consumers are required to repay any benefits paid by DSHS that they were not eligible to receive.

(4) If an overpayment was made through departmental error, the consumer is still required to repay that amount.

(5) If a consumer is not eligible under WAC 170-290-0032 and the provider has billed correctly, the consumer is responsible for the entire overpayment, including any absent days.

AMENDATORY SECTION (Amending WSR 11-12-078, filed 5/31/11, effective 7/1/11)

WAC 170-290-3530 Verifying consumers' information. DSHS ~~((staff verify))~~ verifies a consumer's information as provided in WAC 170-290-0012.

AMENDATORY SECTION (Amending WSR 11-12-078, filed 5/31/11, effective 7/1/11)

WAC 170-290-3560 Consumers' rights. When a consumer applies for or receives SCC program subsidies, he or she has the right to:

(1) Be free from discrimination in accordance with all applicable federal and state nondiscrimination laws, regulations and policies;

(2) Have the consumer's application accepted and acted upon within thirty days;

(3) Be informed, in writing, of the consumer's legal rights and responsibilities related to the SCC subsidy program;

(4) Have the consumer's information shared with other agencies only when required by federal or state regulations;

(5) Be allowed to choose a licensed or certified child care provider as long as the provider meets requirements in WAC 170-290-3750;

(6) Receive a written notice at least ten days before changes are made to lower or stop benefits except as stated in WAC 170-290-3730;

(7) Ask for an administrative hearing if the consumer does not agree with a decision per WAC 170-290-3860;

(8) Ask to speak to a supervisor or administrator at DSHS to review a decision or action affecting the consumer's benefits without affecting the consumer's right to an administrative hearing;

(9) Have interpreter or translator services provided by DSHS within a reasonable amount of time and at no cost to the consumer;

(10) Refuse to speak to a fraud early detection (FRED) investigator from the DSHS ~~((division))~~ office of fraud ~~((investigations (DFI)))~~ and accountability (OFA) when they ask to come into your home. This request will not affect eligibility for SCC program subsidies. If the consumer refuses to cooperate with the investigator at a later date, it could affect his or her SCC program subsidies;

(11) Access his or her child at all times while the child is in child care;

(12) Terminate child care without cause and without notice to the provider. Notice must be given to DSHS within five days of termination; ~~((and))~~

(13) Not be charged by the consumer's licensed or certified provider, or be made to pay, for~~((=~~

~~((+))~~ the difference between the child care provider's private rate and the state maximum child care subsidy rate, when ~~((their))~~ the provider's private rate for child care ~~((or the registration fee))~~ is higher than the maximum state rate; and

(14) Not be charged by the consumer's licensed or certified provider, or be made to pay for:

(a) The difference between the provider's registration fee and the state's maximum registration fee, when the provider's registration fee is higher;

(b) Any day when the consumer's child is absent;

(c) Vacation days when the provider chooses to close;

(d) A higher amount than the state allows for field trips;

(e) A preschool tuition fee in addition to regular child care services; or

(f) Child care services after the final day of care, when the provider ~~((chooses to))~~ stops caring for the consumer's children.

AMENDATORY SECTION (Amending WSR 11-12-078, filed 5/31/11, effective 7/1/11)

WAC 170-290-3565 Consumers' responsibilities.

When a ~~((consumer))~~ person applies for or receives SCC program subsidies, ~~((he or she))~~ the applicant or consumer must, as a condition of receiving those subsidies:

(1) Give DSHS correct and current information so that DSHS can determine the consumer's eligibility and authorize child care payments correctly;

(2) Choose a licensed or certified child care provider who meets requirements of WAC 170-292-3750;

(3) Leave the consumer's children with his or her provider while the consumer is in SCC approved activities outside of the consumer's home;

(4) Pay the provider for child care services when the consumer requests additional child care for personal reasons other than working or participating in SCC approved activities that have been authorized by DSHS;

(5) Pay the provider for optional child care programs for the child that the consumer requests. The provider must have a written policy in place charging all families for these optional child care programs;

(6) Pay ~~((, or make arrangements for someone to pay, the consumer's SCC))~~ the copayment directly to the child care provider or arrange for a third party to pay the copayment directly to the provider;

(7) In cases of overdue or past due copayments, the consumer, as a condition of maintaining his or her eligibility, must do one or more of the following:

(a) Pay past or overdue copayments;

(b) Give DSHS a written agreement between the provider and consumer to verify that copayment arrangements include one or more of the following:

(i) An installment payment plan;

(ii) A collection agency payment plan;

(iii) In-kind services in lieu of paying the copayment; or

(iv) Forgiveness of the copayment from the provider; or

(c) Provide proof that the consumer has attempted to pay a copayment to a licensed provider who is no longer in business or a license-exempt provider who is no longer providing child care. "Proof" includes, but is not limited to, a return receipt that was signed for and not responded to, or a returned document that was not picked up;

(8) Pay the provider the same late fees that are charged to other families, if the consumer pays a copayment late or picks up the child late;

~~((8) Sign his or her children in and out of child care as provided in WAC 170-295-7030, 170-296-0520, or 170-151-460, as applicable, for that type of provider; and))~~

(9) Document their child's attendance in subsidized child care by having the consumer or other person authorized by the consumer to take the child to or from child care:

(a) If the licensee uses a paper attendance record, sign the child in on arrival and sign the child out at departure, using their full signature and writing the time of arrival and departure; or

(b) Record the child's attendance using an electronic system if used by the licensee;

(10) Provide the information requested by the ~~((DSHS))~~ fraud early detection (FRED) investigator from the DSHS

office of fraud and accountability (OFA). If the consumer refuses to provide the information requested within fourteen days, it could affect his or her SCC program subsidies. If DSHS determines a consumer is not cooperating by supplying the requested information, the consumer will not be eligible for SCC program subsidies. The consumer may become eligible again when he or she meets SCC program requirements in part III of this chapter;

(11) Seek child support enforcement services from the DSHS division of child support, unless DSHS finds that the applicant or consumer has good cause not to cooperate as defined under WAC 388-422-0020 or as provided in (a) of this subsection.

(a) For the purposes of this subsection, "good cause" also includes the following:

(i) The applicant or consumer has a current court or administrative order showing the child support amount ordered on behalf of the child who will receive the child care subsidy benefits;

(ii) The applicant or consumer already complies with child support enforcement services, either voluntarily or to meet other public assistance benefits requirements;

(iii) The applicants or consumers are married parents, or unmarried two-parent families with a child in common needing child care living in the same household;

(iv) The applicant or consumer is a single-parent family when the other parent is deceased;

(v) The applicant or consumer is a single-parent family when the other parent is incarcerated for one year or longer;

(vi) The applicants or consumers are both minor parents;

or
(vii) The DSHS division of child support does not have jurisdiction over the child support case, such as for tribal child support cases, child support cases in other states, or cases outside of the United States, whether or not the division of child support has a reciprocal agreement with that jurisdiction.

(b) Child support ordered on behalf of a child who will receive child care subsidy benefits does not affect the other children in the family who are not receiving child support. All other family size rules in WAC 170-290-0015 apply; and

(12) Ensure that their children who receive subsidized child care outside of their own home are current on all immunizations required under WAC 246-105-030, except when the parent or guardian provides:

(a) A department of health (DOH) medical exemption form signed by a health care professional; or

(b) A DOH form or similar statement signed by the child's parent or guardian expressing a religious, philosophical or personal objection to immunization.

NEW SECTION

WAC 170-290-3566 Subsidized child care providers' responsibilities. Licensed or certified child care providers who accept SCC subsidies must do the following:

(1) Comply with all of the DEL child care licensing or certification requirements as provided in chapter 170-295, 170-296A, or 170-151 WAC;

(2) Report pending charges or convictions to DSHS as provided in chapter 170-295, 170-296A, or 170-151 WAC;

(3) Keep complete and accurate daily attendance records for children in their care; and allow access to DEL or DSHS to inspect attendance records during all hours in which authorized child care is provided as follows:

(a) Current attendance records (including records from the previous twelve months) must be available immediately for review upon request by DSHS or DEL.

(b) Attendance records older than twelve months to five years old must be provided to DSHS or DEL within two weeks of the date of a written request from either department.

(c) Failure to make available attendance records as provided in this subsection may:

(i) Result in the immediate suspension of the provider's subsidy payments; and

(ii) Establish a provider overpayment as provided in WAC 170-290-0268;

(4) Allow consumers access to their child at all times while the child is in care;

(5) Collect copayments directly from the consumer or the consumer's third-party payor, and report to DSHS if the consumer has not paid a copayment to the provider within the previous sixty days;

(6) Follow billing procedures as described in "*Child Care Subsidies: A Booklet for Licensed and Certified Child Care Providers*" revised 2012, including billing only for actual hours of child care provided or allowed under WCCC billing guidelines;

(7) Not claim a payment in any month in which a child has not attended at least one day in that month;

(8) Invoice the state no later than one calendar year after the actual date of service;

(9) Not charge subsidized families for:

(a) The difference between the provider's customary rate and the maximum allowed state rate;

(b) Registration fees in excess of what is paid by subsidy program rules;

(c) Absence days in excess of five days per month, regardless of whether the child attended or not;

(d) Handling fees to process consumer copayments, child care services payments, or paperwork;

(e) Fees for materials, supplies, or equipment required to meet licensing rules and regulations; or

(f) Child care or fees related to subsidy billing invoices that are in dispute between the provider and the state; and

(10) For providers who care for children in states bordering Washington, verify that they are currently complying with their state's licensing regulations, and notify DSHS within ten days of any suspension, revocation, or changes to their license.

AMENDATORY SECTION (Amending WSR 11-12-078, filed 5/31/11, effective 7/1/11)

WAC 170-290-3580 Failure to report changes. (1) If a consumer fails to report any changes as required in WAC 170-290-3570 within the stated time frames, DSHS may establish an overpayment to the consumer per WAC 170-

290-3850 or the consumer may have to pay additional costs, such as a higher copayment.

(2) The consumer may receive an overpayment for what the provider is allowed to bill to include billing for absent days (see publication *Child Care Subsidies, A Booklet for Licensed and Certified Child Care Providers*, ((DEL-22-877,)) revised ((2010)) 2012).

AMENDATORY SECTION (Amending WSR 11-12-078, filed 5/31/11, effective 7/1/11)

WAC 170-290-3590 DSHS's responsibilities to consumers. DSHS ((staff)) must:

(1) Treat consumers in accordance with all applicable federal and state nondiscrimination laws, regulations and policies;

(2) Complete applications for SCC program subsidies based on information the consumer provides, and determine a consumer's eligibility within thirty days from the date the consumer applied;

(3) Accept a variety of forms of verification and may not specify the type of documentation required;

(4) Authorize payments only to a licensed or certified child care provider the consumer chooses who meets the requirements in WAC 170-290-3750;

(5) Authorize payments only when no adult in a consumer's family (under WAC 170-290-3540) is able or available to care for the consumer's children as defined in WAC 170-290-3550;

(6) Inform a consumer of:

(a) The consumer's copayment amount as determined in WAC 170-290-3620 and defined in WAC 170-290-0075;

(b) The consumer's rights and responsibilities under the SCC program when he or she applies or reapplies;

(c) The types of child care providers the SCC program will pay;

(d) The community resources that can help the consumer select child care when needed;

(e) Other options for child care subsidies, if the consumer does not qualify for SCC program subsidies; and

(f) The consumer's rights to an administrative hearing;

(7) Provide prompt child care authorizations to a consumer's child care provider;

(8) Respond to a consumer within ten days if the consumer reports a change of circumstance that affects the consumer's:

(a) SCC eligibility;

(b) Copayment; or

(c) Providers; and

(9) Provide an interpreter or translator service at no cost to the consumer to explain information related to the SCC program.

AMENDATORY SECTION (Amending WSR 11-12-078, filed 5/31/11, effective 7/1/11)

WAC 170-290-3610 Countable income. DSHS counts income as money a consumer earns or receives from:

(1) Wages and commissions earned from employment;

(2) Unemployment compensation;

(3) ((A TANF or other welfare grant;

~~(4))~~ The following child support payment(s received) amounts:

(a) For applicants or consumers who are not receiving DSHS division of child support services because they are exempt for good cause under WAC 170-290-3565 (11)(a), the amount as shown on a current court or administrative order; or

(b) For applicants or consumers who are receiving DSHS division of child support services, the amount as verified by the DSHS division of child support;

~~((5))~~ (4) Supplemental Security Income (SSI);

~~((6))~~ (5) Other Social Security payments, such as Social Security Administration (SSA) and Social Security disability insurance (SSDI);

~~((7))~~ (6) Refugee assistance payments;

~~((8))~~ (7) Payments from the Veterans' Administration;

~~((9))~~ (8) Pensions or retirement income;

~~((10))~~ (9) Payments from labor and industries (L&I), or disability payments;

~~((11))~~ (10) Lump sums as money a consumer receives from a one-time payment such as back child support, an inheritance, or gambling winnings;

~~((12))~~ (11) Other types of income not listed in WAC 170-290-3630; and

~~((13))~~ (12) Gross wages from employment or self-employment income as defined in WAC 170-290-0003. Gross wages include any wages that are taxable.

AMENDATORY SECTION (Amending WSR 11-12-078, filed 5/31/11, effective 7/1/11)

WAC 170-290-3660 Eligibility period. (1) A consumer who meets all of the requirements of part III of this chapter is eligible ~~((for))~~ to receive SCC subsidies for six months before having to redetermine his or her income eligibility. The six-month eligibility period applies only if enrollments in the SCC program are capped as provided in WAC 170-290-0001(1) and 170-290-3501. Regardless of the length of eligibility, consumers are still required to report changes of circumstances to DSHS as provided in WAC 170-290-3570.

(2) A consumer's eligibility may be for less than six months if requested by the consumer.

(3) A consumer's eligibility may end sooner than six months if:

(a) The consumer no longer wishes to participate in SCC; or

(b) DSHS terminates the consumer's eligibility as stated in WAC 170-290-3855.

NEW SECTION

WAC 170-290-3800 Eligible provider capacity and payment. (1) DSHS may pay licensed and certified providers for authorized care up to the provider's licensed capacity as determined under WAC 170-151-080, 170-295-0080, or 170-296A-5700, as appropriate.

(2) Licensed providers may not bill the state for more than the number of children they have in their licensed capacity and who are authorized to receive child care subsidies.

(3) A violation of subsection (2) of this section may:

(a) Result in the immediate suspension of the provider's subsidy payments; and

(b) Establish a provider overpayment as provided in WAC 170-290-0268.

(4) As used in this section, "capacity" has the same meaning as defined in WAC 170-151-010, 170-295-0010, and 170-296A-0010.

AMENDATORY SECTION (Amending WSR 11-12-078, filed 5/31/11, effective 7/1/11)

WAC 170-290-3855 Termination of and redetermining eligibility for SCC program subsidies. (1) A consumer's continued eligibility for SCC program subsidies stops when:

(a) The consumer's monthly copayment is equal to or higher than the state maximum monthly child care rate for all of the consumer's children in care; or

(b) The consumer:

(i) Is not participating in an approved activity as defined in WAC 170-290-3555;

(ii) Does not meet other SCC eligibility requirements related to family size, income and approved activities;

(iii) Does not ~~((pay the copayment fees to the consumer's child care provider or does not make mutually acceptable arrangements with the consumer's child care provider for payment))~~ comply with the copayment requirements of WAC 170-290-3565 (6) and (7); or

(iv) Refuses to cooperate with ~~((investigations conducted by quality assurance staff))~~ the child care subsidy audit process or the ((division)) DSHS office of fraud ((investigations)) and accountability (OFA).

(2) A consumer might be eligible for SCC program subsidies again ~~((when))~~ beginning on the date that the consumer:

(a) ~~((The consumer))~~ Meets all SCC program eligibility requirements;

(b) ~~((The consumer pays back copayment fees or made mutually acceptable payment arrangements with his or her child care provider; or))~~ Complies with the copayment requirements of WAC 170-290-3565(6); and

(c) ~~((The consumer cooperated with the quality assurance review process or with the DSHS division of fraud investigations.))~~ Cooperates with the child care subsidy audit process or with the DSHS office of fraud and accountability (OFA).

AMENDATORY SECTION (Amending WSR 08-08-012, filed 3/19/08, effective 4/19/08)

WAC 170-295-0030 ((What must I do to be eligible)) Eligibility to receive state child care subsidies((?)). To be eligible to receive state child care subsidies for children in ~~((your))~~ their care ((you)), individuals, entities and agencies must:

(1) Be licensed or certified;

(2) Be a seasonal camp that has a contract with ~~((us))~~ DEL and is certified by the American Camping Association;

(3) Follow billing policies and procedure in *Child Care Subsidies: A Booklet for Licensed and Certified Child Care Providers*, ~~((DEL 22-877))~~ revised 2012;

(4) Bill ~~((us))~~ at ~~((you))~~ the individual's, entity's, or agency's customary rate or the state rate, whichever is less; and

(5) Keep ~~((the))~~ attendance records as described in WAC 170-295-7030 and ~~((the))~~ invoices for state-paid children on-site for at least five years as provided in WAC 170-295-7031.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-295-7010 ~~((What))~~ Information ~~((must))~~ to be kept in the child's individual file~~((?))~~. (1) ~~((You))~~ Licensees must keep current organized confidential records and information about each child in care on the premises~~((You))~~ as provided in WAC 170-295-7031, and must make sure that each child's record contains, at a minimum:

(a) Completed enrollment application signed by the parent;

(b) Name, birth date, dates of enrollment and termination, and other identifying information;

(c) Name, address, and home and business telephone number of the parent and other person to be contacted in case of an emergency;

(d) Health history;

(e) Individual plan of care when needed for chronic health conditions and life threatening medical conditions;

(f) Written consent from the parent for ~~((you))~~ the licensee to seek and approve medical care in an emergency situation, a court order waiving the right of informed consent, or the parent's alternate plans for emergency medical and surgical care if the parent can not be reached;

(g) Information on how to contact the parents, especially in emergencies;

(h) Instructions from the parent or health care providers related to medications, specific food or feeding requirements, allergies, treatments, and special equipment or health care needs if necessary;

(i) Written records of any illness or injury that occurs during child care hours and the treatment provided; and

(j) Written records of any medications given while the child is at child care.

(2) ~~((You))~~ Licensees must include the following authorizations in each child's record:

(a) Name, address, and telephone number of the person authorized to remove the child from the center;

(b) Written parental consent for transportation to and from school; and

(c) Written parental consent for transportation provided by the center to and from field trips, including field trip location, date of trip, departure and arrival times and any other additional information on which the parent may need to be advised ~~((of))~~.

(3) ~~((You can))~~ Licensees may use any health history form ~~((you))~~ that the licensee chooses as long as it includes:

(a) The date of the child's last physical exam or the date the child was last seen by a health care provider for reasons other than immunizations;

(b) Allergies, expected symptoms, and method of treatment if necessary;

(c) Health and developmental concerns or issues;

(d) Any life threatening medical condition that requires an individual health plan;

(e) A list of current medications used by the child;

(f) Name, address, and phone number of the child's health care provider; and

(g) Name, address, and phone number of the child's dentist, if the child has a dentist.

(4) The individual records, including the certificate of immunization status, must be kept on the premises:

(a) For each child currently in care; and

(b) For ~~((one))~~ five years after the child leaves ~~((you))~~ enrollment in the licensee's care.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-295-7030 ~~((What type of))~~ Attendance records ~~((do I have to keep?))~~. ~~((You))~~ Licensees must keep daily attendance records.

(1) The parent or other person authorized by the parent to take the child to or from the center must:

(a) Sign in the child on arrival and sign out the child at departure, using their full ~~((legal))~~ signature and writing the time of arrival and departure; or

(b) Record the child's attendance using an electronic system if used by the licensee under WAC 170-295-7032;

(2) When the child leaves the center to attend school or participate in offsite activities as authorized by the parent, ~~((you or your))~~ the licensee or staff must sign out the child, and sign in the child on return to the center; and

(3) Paper and electronic attendance records and invoices for state ~~((paid))~~ subsidized children must be kept on the premises for at least five years after the child leaves ~~((you))~~ the licensee's care as provided in WAC 170-295-7031.

NEW SECTION

WAC 170-295-7031 Recordkeeping—Records available to the department. The licensee must keep all records required in this chapter for a minimum of five years:

(1) Current records (including records from the previous twelve months) must be kept in the licensed space and be available for the department's review.

(2) Records older than twelve months to five years old must be provided to the department within two weeks of the date of the department's written request.

NEW SECTION

WAC 170-295-7032 Electronic attendance records—Records retention. (1) Licensees may use an electronic system to record attendance in lieu of a paper sign-in record.

(2) If an electronic system is used to record attendance, it must record either an electronic signature, swipe card, personal identification number (PIN), biometric reader, or similar action by the parent or designee when signing the child in and out of the licensee's care.

(3) The electronic system selected must ensure the authenticity, confidentiality, integrity, security, accessibility, and protection against repudiation of the electronic records, and must be able to:

(a) Produce an authentic, verifiable written record for each transaction upon demand that complies with all legal and other requirements regarding the record's structure, content, and time of creation or receipt;

(b) Authenticate (prove the identity of) the sender of the record and ensure that the electronic record has not been altered;

(c) Uniquely identify each record;

(d) Capture an electronic record for each transaction conducted;

(e) Maintain the integrity of electronic records as captured or created so that they can be accessed, displayed, and managed as a unit;

(f) Retain electronic records in an accessible form for their legal minimum retention period;

(g) Search and retrieve electronic records in the normal course of business throughout their entire legal minimum retention period;

(h) Produce authentic copies of electronic records and supply them in useable formats, including hard copies, for business purposes and all public access purposes;

(i) Develop an approach to maintain the authenticity and integrity of electronically signed electronic records;

(j) Ensure that the electronic system performs in an accurate, reliable, and consistent manner in the normal course of business; and

(k) Limit system access to authorized individuals and for authorized purposes, and maintain physical and environmental security controls.

(4) Electronic attendance records must contain all of the information necessary to reproduce the entire electronic record and associated signatures in a form that permits the person viewing or printing the entire electronic record to verify:

(a) The contents of the electronic record;

(b) The method used to sign the electronic record, if applicable;

(c) The person signing the electronic record; and

(d) The date when the signature was executed.

(5) As used in this section:

"Electronic record" means a record generated, communicated, received, or stored by electronic means for use in an information system or for transmission from one information system to another.

"Electronic signature" means a signature in electronic form attached to or logically associated with an electronic record including, but not limited to, a digital signature. An electronic signature is a paperless way to sign a document using an electronic sound, symbol, or process, attached to or logically associated with a record, and executed or adopted by a person with the intent to sign the record.

"Sign" includes signing by physical signature, if available, or electronic signature.

AMENDATORY SECTION (Amending WSR 11-23-068, filed 11/14/11, effective 3/31/12)

WAC 170-296A-2125 Child attendance records—Staff to child ratio records. The licensee must also keep records of:

(1) Daily attendance for each child counted in capacity that includes the:

(a) Child's dates of attendance;

(b) Time the child arrives or returns to the child care, including signature of the person authorized by the child's parent or guardian to sign the child in; and

(c) Time the child leaves from the licensee's care including signature of the person authorized by the child's parent or guardian to sign the child out; ~~((and))~~

(2) Names of staff being counted to meet the daily staff-to-child ratio requirements; and

(3) Electronic attendance records if the child's attendance is recorded using an electronic system under WAC 170-296A-2126.

NEW SECTION

WAC 170-296A-2126 Electronic attendance records; records retention. (1) Licensees may use an electronic system to record attendance in lieu of a paper sign-in record.

(2) If an electronic system is used to record attendance, it must record either an electronic signature, swipe card, personal identification number (PIN), biometric reader, or similar action by the parent or designee when signing the child in and out of the licensee's care.

(3) The electronic system selected must ensure the authenticity, confidentiality, integrity, security, accessibility, and protection against repudiation of the electronic records, and must be able to:

(a) Produce an authentic, verifiable written record for each transaction upon demand that complies with all legal and other requirements regarding the record's structure, content, and time of creation or receipt;

(b) Authenticate (prove the identity of) the sender of the record and ensure that the electronic record has not been altered;

(c) Uniquely identify each record;

(d) Capture an electronic record for each transaction conducted;

(e) Maintain the integrity of electronic records as captured or created so that they can be accessed, displayed, and managed as a unit;

(f) Retain electronic records in an accessible form for their legal minimum retention period;

(g) Search and retrieve electronic records in the normal course of business throughout their entire legal minimum retention period;

(h) Produce authentic copies of electronic records and supply them in useable formats, including hard copies, for business purposes and all public access purposes;

(i) Develop an approach to maintain the authenticity and integrity of electronically signed electronic records;

(j) Ensure that the electronic system performs in an accurate, reliable, and consistent manner in the normal course of business; and

(k) Limit system access to authorized individuals and for authorized purposes, and maintain physical and environmental security controls.

(4) Electronic attendance records must contain all of the information necessary to reproduce the entire electronic

record and associated signatures in a form that permits the person viewing or printing the entire electronic record to verify:

- (a) The contents of the electronic record;
 - (b) The method used to sign the electronic record, if applicable;
 - (c) The person signing the electronic record; and
 - (d) The date when the signature was executed.
- (5) As used in this section:

"Electronic record" means a record generated, communicated, received, or stored by electronic means for use in an information system or for transmission from one information system to another.

"Electronic signature" means a signature in electronic form attached to or logically associated with an electronic record including, but not limited to, a digital signature. An electronic signature is a paperless way to sign a document using an electronic sound, symbol, or process, attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

"Sign" includes signing by physical signature, if available, or electronic signature.

WSR 12-02-078
PROPOSED RULES
DEPARTMENT OF
EARLY LEARNING

[Filed January 4, 2012, 11:05 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-12-076.

Title of Rule and Other Identifying Information: The department of early learning (DEL) is proposing amended and new sections in chapters 170-151 and 170-295 WAC to implement SB 5625 (chapter 297, Laws of 2011). The rules establish the requirements for a DEL-licensed child care agency to obtain and continue a "nonexpiring" license as established by SB 5625.

Hearing Location(s): DEL, Tumwater Office, Nisqually Room, 6860 Capitol Boulevard S.E., Building 2, Tumwater, WA 98501, on Tuesday, February 7, 2012, at 6:00 p.m.; and at the Northeast Washington Educational Services District 101, 4202 South Regal, Spokane, WA 99223, on Saturday, February 11, 2012, at 11:00 a.m.

Individuals may arrive after the posted start time and still participate in these hearing[s]. However, the presiding officer may close the hearing if there are no public participants in attendance, or after all persons who indicated they wish to testify have done so. The public is encouraged to give input in writing:

The deadline for sending written comments on the proposed rules is midnight on Monday, February 13, 2012. See the "Submit Written Comments to" section of this notice about how to submit written input on this proposal.

DEL encourages the public to use of the department Facebook and DEL blog pages on the internet to post input about DEL programs and initiatives. However, for a written

comment to be considered part of the official record for this proposal, the comment must be received at the on-line, e-mail, fax or postal mail locations as described in this notice under "Submit Written Comments to."

Everyone who comments on the proposed rules either in writing as provided in this notice or at a public hearing will receive the department's combined written response, called a *concise explanatory statement*. This statement is also available to anyone who requests it, by contacting the DEL rules coordinator at the address below, or by e-mailing Rules@del.wa.gov.

Date of Intended Adoption: Not earlier than February 14, 2012.

Submit Written Comments to: DEL, Rules Coordinator, P.O. Box 40970, Olympia, WA 98504-0970, on-line at <https://apps.del.wa.gov/PolicyProposalComment/Detail.aspx>, e-mail Rules@del.wa.gov, fax (360) 413-3482, by February 13, 2012.

Assistance for Persons with Disabilities: Contact DEL rules coordinator by February 2, 2012, (360) 725-4424.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Prior to enactment of SB 5625 (chapter 297, Laws of 2011), a "full" child care license was issued for a period of three years. To renew the license, the child care provider submitted a renewal application that in many respects included the same elements and level of detail as an application for a new child care license.

SB 5625 eliminated the three-year renewal of a child care license and establishes a simplified annual process for licensees to continue a nonexpiring license. The proposed rules describe the requirements for a child care provider operating under a DEL initial license to obtain "nonexpiring full license" status, and once obtained, the annual requirements for continuing the nonexpiring full license. Under the rules, to maintain a nonexpiring license the licensee must, by thirty days before the annual anniversary date of the child care license:

- Pay the annual license fee;
- Submit a signed declaration:
 - Indicating the licensee's intent to continue his or her child care program (or tell DEL the date the licensee plans to cease child care operations), and
 - Stating that the licensee is in compliance with all DEL licensing rules; and
- Verify that each employee and others associated with the child care who are required to have a DEL background check clearance either have such a clearance or have submitted current DEL background check application.

Under the bill and the proposed rules, a child care license expires if the licensee does not meet the annual requirements to maintain a nonexpiring full license. If so, the child care agency must close and the provider must submit a new license application and obtain a new license.

The proposal revises other sections of chapters 170-151 and 170-295 WAC consistent with provisions in SB 5625 regarding:

- Payment of annual license fees;

- Enforcement actions; and
- Probationary licenses.

Proposal of this rule is consistent with state office of financial management guidance regarding implementation of Executive Order 10-06 suspending noncritical rule making (extended by Executive Order 11-03), but allowing rules to proceed that are:

"Required by federal or state law or required to maintain federally delegated or authorized programs;" or

"Beneficial to or requested or supported by the regulated entities, local governments or small businesses that it affects."

The proposed rules are needed to implement SB 5625 and remove requirements that are inconsistent with the new law. Small child care business owners and their advocates testified in support enacting SB 5625 during the 2011 legislative session.

Reasons Supporting Proposal: The proposed rules implement 2011 SB 5625, and simplify the process and paperwork that licensed child care agencies must provide to maintain a DEL child care license. In legislative hearings, child care licensees and licensee advocates supported passage of SB 5625.

Statutory Authority for Adoption: RCW 43.215.070, 43.215.060 and 43.43.832(6); chapter 43.215 RCW.

Statute Being Implemented: Chapter 43.215 RCW as amended by chapter 297, Laws of 2011.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The proposed rules apply to DEL child care centers and school-age center programs. Rules for licensed family home child care agencies implementing SB 5625 were adopted in new chapter 170-296A WAC filed for permanent adoption as WSR 11-23-068. When adopted, the proposed rules are intended to replace emergency rules filed since July 2011 as WSR 11-15-091 and 11-19-066.

Name of Proponent: DEL, governmental.

Name of Agency Personnel Responsible for Drafting: Lynne Shanafelt, Licensing Adminis., DEL State Office, P.O. Box 40970, Olympia, WA 98504, (360) 725-2829; Implementation and Enforcement: DEL licensing offices, statewide.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules are not expected to impose new costs on businesses that are required to comply. If the rules result in costs, those costs are not expected to be "more than minor" as defined in chapter 19.85 RCW. The proposed rules may decrease costs to affected businesses by reducing the administrative and paperwork requirements for maintaining a current DEL child care license.

A cost-benefit analysis is not required under RCW 34.05.328. DEL is not among the agencies listed as required to comply with RCW 34.05.328.

January 4, 2012
Elizabeth M. Hyde
Director

AMENDATORY SECTION (Amending WSR 08-08-012, filed 3/19/08, effective 4/19/08)

WAC 170-151-010 What definitions are important for the school-age child care center program? The following definitions are important under this chapter:

"Capacity" means the maximum number of children the licensee is authorized to have on the premises at a given time.

"Child abuse or neglect" means the injury, sexual abuse, sexual exploitation, or negligent treatment or maltreatment of a child as defined in RCW 26.44.020 and chapter 388-15 WAC.

"Department" means the state department of early learning (DEL), or its predecessor the department of social and health services (DSHS), the state agency with the legal authority to regulate and certify school-age child care centers.

"Department of health" means the state department of health.

"I," "you," and "your" refer to and mean the licensee or applicant for child care license.

"License" means a permit issued by the department to a person or organization to operate a school-age child care center and affirming the licensee meets requirements under licensure.

"Licensee" means the person, organization, or legal entity named on the facility license and responsible for operating the center.

"Licensor" means the person employed by the department to regulate and license a school-age child care center.

"Nonexpiring license" or "nonexpiring full license" means a full license that is issued to a licensee following the initial licensing period as provided in WAC 170-151-087.

"Premises" means the building where the center is located and the adjoining grounds over which the licensee has control.

"School-age child" means a child five years of age through twelve years of age enrolled in a public or private school.

"School-age child care center" means a program operating in a facility other than a private residence, accountable for school-age children when school is not in session. The program must meet department licensing requirements, provide adult-supervised care, and a variety of developmentally appropriate activities.

"Staff" means a person or persons employed by the licensee to provide child care and to supervise children served at the center.

"The Washington state training and registry system (STARS)" means the entity approved by the department to determine the classes, courses, and workshops licensees and staff may take to satisfy the department's training requirements.

"We" or "our" refer to and mean the department of early learning (DEL), including DEL licensors.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-151-085 ((How do I get an)) Initial ((license?)) licenses. (1) The department may issue an initial

license ~~((to you if you are))~~ if an applicant is not currently licensed to provide child care, when ~~((you))~~ the applicant:

(a) Can demonstrate compliance with the rules contained in this chapter pertaining to the health and safety of the child in care; but

(b) Cannot demonstrate compliance with the rules pertaining to:

- (i) Staff-child interactions~~((:))~~;
- (ii) Group size and staff-child ratios~~((:))~~;
- (iii) Behavior management and discipline~~((:))~~;
- (iv) Activity programs~~((:))~~;
- (v) Child records and information~~((:))~~; and
- (vi) Other rules requiring department observation of the applicant's ability to comply with rules~~((:))~~; and

(c) Can provide a plan, acceptable to the department, to comply with rules found in subsection (1)(b) of this section.

(2) The department may issue an initial license ~~((to you))~~ for a period not to exceed six months, renewable for a period not to exceed two years.

(3) The department must evaluate ~~((you))~~ an applicant's ability to comply with all rules contained in this chapter during the period of initial licensure prior to issuing a nonexpiring full license under WAC 170-151-087.

(4) The department may issue a nonexpiring full license to ((you if you)) a licensee operating under an initial license who:

(a) Demonstrates ((you)) full compliance with ((all rules contained in)) the health and safety requirements of this chapter at any time during the period of initial licensure;

(b) Demonstrates substantial compliance with the other requirements of this chapter at any time during the period of initial licensure; and

(c) Meets the requirements for a nonexpiring full license as provided in WAC 170-151-087.

(5) The department must ~~((not issue))~~ deny a nonexpiring full license to ((you if you do)) a licensee operating under an initial license who does not demonstrate the ability to comply with all rules contained in this chapter during the period of initial licensure.

NEW SECTION

WAC 170-151-087 Nonexpiring licenses. (1) To qualify for a nonexpiring full license, a licensee must submit the following to the department on an annual basis thirty days prior to the anniversary date of the license. The anniversary date is the date the licensee's first initial license was issued:

- (a) An annual nonrefundable licensing fee;
- (b) A declaration to the department on a department-approved form indicating:
 - (i) The intent to continue operating a licensed child care program; or
 - (ii) The intent to cease operation on a date certain;
- (c) A declaration on a department-approved form of compliance with all licensing rules; and
- (d) Documentation of completed background check applications as determined by the department-established schedule. As provided in RCW 43.215.215 (2)(f), as amended by chapter 295 (2SHB 1903), Laws of 2011, the schedule for submission of a background check application

shall be once every three years. For each individual required to have a background check clearance, the licensee must verify current background checks or submit a background check application at least thirty days prior to the anniversary date.

(2) The requirements in subsection (1) of this section must be met:

(a) Before a licensee operating under an initial license is issued a nonexpiring full license; and

(b) Every twelve months after issuance of a nonexpiring full license.

(3) If a licensee fails to meet the requirements in subsection (1) of this section for continuation of a nonexpiring full license, the license expires and the licensee must submit a new application for licensure.

(4) Nothing about the nonexpiring license process in this section may interfere with the department's established monitoring practice.

(5) A licensee has no right to an adjudicative proceeding (hearing) to appeal the expiration, nonrenewal, or noncontinuation of a full nonexpiring license as a result of the licensee's failure to comply with the requirements of this section.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-151-097 ~~((What if I do not pay the)) Civil ((penalty?)) penalties—Failure to pay.~~ The department may suspend, revoke, or not ~~((renew))~~ continue a license for failure to pay a civil monetary penalty the department has assessed within ten days after such assessment becomes final.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-151-098 ~~((Under what circumstances may the department issue a)) Probationary ((license?)) licenses.~~ (1) The department may issue a probationary license to a licensee in accordance with the process provided in RCW 43.215.290, and must base the decision to issue a probationary license on the following factors:

(a) Willful or negligent noncompliance by ~~((you,))~~ the licensee;

(b) History of noncompliance~~((:))~~;

(c) Extent of deviation from the requirements~~((:))~~;

(d) Evidence of a good faith effort to comply~~((:))~~; and

(e) Any other factors relevant to the unique situation.

(2) Where the negligent or willful violation of the licensing law does not present an immediate threat to the health and well-being of the children but would be likely to do so if allowed to continue, the department may issue a probationary license in addition to civil penalties or other sanctions. Such situations may include:

(a) Substantiation that a child (or children) was abused or neglected while in the care of the center~~((:))~~;

(b) Disapproved fire safety or sanitation report~~((:))~~;

(c) Use of unauthorized space for child care~~((:))~~;

(d) Inadequate supervision of children~~((:))~~;

(e) Understaffing for the number of children in care~~((:))~~;

or

(f) Noncompliance with requirements addressing:

(i) Children's health~~((:))~~;

- (ii) Proper nutrition~~((:));~~
- (iii) Discipline~~((:));~~
- (iv) Emergency medical plan~~((:)); or~~
- (v) Sanitation and personal hygiene practices.

(3) ~~((You))~~ The licensee must notify parents of all children in care or who may apply for care when the department issues a probationary license ~~((to you)).~~ The licensee must:

(a) ~~((You must))~~ Notify the parents or guardians of all children in care of the program's probationary status within five working days of receiving the department's notification that the department has issued a probationary license;

(b) ~~((You must))~~ Notify parents and guardians in writing, and the department must approve the notice before ~~((you))~~ the licensee sends the notification; and

(c) ~~((You must))~~ Provide documentation to the department that ~~((you have))~~ he or she has notified parents or guardians of all children in care within ten working days after ~~((you))~~ the licensee receives notification that the department has issued a probationary license. Documentation must consist of a copy of the letter ~~((you have))~~ the licensee has sent to the parents~~((:))~~ or guardians.

~~((+))~~ (4) The department may issue a probationary license for up to six months, and at the department's discretion, the department may extend the probationary license for an additional six months.

AMENDATORY SECTION (Amending WSR 08-08-012, filed 3/19/08, effective 4/19/08)

WAC 170-151-992 Fee payment ~~((and refunds)).~~ ~~((+))~~
~~Fees are due with applications for initial license or renewal. The department will not proceed on applications until required fees are paid.~~

~~Except as otherwise provided in these rules, fees shall be paid for a minimum of one year.~~

~~(2) Fees for licenses issued for other than yearly periods shall be prorated based on the stated annual fee.~~

~~(3) When the department issues a license for more than one year:~~

~~(a) Fees may be paid for the entire licensing period by paying at the rate established at the time the application was submitted, or~~

~~(b) If the licensee does not pay the fee for the entire license period, annual fees shall be due thirty days prior to each annual anniversary date of the license, at the annual fee rate established by these rules at the time such fee is paid.~~

~~(4) Except as otherwise provided in these rules, if an application is withdrawn prior to issuance or denial, one half of the fee shall be refunded.~~

~~(5) If there is a change of or by the licensee requiring a new license, the fee paid for a period beyond the next license anniversary date shall be refunded. Changes requiring a new license shall require a new application and payment of fee as provided herein.~~

~~(6) If there is a change by the applicant or licensee that requires an amendment placing the licensee in a higher fee category, the additional fee shall be prorated for the remainder of the license period.~~

~~(7) Fees becoming due on or after the effective date of this chapter shall be at the rates provided herein.~~

~~(8) To the extent fees are reduced through regular rule adoption of this chapter on or before December 31, 1982, fees shall be refunded.~~

~~(9) Fee payments shall be by mail. Payment shall be by check, draft, or money order.)~~ (1) The department does not process an application or continuation until the applicant or licensee, as applicable, has paid the required fee.

(2) Applicants or licensees can pay licensing fees for:

(a) A minimum of one year; or

(b) Multiple years.

(3) Applicants and licensees must pay their fees by mailing a check or money order for the required amount to the department.

(4) If there is a change in a facility that places the facility in a different fee category, the department prorates the additional fee amount over the remainder of the license period.

(5) If an applicant or licensee withdraws an application before the department denies or issues a license, the fee shall not be refunded.

AMENDATORY SECTION (Amending WSR 08-10-041, filed 4/30/08, effective 5/31/08)

WAC 170-295-0010 What definitions under this chapter apply to licensed child care providers? "American Indian child" means any unmarried person under the age of eighteen who is:

(1) A member or eligible for membership in a federally recognized Indian tribe, or who is Eskimo, Aleut, or other Alaska native and a member of an Alaskan native regional corporation or Alaska native village;

(2) Determined or eligible to be found Indian by the Secretary of the Interior, including through issuance of a certificate of degree of Indian blood, or by the Indian health service;

(3) Considered to be Indian by a federally recognized or nonfederally recognized Indian tribe; or

(4) A member or entitled to be a member of a Canadian tribe or band, Metis community, or nonstatus Indian community from Canada.

"Anti-bias" is an approach that works against biases and recognizes when others are treated unfairly or oppressively based on race, color, national origin, marital status, gender, sexual orientation, class, religion, creed, disability, or age.

"Capacity ~~((that you are licensed for))~~" means the maximum number of children that ~~((you are))~~ a licensee is authorized to have on the premises of the child care at any one time.

"Center" means the same as "child care center."

"Certification" means department approval of a person, home, or facility that does not legally need to be licensed, but wants evidence that they meet the minimum licensing requirements (also see "Tribal certification").

"Child abuse or neglect" means the physical abuse, sexual abuse, sexual exploitation, abandonment or negligent treatment or maltreatment of a child by any person indicating the child's health, welfare, and safety is harmed.

"Child-accessible" means areas where children regularly have access such as: Entrances and exits to and from the

center, classrooms or child care areas, playground area including equipment and fencing, parking areas, walkways, decks, platforms, stairs and any items available for children to use in these areas.

"Child care center" means the same as a **"child day care center"** or a facility providing regularly scheduled care for a group of children one month of age through twelve years of age for periods less than twenty-four hours.

"Clean" means to remove dirt and debris from a surface by scrubbing and washing with a detergent solution and rinsing with water. This process must be accomplished before sanitizing a surface.

"CACFP" means child and adult care food program established by congress and funded by the United States Department of Agriculture (USDA).

"Commercial kitchen equipment" means equipment designed for business purposes such as restaurants.

"Communicable disease" means a disease caused by a microorganism (bacterium, virus, fungus, or parasite) that can be transmitted from person to person via an infected body fluid or respiratory spray, with or without an intermediary agent (such as a louse, or mosquito) or environmental object (such as a table surface).

"Cultural relevancy" creates an environment that reflects home cultures, communities and lives of children enrolled in the program.

"Department," "we," "us," or "our" refers to and means the state department of early learning (DEL) and its predecessor agency the department of social and health services (DSHS).

"Developmentally appropriate practice":

(1) Means that the provider should interact with each child in a way that recognizes and respects the child's chronological and developmental age;

(2) Is based on knowledge about how children grow and learn; and

(3) Reflects the developmental level of the individual child, and interactions and activities must be planned with the needs of the individual child in mind.

"Director" means the person responsible for the overall management of the center's facility and operation, except that "DEL director" means the director of the department of early learning.

"Disinfect" means to eliminate virtually all germs from inanimate surfaces through the use of chemicals or physical agents.

"Domestic kitchen" means a kitchen equipped with residential appliances.

"External medication" means a medication that is not intended to be swallowed or injected but is to be applied to the external parts of the body, such as medicated ointments, lotions, or liquids applied to the skin or hair.

"I," "you," and "your" refer to and mean the licensee or applicant for a child care license.

"Inaccessible to children" means stored or maintained in a manner preventing children from reaching, entering, or using potentially hazardous items or areas. Examples include but are not limited to: Quantities of water, sharp objects, medications, chemicals, electricity, fire, mechanical equipment, entrapment or fall areas.

"Individual plan of care" means that the center's health policies and procedures do not cover the needs of the individual child so an individual plan is needed. Examples may include children with allergies, asthma, Down syndrome, tube feeding, diabetes care such as blood glucose monitoring, or nebulizer treatments.

"Infant" means a child one-month through eleven months of age.

"Lead teacher" means the person who is the lead child care staff person in charge of a child or group of children and implementing the activity program.

"License" means a permit issued by the department authorizing ~~((you))~~ a licensee by law to operate a child care center and certifying that ~~((you))~~ the licensee meets the minimum requirements under licensure.

"Licensee" or "you" means the person, organization, or legal entity responsible for operating the center.

"Maximum potential capacity based on square footage" is the maximum number of children ~~((you))~~ a licensee can be licensed for based on the amount of useable space (square footage) in ~~((you))~~ the licensee's center. ~~((you))~~ The licensee may be licensed for less than the maximum potential capacity. ~~((you))~~ A licensee may not be licensed for more than the maximum potential capacity.

"Moisture impervious" or "moisture resistant" means a surface incapable of being penetrated by water or liquids.

"Nonexpiring license" or "nonexpiring full license" means a full license that is issued to a licensee following the initial licensing period as provided in WAC 170-295-0095.

"Parent" means birth parent, custodial parent, foster parent, legal guardian, those authorized by the parent or other entity legally responsible for the welfare of the child.

"Pesticides" means chemicals that are used to kill weeds, pests, particularly insects.

"Potentially hazardous food" means any food or ingredient that requires temperature control because it supports rapid growth of infectious or toxin forming microorganisms.

"Potable water" means water suitable for drinking by the public as determined by the state department of health or local health jurisdiction.

"Premises" means the building where the center is located and the adjoining grounds over which ~~((you have))~~ the licensee has control.

"Preschool age child" means a child thirty months through five years of age not attending kindergarten or elementary school.

"Program supervisor" means the person responsible for planning and supervising the center's learning and activity program.

"Sanitize" means a surface must be clean and the number of germs reduced to a level that disease transmissions by that surface are unlikely. This procedure is less vigorous than disinfection.

"Satellite kitchen" means a food service establishment approved by a local health jurisdiction where food is stored, prepared, portioned or packaged for service elsewhere.

"School-age child" means a child not less than five years through twelve years of age who has begun attending kindergarten or elementary school.

"**Staff**" means a child care giver or group of child care givers employed by the licensee to supervise children served at the center who are authorized by DEL to care for or have unsupervised access to children under chapter 170-06 WAC.

"**Supervised access**" refers to those individuals at a child care center who have no responsibility for the operation of the center and do not have unsupervised access to children. These individuals are not required to submit a background check form. This includes those persons on the premises for "time limited" activities whose presence is supervised by a center employee and does not affect provider/child ratios or the normal activities or routine of the center. Examples include:

(1) A person hired to present an activity to the children in care such as a puppet show, cooking activity, and story telling;

(2) Parent participation as part of a special theme; or

(3) A relative visiting a child on the premises.

"**The Washington state training and registry system (STARS)**" means the entity approved by the department to determine the classes, courses, and workshops licensees and staff may take to satisfy training requirement.

"**Toddler**" means a child twelve months through twenty-nine months of age.

"**Terminal room cleaning**" means thorough cleaning of walls, ceiling, floor and all equipment, and disinfecting as necessary, in a room which has been used by a person having a communicable disease before it is occupied by another person.

"**Tribal certification**" means that the department has certified the tribe to receive state payment for children eligible to receive child care subsidies.

"**Unsupervised access**" refers to those individuals at a child care center who can be left alone with children in the child care center. These individuals must have received a full background authorization clearance under chapter 170-06 WAC.

"**Useable space**" means the areas that are available at all times for use by the children that do not cause a health or safety hazard.

AMENDATORY SECTION (Amending WSR 08-08-012, filed 3/19/08, effective 4/19/08)

WAC 170-295-0090 (~~When does the department issue~~) **Initial and nonexpiring full licenses**(~~, and when are~~)—**Licensing fees** (~~(due?)~~). ((We)) The department may issue an initial license to centers that have not yet begun providing care, but are accepting applications for potential clients.

(1) ((We)) The department may issue an initial license when ((you)) an applicant can show that ((you are)) he or she is following the rules regarding the child's health and safety.

(2) ((We)) The department may issue an initial license if ((you have)) an applicant has not yet opened for business, and so ((are)) is not yet able to show that ((you are)) he or she is complying with the rules pertaining to:

(a) Staff to child interactions;

(b) Group size and staff to child ratios;

(c) Behavior management and discipline;

(d) Activity programs;

(e) Child records and information; and

(f) Other rules that require us to observe ((you)) the facility's ability to comply with rules.

(3) ((You)) Applicants must provide ((us)) the department with a plan to comply with the rules listed in subsection (2)(a) through (f) of this section. ((We)) The department must approve of that plan.

(4) ((We)) The department may issue an initial license to an applicant for a period not to exceed six months, renewable for a period not to exceed two years.

(5) When ((you have)) a licensee has an initial license ((we:

(a) ~~Evaluate you~~) the department evaluates the licensee's ability to comply with all rules contained in this chapter prior to issuing a nonexpiring full license(;

(b) ~~May issue a full license to you when you have demonstrated compliance with chapter 170-295 WAC; and~~

(c) ~~Do not issue a full license to you if you do not demonstrate the ability to comply with all rules contained in chapter 170-295~~) under WAC 170-295-0095.

(6) ((You must pay licensing fees at the time you apply for an initial license and when your license is being renewed.

(7) ~~We do~~) The department may issue a nonexpiring full license to a licensee operating under an initial license who:

(a) Demonstrates full compliance with the health and safety requirements of this chapter at any time during the period of initial licensure;

(b) Demonstrates substantial compliance with the other requirements of this chapter at any time during the period of initial licensure; and

(c) Meets the requirements for a nonexpiring full license as provided in WAC 170-295-0095.

(7) The department must deny a nonexpiring full license to a licensee operating under an initial license who does not demonstrate the ability to comply with all rules contained in this chapter during the period of initial licensure.

(8) Fees are due with applications for initial licenses or continuations of a nonexpiring full license.

(9) The department does not process ((you)) an application or continuation until ((you have)) the applicant or licensee, as applicable, has paid the required fee.

((8) You) (10) Applicants or licensees can pay licensing fees for:

(a) A minimum of one year; or

(b) ((The entire length of your license.)) Multiple years.

((9) You pay your fee) (11) Applicants and licensees pay their fees by mailing a check or money order for the required amount to the department(~~, according to instructions on the licensing application.~~

(10) If you pay your fee one time per year, you pay the annual rate each time. The annual fee is due thirty days before each annual anniversary date of the license.

(11) If you pay for more than one year, the total fee you pay is based on the annual fee rate. For example, if you are licensed for three years and want to pay the licensing fee for the entire period at once, you multiply the annual fee by three years, and pay that amount at the time of your license application or renewal).

(12) If there is a change in ~~((your))~~ a facility that places ~~((your))~~ the facility in a ~~((higher))~~ different fee category, ~~((we))~~ the department prorates the additional fee amount over the remainder of the license period.

(13) If ~~((you))~~ an applicant or licensee withdraws ~~((your))~~ an application before ~~((we deny))~~ the department ~~denies~~ or issues a license, ~~((we refund one-half of))~~ the fee shall not be refunded.

~~((14) If there is a change that requires a new license, we refund any fee that remains after your next licensing date. A new license requires a new application and fee.~~

~~(15) If we deny, revoke, or suspend your license, we do not refund your licensing fee.~~

~~(16) If you reapply for a license after we revoke or suspend your license, you must pay a new license fee.~~

~~(17) If you do not pay licensing fees when they are due, we suspend or deny your license.))~~

NEW SECTION

WAC 170-295-0095 Nonexpiring full license. (1) To qualify for a nonexpiring full license, a licensee must submit the following to the department on an annual basis thirty days prior to the anniversary date of the license. The anniversary date is the date the licensee's first initial license was issued:

- (a) An annual nonrefundable licensing fee;
- (b) A declaration to the department on a department-approved form indicating:
 - (i) The intent to continue operating a licensed child care program; or
 - (ii) The intent to cease operation on a date certain;
- (c) A declaration on a department-approved form of compliance with all licensing rules; and
- (d) Documentation of completed background check applications as determined by the department-established schedule. As provided in RCW 43.215.215 (2)(f), as amended by chapter 295 (2SHB 1903), Laws of 2011, the schedule for submission of a background check application shall be once every three years. For each individual required to have a background check clearance, the licensee must verify current background checks or submit a background check application at least thirty days prior to the anniversary date.

(2) The requirements in subsection (1) of this section must be met:

- (a) Before a licensee operating under an initial license is issued a nonexpiring full license; and
 - (b) Every twelve months after issuance of a nonexpiring full license.
- (3) If a licensee fails to meet the requirements in subsection (1) of this section for continuation of a nonexpiring full license, the license expires and the licensee must submit a new application for licensure.
- (4) Nothing about the nonexpiring license process in this section may interfere with the department's established monitoring practice.

(5) A licensee has no right to an adjudicative proceeding (hearing) to appeal the expiration, nonrenewal, or noncontinuation of a full nonexpiring license as a result of the licensee's failure to comply with the requirements of this section.

AMENDATORY SECTION (Amending WSR 08-08-012, filed 3/19/08, effective 4/19/08)

WAC 170-295-0110 ~~((When can I be fined for not following the minimum licensing requirements?))~~ Civil fines. (1) ~~((We notify you))~~ The department notifies licensees in writing of ~~((our))~~ the department's intention to impose a civil fine. ~~((We))~~ The department may use personal service, ~~((including by our))~~ the department's licensor, or certified mail. The letter will include:

- (a) A description of the violation and a quote of the law or rule that ~~((you have))~~ the licensee has failed to meet;
- (b) A statement of what ~~((you))~~ the licensee must do to come into compliance;
- (c) The date by which ~~((we))~~ the department requires compliance;
- (d) Information about the maximum allowable penalty ~~((we))~~ the department can impose if ~~((you do))~~ the licensee does not come into compliance by the given date;
- (e) How ~~((you))~~ the licensee can get technical assistance services provided by ~~((us))~~ the department or by others; and
- (f) Information about how ~~((you))~~ the licensee can request an extension to the date ~~((you must))~~ to be in compliance, if ~~((we))~~ the department decides ~~((you have))~~ he or she has a good reason.

(2) The length of time ~~((we establish))~~ the department establishes for ~~((you))~~ the licensee to come into compliance depends on:

- (a) The seriousness of the violation;
- (b) The potential threat to the health, safety and welfare of children in ~~((your))~~ the licensee's care; or
- (c) If ~~((you have))~~ the licensee has had previous opportunities to correct the deficiency and ~~((have))~~ has not done so.

(3) ~~((We))~~ The department uses the following criteria to determine if ~~((we))~~ the department imposes a civil fine based on, but not limited to, these reasons:

- (a) The child care center has previously been subject to an enforcement action for the same or similar type of violation for the same statute or rule; or
- (b) The child care center has previously been given notice of the same or similar type of violation of the same law or rule; or
- (c) The violation represents a potential threat to the health, safety, and/or welfare of children in care.

(4) ~~((We can))~~ The department may impose a civil fine in addition to or at the same time as other disciplinary actions against a child care center. These include probation, suspension, or other action.

(5) ~~((You))~~ A licensee must pay any civil fines no more than twenty-eight days after ~~((you receive))~~ receiving the notice that ~~((you have))~~ he or she has a fine. ~~((We))~~ The department may specify a later date.

(6) ~~((We can))~~ The department may waive the fine if ~~((your))~~ the licensee's center comes into compliance during the notification period.

(7) ~~((You))~~ A licensee must post the final notice of a civil fine in a noticeable place in ~~((your))~~ his or her center. The notice must remain posted until ~~((we notify you))~~ the department notifies the licensee that ~~((we have))~~ the department has received ~~((your))~~ the payment.

(8) Each violation of a law or rule is a separate violation. ~~((We can))~~ The department may penalize each violation. ~~((We can))~~ The department may impose a penalty for each day the violation continues or as a flat amount of the maximum allowable penalty.

(9) If ~~((you))~~ a licensee fails to pay ~~((your))~~ a fine within ten days after the assessment becomes final, ~~((we can))~~ the department may suspend, revoke, or not ~~((renew your))~~ continue his or her license.

(10) ~~((You))~~ Licensees have the right to a hearing when ~~((we assess))~~ the department assesses a civil fine under RCW 43.215.307 and chapter 170-03 WAC.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-295-0140 ~~((When can the department issue a))~~ Probationary licenses ~~((to a child care center operator?))~~, (1) ~~((We can))~~ The department may issue a probationary license to ~~((you))~~ a licensee in accordance with the process provided in RCW 43.215.290, based on the following factors:

(a) ~~((Your))~~ The licensee's willful or negligent failure to comply with the regulations;

(b) ~~((Your))~~ The licensee's history of noncompliance with the regulations;

(c) How far ~~((you))~~ the licensee deviates from the regulations;

(d) Evidence of ~~((your))~~ the licensee's good faith effort to comply with the regulations; and

(e) Any other factors relevant to ~~((your))~~ the licensee's unique situation.

(2) ~~((We can))~~ The department may issue a probationary license to ~~((you))~~ a licensee when the willful or negligent violation of the licensing requirements does not present an immediate threat to the health and well being of the children, but would be likely to do so if allowed to continue. ~~((We can))~~ The department may also issue civil fines or other sanctions in this case. Such situations can include:

(a) Substantiation that a child was abused or neglected while in the care of the center;

(b) A fire safety inspection or health/sanitation inspection report that has been disapproved;

(c) Use of unauthorized space for child care;

(d) Inadequate supervision of children;

(e) Under staffing for the number of children in care; and

(f) Noncompliance with requirements addressing children's health, proper nutrition, discipline, emergency medical plan, sanitation and personal hygiene practices.

(3) ~~((You))~~ Licensees are required to notify parents when a probationary license is issued. ~~((You))~~ The licensee must:

(a) Notify in writing the parents or guardians of all children in care that the center is in probationary status. This notification must be within five working days of ~~((your))~~ receiving notification of being placed on probationary status or being issued a probationary license. ~~((We))~~ The department must approve the notification before ~~((you))~~ the licensee sends it; and

(b) Provide documentation to ~~((us))~~ the department that parents or guardians of all children in care have been notified.

~~((You))~~ The licensee must provide this documentation within ten working days of being notified that ~~((you have))~~ he or she has been issued a probationary license.

(4) A probationary license ~~((can))~~ may be issued for up to six months and ~~((can))~~ may be extended at ~~((our))~~ the department's discretion for an additional six months.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-295-7040 ~~((Am I required to keep licensing information available on site for parents to review?))~~ Facility records. ~~((You))~~ The licensee must keep a file on-site containing ~~((the following licensing information:~~

(1) ~~Copies of the most recent child care center checklists for licensing renewal and facility licensing compliance agreement for any deficiencies noted; and~~

(2) ~~copies of the most recent child care center(s) monitoring checklist and facility licensing compliance agreement for any deficiencies noted.~~

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-295-7080 ~~((What am I required to post in the center?))~~ Materials that must be posted. ~~((You))~~ Licensees must post the following items so that they are clearly visible to the parent and staff:

(1) The center's child care license issued under this chapter;

(2) A schedule of regular duty hours with the names of staff;

(3) A typical activity schedule, including operating hours and scheduled mealtimes;

(4) Meal and snack menus for the month;

(5) Fire safety record and evacuation plans and procedures, including a diagram of exiting routes;

(6) Emergency telephone numbers near the telephone;

(7) Nondiscrimination poster;

(8) For the staff, ~~((you))~~ the licensee must post:

(a) Dietary restrictions and nutrition requirements for particular children;

(b) Handwashing practices;

(c) Diaper changing procedures, if applicable;

(d) Disaster preparedness plan; and

(e) Center policies and procedures.

(9) ~~((You))~~ The licensee must post a notification advising parents that ~~((you are))~~ the licensee is required to keep ~~((the following licensing information available))~~ a file on-site for their review(~~:~~

~~(a) Copies of the most recent child care center checklist for licensing renewal and facility licensing compliance agreement for any deficiencies noted; and~~

~~(b))~~ containing copies of the most recent child care center~~(s)~~ monitoring checklist and facility licensing compliance agreement for any deficiencies noted.

WSR 12-02-079
PROPOSED RULES
DEPARTMENT OF
EARLY LEARNING

[Filed January 4, 2012, 11:08 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-12-076.

Title of Rule and Other Identifying Information: The department of early learning (DEL) is proposing amended WAC 170-151-0070 and 170-295-0060 to implement subsection 617(2) of 2ESHB 1087 (chapter 50, Laws of 2011 1st sp. sess.), the 2011-2013 state operating appropriations bill, directing DEL to raise annual license fees for DEL-licensed child care agencies.

Child care license fees are deposited into the state general fund and are not retained by DEL.

Hearing Location(s): DEL, Tumwater Office, Nisqually Room, 6860 Capitol Boulevard S.E., Building 2, Tumwater, WA 98501, on Tuesday, February 7, 2012, at 6:00 p.m.; and at the Northeast Washington Educational Services District 101, 4202 South Regal, Spokane, WA 99223, on Saturday, February 11, 2012, at 11:00 a.m.

Individuals may arrive after the posted start time and still participate in these hearing[s]. However, the presiding officer may close the hearing if there are no public participants in attendance, or after all persons who indicated they wish to testify have done so. The public is encouraged to give input in writing.

The deadline for sending written comments on the proposed rules is midnight on Monday, February 13, 2012. See the "Submit Written Comments to" section of this notice about how to submit written input on this proposal.

DEL encourages the public to use of the department Facebook and DEL blog pages on the internet to post input about DEL programs and initiatives. However, for a written comment to be considered part of the official record for this proposal, the comment must be received at the on-line, e-mail, fax or postal mail locations as described in this notice under "Submit Written Comments to."

Everyone who comments on the proposed rules either in writing as provided in this notice or at a public hearing will receive the department's combined written response, called a *concise explanatory statement*. This statement is also available to anyone who requests it, by writing to the DEL Rules Coordinator, P.O. Box 40970, Olympia, WA 98504-0970, or by e-mailing Rules@del.wa.gov.

Date of Intended Adoption: Not earlier than February 14, 2012.

Submit Written Comments to: DEL, Rules Coordinator, P.O. Box 40970, Olympia, WA 98504-0970, on-line at <https://apps.del.wa.gov/PolicyProposalComment/Detail.aspx>, e-mail Rules@del.wa.gov, fax (360) 413-3482, by February 13, 2012.

Assistance for Persons with Disabilities: Contact the DEL rules coordinator by February 2, 2012, (360) 725-4424.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The 2011 legislature adopted a series of spending reductions and revenue generating measures to help the state avoid a projected \$5.1 bil-

lion budget deficit in the 2011-2013 biennium. Among the measures enacted, the legislature identified anticipated revenue of nearly \$1 million in the biennium by directing DEL to raise annual license fees for child care center and family home child care licensees. See Appendix B in the 2011-13 Operating Budget Overview, 2ESHB 1087 published by the senate ways and means committee.

Subsection 617(2) of ESHB [2ESHB] 1087 states: "(2) *In accordance with RCW 43.215.255(2) and 43.135.055, the department is authorized to increase child care center and family home licensure fees in fiscal years 2012 and 2013 for costs to the department for the licensure activity, including costs of necessary inspection. These increases are necessary to support expenditures authorized in this section.*"

The proposed rules raise the base license fee for DEL-licensed child care centers and school-age center programs by twenty-five percent. Centers also pay a per-child fee for each child above the first twelve children - these fees are raised by fifty percent. To summarize:

- Base fee: Increased to \$125 (previously \$100) for the first twelve children in care; plus
- Per child fee: Increased to \$12 (previously \$8) per child after the first twelve children, up to the center's maximum capacity stated on its license.

Child care centers may be licensed for any number of children up to the safe capacity of the facility - some centers are licensed by DEL for more than two hundred fifty children.

The new license fee rates for child care centers and school-age center programs has been in effect by emergency rule since July 1, 2011, see rules filed as WSR 11-13-077 and 11-21-021. This proposal is to adopt the new fee amounts as permanent rules.

Family home child care licensees were increased by twenty-five percent to \$30 (from the previous \$24) in emergency rules filed as WSR 11-13-077 and 11-21-021, and in permanent rules filed as WSR 11-23-068 (effective March 31, 2012) implementing section 617(2) of 2ESHB 1087. This was the first increase for family home child care license fees since 1982. Family home providers do not pay a per-child fee.

Proposal of this rule is consistent with state office of financial management guidance regarding implementation of Executive Order 10-06 suspending noncritical rule making (extended by Executive Order 11-03), but allowing rules to proceed that are:

"... necessary to manage budget shortfalls, maintain fund solvency, or for revenue generating activities."

The legislature stated in 2ESHB 1087 that the child care license fee increases are necessary to support the expenditures authorized in the bill. These license fees are deposited to the state general fund and are not retained by DEL.

Reasons Supporting Proposal: RCW 43.215.255 states, in part: "(1) *The director shall charge fees to the licensee for obtaining a license ... (3) The director shall establish the fees charged by rule.*" DEL must adopt rules to set or revise fees for obtaining a child care license to comply with the proviso in section 617(2) of ESHB [2ESHB] 1087.

Statutory Authority for Adoption: RCW 43.215.070 and 43.215.060; chapter 43.215 RCW.

Statute Being Implemented: Section 617(2) of chapter 50, Laws of 2011 1st sp. sess.; RCW 43.215.255.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The proposed rules apply to DEL child care centers and school-age center programs. Rules for licensed family home child care agencies implementing section 617(2) of 2ESHB 1087 were adopted in new chapter 170-296A WAC filed for permanent adoption as WSR 11-23-068.

Name of Proponent: DEL, governmental.

Name of Agency Personnel Responsible for Drafting: Lynne Shanafelt, Licensing Adminis., DEL State Office, P.O. Box 40970, Olympia, WA 98504, (360) 725-2829; Implementation and Enforcement: DEL licensing offices, statewide.

No small business economic impact statement has been prepared under chapter 19.85 RCW. This proposal raises child care license fees as directed by the 2011 legislature. The legislature stated that the license fee increase in section 617(2) of 2ESHB 1087 is necessary to support expenditures authorized in the bill.

A cost-benefit analysis is not required under RCW 34.05.328. DEL is not among the agencies listed as required to comply with RCW 34.05.328.

January 4, 2012
Elizabeth M. Hyde
Director

AMENDATORY SECTION (Amending WSR 10-24-016, filed 11/19/10, effective 12/20/10)

WAC 170-151-070 How do I apply or reapply for a license? (1) You must comply with the department's application procedures and submit to the department:

(a) A completed department-supplied application for school-age child care center license, including attachments, ninety or more days before the:

- (i) Expiration of your current license;
- (ii) Opening date of your center;
- (iii) Relocation of your center; or
- (iv) Change of the licensee.

(b) A completed background check form for each staff person or volunteer having unsupervised or regular access to the child in care; and

(c) The annual licensing fee is:

(i) ~~((For new licenses issued by the department before July 1, 2010, or for licensees whose annual licensing fees are due before July 1, 2010, forty-eight dollars per year for the first twelve children plus four dollars for each additional child over the licensed capacity of twelve children; or~~

~~(ii))~~ For new licenses issued ~~((after June 30, 2010))~~ before July 1, 2011, or for licensees whose annual licensing fees are due ~~((after June 30, 2010))~~ before July 1, 2011, one hundred dollars per year for the first twelve children plus eight dollars for each additional child over the licensed capacity of twelve children; or

(ii) For new licenses issued after June 30, 2011, or for licensees whose annual licensing fees are due after June 30, 2011, one hundred twenty-five dollars per year for the first twelve children, plus twelve dollars per year for each additional child over the licensed capacity of twelve children.

(2) In addition to the required application materials specified under subsection (1) of this section, you must submit to the department:

(a) An employment and education resume of the person responsible for the active management of the center and of the site coordinator;

(b) Copies of diplomas or education transcripts of the director and site coordinator; and

(c) Three professional references each for you, the director, and the site coordinator.

(3) You, as the applicant for a license under this chapter must be twenty-one years of age or older.

(4) You must conform to rules and regulations approved or adopted by the:

(a) State department of health and relating to the health care of children at school-age child care centers;

(b) State fire marshal's office, establishing standards for fire prevention and protection of life and property from fire, under chapter 212-12 WAC.

(5) The department must not issue a license to you until the state fire marshal's office has certified or inspected and approved the center.

(6) The department may exempt a school site possessing a fire safety certification signed by the local fire official within six months prior to licensure from the requirement to receive an additional fire safety inspection by the state fire marshal's office.

(7) You must submit a completed plan of deficiency correction, when required, to the department of health and the department licensor before the department will issue you a license.

(8) You, your director and site coordinator must attend department-provided orientation training.

AMENDATORY SECTION (Amending WSR 10-24-016, filed 11/19/10, effective 12/20/10)

WAC 170-295-0060 What are the requirements for applying for a license to operate a child care center? (1) To apply or reapply for a license to operate a child care center you must:

(a) Be twenty-one years of age or older;

(b) The applicant, director and program supervisor must attend the orientation programs that we provide, arrange or approve;

(c) Submit to us a completed and signed application for a child care center license or certification using our forms (with required attachments).

(2) The application package must include the following attachments:

(a) The annual licensing fee. The fee is based on your licensed capacity, and is:

(i) ~~((For new licenses issued by the department before July 1, 2010, or for licensees whose annual licensing fees are due before July 1, 2010, forty-eight dollars for the first twelve~~

~~children plus four dollars for each additional child over the licensed capacity of twelve children; or~~

~~((ii)) For new licenses issued ((after June 30, 2010)) before July 1, 2011, or for ((licenses)) licensees whose annual license fees are due ((after June 30, 2010)) before July 1, 2011, one hundred dollars per year for the first twelve children plus eight dollars for each additional child over the licensed capacity of twelve children; or~~

~~((ii) For new licenses issued after June 30, 2011, or for licensees whose annual license fees are due after June 30, 2011, one hundred twenty-five dollars per year for the first twelve children, plus twelve dollars for each additional child over the licensed capacity of twelve children;~~

(b) If the center is solely owned by you, a copy of your:

(i) Photo identification issued by a government entity; and

(ii) Social Security card that is valid for employment or verification of your employer identification number((-);

(c) If the center is owned by a corporation, verification of the corporation's employer identification number;

(d) An employment and education resume for:

(i) The person responsible for the active management of the center; and

(ii) The program supervisor((-);

(e) Diploma or education transcript copies of the program supervisor;

(f) Three professional references each, for yourself, the director, and the program supervisor;

(g) Articles of incorporation if you choose to be incorporated;

(h) List of staff (form is provided in the application);

(i) Written parent communication (child care handbook);

(j) Copy of transportation insurance policy (liability and medical);

(k) In-service training program (for facilities employing more than five persons);

(l) A floor plan of the facility drawn to scale;

(m) A copy of your health care plan reviewed and signed by an advisory physician, physician's assistant, or registered nurse;

(n) A copy of your policies and procedures that you give to parents; and

(o) A copy of your occupancy permit.

(3) You must submit to the department a completed background check form for all persons required to be authorized by DEL to care for or have unsupervised access to the children in care under chapter 170-06 WAC; and

(4) You must submit your application and reapplication ninety or more calendar days before the date:

(a) You expect to open your new center;

(b) Your current license is scheduled to expire;

(c) You expect to relocate your center;

(d) You expect to change licensee; or

(e) You expect a change in your license category.

WSR 12-02-080

PROPOSED RULES

DEPARTMENT OF EARLY LEARNING

[Filed January 4, 2012, 11:10 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-12-076.

Title of Rule and Other Identifying Information: The department of early learning (DEL) is proposing amended sections in chapters 170-151 and 170-295 WAC consistent with SSB 5504 (chapter 296, Laws of 2011) regarding unlicensed child care and civil penalties (fines).

Hearing Location(s): DEL, Tumwater Office, Nisqually Room, 6860 Capitol Boulevard S.E., Building 2, Tumwater, WA 98501, on Tuesday, February 7, 2012, at 6:00 p.m.; and at the Northeast Washington Educational Services District 101, 4202 South Regal, Spokane, WA 99223, on Saturday, February 11, 2012, at 11:00 a.m.

Individuals may arrive after the posted start time and still participate in these hearing[s]. However, the presiding officer may close the hearing if there are no public participants in attendance, or after all persons who indicated they wish to testify have done so. The public is encouraged to give input in writing.

The deadline for sending written comments on the proposed rules is midnight on Monday, February 13, 2012. See the "Submit Written Comments to" section of this notice about how to submit written input on this proposal.

DEL encourages the public to use of the department Facebook and DEL blog pages on the internet to post input about DEL programs and initiatives. However, for a written comment to be considered part of the official record for this proposal, the comment must be received at the on-line, e-mail, fax or postal mail locations as described in this notice under "Submit Written Comments to."

Everyone who comments on the proposed rules either in writing as provided in this notice or at a public hearing will receive the department's combined written response, called a *concise explanatory statement*. This statement is also available to anyone who requests it, by writing to the DEL Rules Coordinator, P.O. Box 40970, Olympia, WA 98504-0970, or by e-mailing Rules@del.wa.gov.

Date of Intended Adoption: Not earlier than February 14, 2012.

Submit Written Comments to: DEL, Rules Coordinator, P.O. Box 40970, Olympia, WA 98504-0970, on-line at <https://apps.del.wa.gov/PolicyProposalComment/Detail.aspx>, e-mail Rules@del.wa.gov, fax (360) 413-3482, by February 13, 2012.

Assistance for Persons with Disabilities: Contact DEL rules coordinator by February 2, 2012, (360) 725-4424.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: SB 5504 increases the maximum civil fine that may be assessed by DEL for a child care agency that violates chapter 43.215 RCW or rules adopted under this law, or when an individual or entity is suspected of providing child care without a license (unlicensed care), when a license is required by law. SB 5504 also changed the content of the notice DEL must give

an individual or entity suspected of providing unlicensed care, and other actions the department may take to let the public know about agencies providing unlicensed care.

The provision of unlicensed child care is a significant public health, safety and welfare concern. The legislature in chapter 43.215 RCW defines the types of child care agencies that must be licensed. Without licensing oversight, unlicensed child care operators may:

- Be caring for children without adequate monitoring;
- Not have had their facilities inspected for health and safety, particularly for fire safety and emergency evacuation of infants and other children who cannot walk;
- Be caring for more children than would be safe, even if the facility was licensed;
- Not be providing adequate early learning or developmental activities;
- Not have staff with adequate child care or child development training; and/or
- Not have done background checks on individuals caring for or having access to the children.

The legislature established DEL in part to "safeguard and promote the health, safety and well-being of children receiving child care and early learning assistance, which is paramount over the right of any person to provide care ..." RCW 43.215.005 (4)(c). These rules are needed to provide the tools for the department to address suspected unlicensed child care, as well as to protect the safety, health and well being of children who may be in unlicensed child care.

Proceeding with these rules is consistent with state office of financial management guidance regarding Executive Order 10-06 suspending noncritical rule making, but allowing rules to proceed that are,

- *"Required by federal or state law or required to maintain federally delegated or authorized programs," or*
- *"Necessary to protect public health, safety, and welfare or necessary to avoid an immediate threat to the state's natural resources."*

Revising these rules is necessary to comply with the revised state law, and to protect the health, safety and welfare of children being cared for in suspected unlicensed and unmonitored child care environments.

Reasons Supporting Proposal: The rules must be consistent with current law to avoid confusion in the amount of civil fines that may be levied and the notice requirements regarding suspected unlicensed child care. Amending the rules is expected to prevent errors in administrative or judicial proceedings regarding appeals of DEL enforcement actions regarding unlicensed child care or enforcement actions that include assessment of a civil fine.

Statutory Authority for Adoption: RCW 43.215.070 and 43.215.060; chapter 43.215 RCW.

Statute Being Implemented: Chapter 43.215 RCW as amended by chapter 296, Laws of 2011.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: The proposed rules apply to DEL child care centers and school-age center programs. Rules implementing SSB 5504 for licensed family home child care agencies were adopted in new chapter 170-296A WAC, Licensed family home child care standards, filed for permanent adoption as WSR 11-23-068 and effective March 31, 2012. DEL has filed emergency rules implementing SSB 5504, WSR 11-24-025. The department intends to adopt the emergency rules as permanent.

Name of Proponent: DEL, governmental.

Name of Agency Personnel Responsible for Drafting: Lynne Shanafelt, Licensing Adminis., DEL State Office, P.O. Box 40970, Olympia, WA 98504, (360) 725-2829; Implementation and Enforcement: DEL licensing offices, statewide.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The maximum civil fine amounts in the proposed rules are prescribed by law. The law and DEL rules provide for decreasing or withdrawing a civil fine if a licensee, or an individual or entity suspected of providing unlicensed child care, comes into compliance before an assessed civil fine takes effect. The proposed rules are not expected to create new costs for businesses - other than costs prescribed by law - that would require preparation of a small business economic impact statement.

A cost-benefit analysis is not required under RCW 34.05.328. DEL is not among the agencies listed as required to comply with RCW 34.05.328.

January 4, 2012

Elizabeth M. Hyde

Director

AMENDATORY SECTION (Amending WSR 08-08-012, filed 3/19/08, effective 4/19/08)

WAC 170-151-095 May the department assess civil penalties on unlicensed programs? ~~(1) If the department receives information that a school-age program is operating without a license, the department will investigate. ((The department may contact the program, send a letter, or make an on-site visit to determine that the agency is operating without a license. Where the department has determined that an agency is operating without a license, the department must send written notification to the unlicensed program by certified mail or other means showing proof of service. This notification must contain the following:~~

~~(1) Notice to the agency of the basis for the department's determination that the agency is providing child care without a license and the need for the department to license the agency;~~

~~(2) The citation of the applicable law;~~

~~(3) The assessment of seventy five dollars per day penalty for each day the agency provides unlicensed care. The department makes the fine effective and payable within thirty days of the agency's receipt of the notification;~~

~~(4) How to contact the department;~~

~~(5) The unlicensed agency's need to submit an application to the department within thirty days of receipt of the department's notification;~~

~~(6) That the department may forgive the penalty if the agency submits an application within thirty days of the notification; and~~

~~(7) The unlicensed agency's right to an adjudicative proceeding as a result of the assessment of a monetary penalty and the appropriate procedure for requesting an adjudicative proceeding-))~~ (2) If the department suspects that an individual is providing unlicensed child care, the department will send the individual written notice within ten calendar days to explain:

(a) Why the department suspects that the individual is providing child care without a license;

(b) That a license is required and why;

(c) That the individual must immediately stop providing child care;

(d) That if the individual seeks to obtain a license, within thirty calendar days from the date of the department's notice in this subsection, the individual must submit a written agreement on a department form stating that he or she agrees to:

(i) Attend the next available department child care licensing orientation; and

(ii) Submit a child care licensing application after completing orientation; and

(e) That the department has the authority to issue a fine of two hundred fifty dollars per day for each day that the individual continues to provide child care without a license.

(3) The department's written notice in subsection (2) of this section must inform the individual providing unlicensed child care:

(a) How to respond to the department;

(b) How to apply for a license;

(c) How a fine, if issued, may be suspended or withdrawn;

(d) That the individual has a right to request an adjudicative proceeding (hearing) if a fine is assessed; and

(e) How to ask for a hearing.

(4) If an individual providing unlicensed child care does not submit an agreement to obtain a license as provided in subsection (2)(d) of this section within thirty calendar days from the date of the department's written notice, the department will post information on its web site that the individual is providing child care without a license.

AMENDATORY SECTION (Amending WSR 08-08-012, filed 3/19/08, effective 4/19/08)

WAC 170-295-0130 When can ((F)) an individual be fined for operating an unlicensed program? (1) If ((we)) the department receives information that ((you are)) an individual is operating a child care center without a license, ((we)) the department investigates the allegation.

~~(2) ((We contact you, send you a letter, or make an on-site visit to your center to determine whether you are operating without a license.~~

~~(3) If we determine that you personally or on behalf of another person are operating a child care center without a license, we send written notification by certified mail or other~~

~~method showing proof of service to the owner of the unlicensed center. This notification must contain the following:~~

~~(a) Notice to the center owner of our basis for determination that the owner is providing child care without a license and the need for us to license the center;~~

~~(b) Citation of the applicable law;~~

~~(c) The fine is effective and payable within thirty days of the agency's receipt of the notification;~~

~~(d) Information about how to contact the department;~~

~~(e) The requirement that the unlicensed center owner submit an application for a license to the department within thirty days of receipt of our notification;~~

~~(f) That we can forgive the fine if the center submits an application within thirty days of the notification; and~~

~~(g) The unlicensed center owner's right to an adjudicative proceeding (fair hearing) as a result of the assessment of a monetary fine and how to request an adjudicative proceeding-))~~ If the department suspects that an individual is providing unlicensed child care, the department will send the individual written notice within ten calendar days to explain:

(a) Why the department suspects that the individual is providing child care without a license;

(b) That a license is required and why;

(c) That the individual must immediately stop providing child care;

(d) That if the individual seeks to obtain a license, within thirty calendar days from the date of the department's notice in this subsection, the individual must submit a written agreement on a department form stating that he or she agrees to:

(i) Attend the next available department child care licensing orientation; and

(ii) Submit a child care licensing application after completing orientation; and

(e) That the department has the authority to issue a fine of two hundred fifty dollars per day for each day that the individual continues to provide child care without a license.

(3) The department's written notice in subsection (2) of this section must inform the individual providing unlicensed child care:

(a) How to respond to the department;

(b) How to apply for a license;

(c) How a fine, if issued, may be suspended or withdrawn;

(d) That the individual has a right to request an adjudicative proceeding (hearing) if a fine is assessed; and

(e) How to ask for a hearing.

(4) If an individual providing unlicensed child care does not submit an agreement to obtain a license as provided in subsection (2)(d) of this section within thirty calendar days from the date of the department's written notice, the department will post information on its web site that the individual is providing child care without a license.

WSR 12-02-081
PROPOSED RULES
DEPARTMENT OF
EARLY LEARNING

[Filed January 4, 2012, 11:12 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 09-18-055.

Title of Rule and Other Identifying Information: Public disclosure of department of early learning (DEL) records. Adopting a new chapter of Title 170 WAC.

Hearing Location(s): DEL, Tumwater Office, Nisqually Room, 6860 Capitol Boulevard S.E., Building 2, Tumwater, WA 98501, on Tuesday, February 7, 2012, at 6:00 p.m.; and at the Northeast Washington Educational Services District 101, 4202 South Regal, Spokane, WA 99223, on Saturday, February 11, 2012, at 11:00 a.m.

Individuals may arrive after the posted start time and still participate in these hearing[s]. However, the presiding officer may close the hearing if there are no public participants in attendance, or after all persons who indicated they wish to testify have done so. The public is encouraged to give input in writing.

The deadline for sending written comments on the proposed rules is midnight on Monday, February 13, 2012. See the "Submit Written Comments to" section of this notice about how to submit written input on this proposal.

DEL encourages the public to use of the department Facebook and DEL blog pages on the internet to post input about DEL programs and initiatives. However, for a written comment to be considered part of the official record for this proposal, the comment must be received at the on-line, e-mail, fax or postal mail locations as described in this notice under "Submit Written Comments to."

Everyone who comments on the proposed rules either in writing as provided in this notice or at a public hearing will receive the department's combined written response, called a *concise explanatory statement*. This statement is also available to anyone who requests it, by writing to the DEL Rules Coordinator, P.O. Box 40970, Olympia, WA 98504-0970 or by e-mailing Rules@del.wa.gov.

Date of Intended Adoption: Not earlier than February 14, 2012.

Submit Written Comments to: DEL, Rules Coordinator, P.O. Box 40970, Olympia, WA 98504-0970, on-line at <https://apps.del.wa.gov/PolicyProposalComment/Detail.aspx>, e-mail Rules@del.wa.gov, fax (360) 413-3482, by February 13, 2012.

Assistance for Persons with Disabilities: Contact DEL rules coordinator by February 2, 2012, (360) 725-4424.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: To adopt new public disclosure rules and related rules as they pertain to DEL, describe DEL's organization (as required by RCW 42.56.040) and help give the public information about requesting DEL records.

Reasons Supporting Proposal: These proposed rules simplify and give clarity to the public disclosure process.

Statutory Authority for Adoption: RCW 42.56.040, 43.215.070, and chapter 43.215 RCW.

Statute Being Implemented: RCW 42.56.040.

Rule is not necessitated by federal law, federal or state court decision.

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: DEL records disclosure impacts the entire agency. Currently, DEL uses the attorney general's model rules as guidance. However, as mentioned in this WAC, the model rules were created as guidance and because state agencies vary in size, resources and the complexity of the requests they receive, a "one-size-fits-all" approach may not be suitable to the respectable agencies. What is laid out in the model rules might very well work for one agency, but not for DEL. These rules give DEL the opportunity to make an easier, more streamlined process for requesters.

Name of Proponent: DEL, governmental.

Name of Agency Personnel Responsible for Drafting: C. Brandon Chapman, Communications, DEL State Office, P.O. Box 40970, Olympia, WA 98504, (360) 725-4385; Implementation: Public Records Officer, DEL State Office, P.O. Box 40970, Olympia, WA 98504; and Enforcement: Communications Manager, DEL State Office, P.O. Box 40970, Olympia, WA 98504.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The proposed rules are not expected to impose new costs on businesses that choose to request records from DEL. If the rules result in costs, those costs are not expected to be "more than minor" as defined in chapter 19.85 RCW.

A cost-benefit analysis is not required under RCW 34.05.328. DEL is not among the agencies listed as required to comply with RCW 34.05.328.

January 4, 2012
 Elizabeth M. Hyde
 Director

Chapter 170-01 WAC

DISCLOSURE OF PUBLIC RECORDS

NEW SECTION

WAC 170-01-0010 Purpose. The purpose of this chapter is to provide rules for the department of early learning to implement the Public Records Act, chapter 42.56 RCW.

NEW SECTION

WAC 170-01-0020 Definitions. The definitions set forth in chapter 42.56 RCW shall apply to this chapter. Additional definitions not listed in the Public Records Act are listed in this section, except as provided in this section.

"DEL" or "department" means the department of early learning. Where appropriate, DEL also may refer to the officials and employees of the department of early learning.

"Disclosure" means inspection and/or copying of public records, unless the record is exempt from disclosure by law.

"Public records" includes anything prepared, owned, used or retained by the agency and can include agency publications, on-line information posted on internet sites owned or

controlled by the agency, child care career and wage ladder information, ECEAP records, subsidy information, grants, requests for proposals and contract information, documents contained in licensing files, interagency communication including service level agreements and memorandums of understanding, e-mails, letters, memos, licensing complaint reports in CAMIS/FAMLINK, service episode records, records held by contractors if they related to agency's function or action, certain electronic records, and other records not readily available to the public such as old manuals or training materials. These records can be written, recorded or electronic.

To be a public record, a document must relate to the "conduct of government or the performance of any governmental or proprietary function." RCW 42.17.020(41). Almost all records held by an agency relate to the conduct of government; however, some do not. A purely personal record having no relation to the conduct of government is not a "public record." While the contents of the personal record might not be a public record, a transaction of the record itself may be.

"Public records officer" means the designated person for the department who oversees all records requests. This person is identified in the Washington state register.

"Redact" means to edit from a released record information that is exempt from disclosure to the public, by covering over the information with black ink or other method without deleting the information from the original record.

NEW SECTION

WAC 170-01-0030 Description of the department of early learning. (1) DEL was formed in July 2006 under chapter 265, Laws of 2006 to bring together child care and early learning programs previously under the departments of social and health services and commerce, as well as the state office of public instruction.

(2) The department was established to oversee child care licensing and early childhood learning programs and initiatives.

(3) The administrative office of the department of early learning is located in Lacey, Washington. To request any information, contact: P.O. Box 40970, Olympia, WA 98504-0970, or call toll free 1-866-482-4325.

(4) Field offices exist in Aberdeen, Bellevue, Bellingham, Bremerton, Everett, Kennewick, Kelso, Kent, Mount Vernon, Othello, Port Angeles, Seattle, Spokane, Tacoma, Tumwater, Vancouver, Wenatchee, and Yakima.

NEW SECTION

WAC 170-01-0040 Public records officer. DEL's director will appoint a public records officer (PRO) whose responsibility is to serve as a "point of contact" for members of the public seeking public records. DEL will provide the public records officer's name and contact information by publishing it in the state register. DEL will also provide the public records officer's contact information on the department web site.

A request may be fulfilled by the PRO, or other DEL staff designated by the PRO.

NEW SECTION

WAC 170-01-0050 Records index. (1) The department keeps an index (list) of the following documents:

(a) Rules adopted by DEL under chapter 34.05 RCW.

(b) Substantive final orders issued by the department in adjudicative proceedings under chapter 34.05 RCW and chapter 170-03 WAC.

(c) Interpretive and policy statements filed by the department under chapter 34.05 RCW.

(2) The department finds that it would be unduly burdensome and would interfere with agency operations to maintain an index of other records because of the complexity and diversity of its operations and the resulting volume of manuals, correspondence, electronic data and constituent records.

(3) The department will make available for public disclosure all indices if at a future time they are developed for agency use.

NEW SECTION

WAC 170-01-0100 Availability of public records. Public records are available for inspection and copying during DEL's normal business hours, Monday through Friday, 8 a.m. to 5 p.m., excluding legal holidays. A department staff person must be present at all times when a record is being inspected. Appointments are not required but significantly help DEL provide prompt and efficient service. Some DEL records may be stored in other locations, in computer storage systems, or the state records warehouse, and may take time for DEL to identify and gather them. Other records may be exempt from disclosure. Original records cannot be removed from a DEL building. If required by law, DEL must redact information in a record before making it available for inspection. DEL staff will make copies of records on request.

NEW SECTION

WAC 170-01-0110 Organization of records. DEL will maintain its records in an organized manner and will take reasonable actions to protect records from damage and disorganization. Records available on the DEL web site at www.del.wa.gov are available to the public without a records request, and the department does not copy those records. Requestors are encouraged to view the documents available on the web site prior to submitting a records request.

NEW SECTION

WAC 170-01-0120 How to make a public records request. (1) Public records requests should be made directly to the DEL public records officer.

(2) Public records requests may be made verbally or in writing.

(a) Written requests may be sent by e-mail to public.records@del.wa.gov, by fax to 360-413-3482 or mail. Requests may be delivered to: Department of Early Learning, 649 Woodland Square Loop S.E., Lacey, WA 98503.

(b) DEL's public records request form is on its web site.

(c) A written request without using the DEL public records request form should contain:

- (i) Name of requestor;
- (ii) Address of requestor;
- (iii) Other contact information, including telephone number and any e-mail address;
- (iv) The date on which the request was made;
- (v) A sufficient description of the record requested; and
- (vi) If the information being requested may include a list of individuals or businesses, a statement that the list will not be used for commercial purposes, which is prohibited by law.

NEW SECTION

WAC 170-01-0200 How DEL responds to your public records request. Within five business days after receiving the request, DEL will either:

- (1) Provide the record(s);
- (2) Acknowledge the request and give a reasonable time estimate of how long the department will take to provide records;
- (3) Contact the requestor to clarify the request if it isn't understood by the public records officer; or
- (4) Deny all or part of the request in writing, with reasons for the denial. The explanation will include the law that DEL relied upon in its denial.

At his or her discretion, the public records officer may send the request records by e-mail, fax, postal mail, or commercial delivery. The records may be delivered on paper, computer or compact discs, or other methods.

NEW SECTION

WAC 170-01-0210 What DEL considers a reasonable time estimate. DEL will roughly calculate the time it will take to fill the request. There is no standard amount of time for fulfilling a request, so reasonable estimates may vary. The estimates are based upon:

- (1) The size of the record requested. A large request generally will take more time than a small request.
- (2) The location or locations where requested records may be. Records may be stored at different DEL offices, or at state records storage facilities.
- (3) The case load of the person filling the request. While providing public records is an essential function of the agency, it is not required to abandon its other, nonpublic records functions.

Example: A child care licensor who fills the request must work the public records request around their other duties monitoring and licensing facilities.

NEW SECTION

WAC 170-01-0220 Reasons for DEL extending the time needed to fill a public records request. DEL may need to extend the time needed to fill a public records request beyond the five days in order to:

- (1) Locate and gather the information requested;
- (2) Notify an individual or organization affected by the request, and to give them an opportunity to object if allowed by law;

(3) Determine whether: The information requested is exempt from disclosure; all or part of the request can be released; portions of the record must be redacted; or

(4) Wait for response after DEL has already contacted the requestor to clarify the intent, scope or specifics of the request. For example, if a request is objectively unclear, DEL will attempt to clarify. If the requestor fails to clarify the request within thirty days of the agency's request, the agency may consider the request abandoned. If the agency considers the request abandoned, it will send a closing letter to the requestor.

DEL will notify the requestor in writing if an extension is needed.

NEW SECTION

WAC 170-01-0230 Reasons for DEL denying disclosure of all or part of a record. RCW 42.56.030 states that the Public Records Act "shall be liberally construed and its exemptions narrowly construed." DEL will provide all records required by law. However, there are times when all or part of a record request would be denied, such as when:

- (1) The record is exempt from disclosure by law.
- (2) The request is for lists of individuals for commercial purposes, including family home providers.
- (3) The requestor has not asked for an identifiable record. The Public Records Act requires access to existing, identifiable public records in an agency's possession at the time of the request.
- (4) The request requires DEL to collect or organize data to create a public record, or to give data that did not exist at the time of the public records request.

NEW SECTION

WAC 170-01-0240 Types of records that may be exempt from disclosure. With any public records request, disclosure must occur unless a specific exemption exists in statute that would allow for DEL to not disclose the record or the information within a record.

DEL is always prohibited by statute from disclosing lists of individuals, including family home providers, for commercial purposes.

The Public Records Act lists exemptions or allows for "other statute" exemptions. Requestors should be aware of the following exemptions, outside the Public Records Act, that restrict the availability of some documents held by DEL, for inspection and copying: For example, RCW 5.60.060(2) restricts privileged attorney-client communications between DEL staff and the office of the attorney general.

NEW SECTION

WAC 170-01-0250 If the public record requested is exempt from disclosure. If DEL determines that a record is exempt from disclosure, you will be informed in writing of the specific exemption authorizing DEL to withhold the record.

NEW SECTION

WAC 170-01-0260 If only part of the record requested is exempt from disclosure. DEL may redact (see WAC 170-01-0020) identifying details or other information when the information is not subject to disclosure. The requestor will be informed in writing of the exemptions authorizing DEL to withhold information within a record.

NEW SECTION

WAC 170-01-0270 DEL reviews of records request denials. If DEL denies all or part of a request, or redacts any portion of a record, the requestor may request a review of this decision by:

(1) Asking the public records officer for an internal DEL review.

(2) Asking for an external review by the attorney general's office.

Requestors may initiate this by sending a request for review to Public Records Review, Office of the Attorney General, P.O. Box 40100, Olympia, WA 98504-0100 or publicrecords@atg.wa.gov.

(3) Asking for a judicial review.

All review requests must be in writing (letter, fax or e-mail). All review requests must specify the part or parts of the denial or redaction that the requestor wishes to be reviewed.

After receiving a request for an internal review, the public records officer will refer the matter for review to the agency communications manager who may consult with other agency leaders. The denial will either be upheld or reversed within two business days after the receipt of the review request.

To initiate a court review of a public records case, a requestor can file a "motion to show cause" which directs the agency to appear before the court and show any cause why the agency did not violate the act. The case must be filed in the superior court in the county in which the record is maintained.

NEW SECTION

WAC 170-01-0300 Fees for inspecting or copying records. (1) **Costs for paper copies.** There is no cost to inspect records. Copying or duplicating fees are intended to equal DEL's costs, including costs of materials, machinery, and personnel. The fees charged may be reviewed periodically to assure their accuracy (RCW 42.56.120). Alternatively, if DEL has not determined the actual per page cost for photocopies of public records, it may charge up to fifteen cents for a standard black-and-white photocopy. The public records officer can share current fee rates.

(2) **Costs for electronic records.** The cost of electronic copies of records shall be determined by how the electronic records are delivered. DEL will charge no more than fair-market value for information that must be delivered on a CD-ROM, DVD or other tool. DEL may charge (put value) for a paper record to be scanned. There will be no charge for e-mailing electronic records, unless another cost applies, such as scanning.

(3) **Costs of mailing.** DEL may also charge actual costs of mailing or shipping a record, including the cost of the shipping container.

(4) **Payment.** Before beginning to make copies, the public records officer may require a deposit of up to ten percent of the estimated cost of copying all the records selected by the requestor. The public records officer may also require payment for the remainder of the copying costs before providing all the records. DEL will not charge sales tax when it makes copies of public records.

If all or part of a requested record is not paid for, or the requested record is not claimed within thirty calendar days, the department may consider the request as terminated. If terminated, the requestor must make a new records request to obtain the record.

Payment should be sent to the DEL Financial Services Office (P.O. Box 40970, Olympia, WA 98504-0970). Payment may be made by cash, check, or money order to the department of early learning. It should clearly be marked as payment for public records.

WSR 12-02-083**PROPOSED RULES****DEPARTMENT OF****SOCIAL AND HEALTH SERVICES**

(Economic Services Administration)

(Community Services Division)

[Filed January 4, 2012, 11:14 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-15-104.

Title of Rule and Other Identifying Information: To continue ESHB 2082, Laws of 2011 implementation, the department is proposing to amend WAC 388-406-0035 How long does the department have to process my application?, 388-412-0005 General information about your cash benefits, 388-446-0005 Disqualification period for cash assistance, 388-450-0015 What types of income are not used by the department to figure out my benefits?, 388-450-0025 What is unearned income?, 388-450-0245 When are my benefits suspended?, 388-470-0055 How do my resources count toward the resource limit for Basic Food?, and 388-472-0005 What are my rights and responsibilities?

Hearing Location(s): Office Building 2, Lookout Room, DSHS Headquarters, 1115 Washington, Olympia, WA 98504 (public parking at 11th and Jefferson. A map is available at <http://www1.dshs.wa.gov/msa/rpau/RPAU-OB-2directions.html> or by calling (360) 664-6094), on February 7, 2012, at 10:00 a.m.

Date of Intended Adoption: Not earlier than February 8, 2012.

Submit Written Comments to: DSHS Rules Coordinator, P.O. Box 45850, Olympia, WA 98504-5850, delivery 1115 Washington Street S.E., Olympia, WA 98504, e-mail DSHSRPAURulesCoordinator@dshs.wa.gov, fax (360) 664-6185, by 5 p.m. on February 7, 2012.

Assistance for Persons with Disabilities: Contact Jennisha Johnson, DSHS rules consultant, by January 18, 2012, TTY (360) 664-6178 or (360) 664-6094 or by e-mail at jennisha.johnson@dshs.wa.gov.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The proposed amendments are necessary to eliminate reference to general assistance (GA) and disability lifeline (DL), and include reference to the new programs aged, blind, or disabled (ABD) assistance and pregnant women assistance (PWA) established November 1, 2011.

Reasons Supporting Proposal: These changes are necessary to comply with ESHB 2082 Laws of 2011, terminating all components of the DL program effective October 31, 2011, and establishing the ABD assistance and the PWA programs effective November 1, 2011.

Statutory Authority for Adoption: RCW 74.04.005, 74.04.050, 74.04.055, 74.04.057, 74.08.090, 74.08A.100, 74.04.770, 74.04.0052, 74.04.655, 74.08.043, 74.08.335.

Statute Being Implemented: ESHB 2082, Laws of 2011.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of social and health services, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Aurea Figueroa-Rogers, 712 Pear Street S.E., Olympia, WA 98503, (360) 725-4623.

No small business economic impact statement has been prepared under chapter 19.85 RCW. These proposed rules do not have an economic impact on small businesses. The proposed amendments only affect DSHS clients by defining eligibility for PWA and ABD cash assistance.

A cost-benefit analysis is not required under RCW 34.05.328. These amendments are exempt as allowed under RCW 34.05.328 (5)(b)(vii) which states in-part, "[t]his section does not apply to ... rules of the department of social and health services relating only to client medical or financial eligibility and rules concerning liability for care of dependents."

December 20, 2011

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 09-19-129, filed 9/22/09, effective 11/1/09)

WAC 388-406-0035 How long does the department have to process my application? (1) We must process your application as quickly as possible. We must respond promptly to your application and to any information you give us. We cannot delay processing your request by using the time limits stated in this section as a waiting period for determining eligibility.

(2) Unless your eligibility determination is delayed for good cause under WAC 388-406-0040, we process your application for benefits within thirty calendar days, except:

(a) If you are pregnant, we must process your application for medical within fifteen working days;

(b) If you are applying for (~~general assistance (GA-U))~~ aged, blind, or disabled (ABD) assistance, alcohol or drug addiction treatment (ADATSA), or medical assistance, we

must process your application within forty-five calendar days unless there is good cause as described in WAC 388-406-0045; and

(c) If you are applying for medical assistance that requires a disability decision, we must process your application within sixty calendar days.

(3) For calculating time limits, "day one" is the date following the date:

(a) The department received your application for benefits under WAC 388-406-0010;

(b) Social Security gets a request for food benefits from a Basic Food assistance unit in which all members either get or are applying for Supplemental Security Income (SSI);

(c) You are released from an institution if you get or are authorized to get SSI and request Basic Food through Social Security prior to your release.

AMENDATORY SECTION (Amending WSR 11-19-047, filed 9/13/11, effective 10/14/11)

WAC 388-412-0005 General information about your cash benefits. (1) Each separate cash assistance unit (AU) gets a separate benefit amount. If several AUs live in the same house, each AU gets a separate benefit amount.

(2) You cannot receive the same type of benefits in:

(a) Two states in the same month; or

(b) Two AUs in the same month; unless

(c) You left the AU to live in a shelter for battered women and children. See WAC 388-408-0045.

(3) If you are married and both you and your spouse get (~~Disability Lifeline~~) aged, blind, or disabled (ABD) assistance, you and your spouse are one AU.

(4) Your grant is rounded down to the next whole dollar amount unless:

(a) You get a clothing and personal incidental (CPI) allowance; or

(b) Your benefits are reduced to pay an overpayment.

(5) We do not issue any cash benefits if you are eligible for less than ten dollars unless:

(a) You get a CPI allowance;

(b) Your benefits are reduced to pay an overpayment; or

(c) You get Supplemental Social Security (SSI) interim assistance payments.

(6) You may use your cash benefits to pay for basic living expenses as detailed under WAC 388-412-0046 (1)(c).

(7) You may not use your electronic benefit transfer (EBT) cards or cash obtained with EBT cards for any of the activities specified under WAC 388-412-0046 (1)(d).

(8) If you choose to withdraw your cash benefits using an automated teller machine (ATM), our EBT vendor may charge a fee for the transaction in addition to any charges by the bank or ATM owner.

AMENDATORY SECTION (Amending WSR 04-13-097, filed 6/21/04, effective 7/22/04)

WAC 388-446-0005 Disqualification period for cash assistance. (1) An applicant or recipient who has been convicted of unlawful practices in obtaining cash assistance is disqualified from receiving further cash benefits if:

(a) For TANF/SFA, the conviction was based on actions which occurred on or after May 1, 1997; or

(b) For ~~((general assistance))~~ aged, blind, or disabled (ABD) assistance, the conviction was based on actions which occurred on or after July 23, 1995.

(2) The disqualification period must be determined by the court and will be:

(a) For a first conviction, no less than six months; and

(b) For a second or subsequent conviction, no less than twelve months.

(3) The disqualification applies only to the person convicted and begins on the date of conviction.

(4) A recipient's cash benefits are terminated following advance or adequate notice requirements as specified in WAC 388-458-0030.

AMENDATORY SECTION (Amending WSR 02-20-069, filed 9/30/02, effective 10/31/02)

WAC 388-450-0025 What is unearned income? This section applies to cash assistance, food assistance, and medical programs for families, children, and pregnant women.

(1) Unearned income is income you get from a source other than employment or self-employment. Some examples of unearned income are:

(a) Railroad retirement;

(b) Unemployment compensation;

(c) Social Security benefits (including retirement benefits, disability benefits, and benefits for survivors);

(d) Time loss benefits as described in WAC 388-450-0010, such as benefits from the department of labor and industries (L&I); or

(e) Veteran Administration benefits.

(2) For food assistance we also count the total amount of cash benefits due to you before any reductions caused by your failure (or the failure of someone in your assistance unit) to perform an action required under a federal, state, or local means-tested public assistance program, such as TANF/SFA, ~~((GA))~~ ABD assistance, PWA, and SSI.

(3) When we count your unearned income, we count the amount you get before any taxes are taken out.

AMENDATORY SECTION (Amending WSR 03-21-029, filed 10/7/03, effective 11/1/03)

WAC 388-450-0245 When are my benefits suspended? (1) For TANF/SFA, RCA, ~~((GA))~~ ABD assistance and Basic Food, "suspend" means the department stops your benefits for one month.

(2) We suspend your AU's benefits for one month when your expected total countable income under WAC 388-450-0162:

(a) Is more than the dollar limit for your AU; and

(b) If over these limits for only that one month.

AMENDATORY SECTION (Amending WSR 11-19-047, filed 9/13/11, effective 10/14/11)

WAC 388-472-0005 What are my rights and responsibilities? For the purposes of this chapter, "we" and "us"

refer to the department and "you" refers to the applicant or recipient.

(1) If you apply for or get cash, food or medical assistance benefits you have the right to:

(a) Have your rights and responsibilities explained to you and given to you in writing;

(b) Have us explain the legal use of DSHS benefits to you;

(c) Be treated politely and fairly no matter what your race, color, political beliefs, national origin, religion, age, gender, disability or birthplace;

(d) Request benefits by giving us an application form using any method listed under WAC 388-406-0010. You can ask for and get a receipt when you give us an application or other documents;

(e) Have your application processed as soon as possible. Unless your application is delayed under WAC 388-406-0040, we process your application for benefits within thirty days, except:

(i) If you are eligible for expedited services under WAC 388-406-0015, you get food assistance within seven days. If we deny you expedited services, you have a right to ask that the decision be reviewed by the department within two working days from the date we denied your request for expedited services;

(ii) If you are pregnant and otherwise eligible, you get medical within fifteen working days;

(iii) ~~((Disability lifeline (DL)))~~ Aged, blind, or disabled (ABD) assistance, alcohol or drug addiction treatment (ADATSA), or medical assistance may take up to forty-five days; and

(iv) Medical assistance requiring a disability decision may take up to sixty days.

(f) Be given at least ten days to give us information needed to determine your eligibility and be given more time if you ask for it. If we do not have the information needed to decide your eligibility, then we may deny your request for benefits;

(g) Have the information you give us kept private. We may share some facts with other agencies for efficient management of federal and state programs;

(h) Ask us not to collect child support or medical support if you fear the noncustodial parent may harm you, your children, or the children in your care;

(i) Ask for extra money to help pay for temporary emergency shelter costs, such as an eviction or a utility shutoff, if you get TANF;

(j) Get a written notice, in most cases, at least ten days before we make changes to lower or stop your benefits;

(k) Ask for an administrative hearing if you disagree with a decision we make. You can also ask a supervisor or administrator to review our decision or action without affecting your right to a fair hearing;

(l) Have interpreter or translator services given to you at no cost and without delay;

(m) Refuse to speak to a fraud investigator. You do not have to let an investigator into your home. You may ask the investigator to come back at another time. Such a request will not affect your eligibility for benefits; and

(n) Get help from us to register to vote.

(2) If you get cash, food, or medical assistance, you are responsible to:

(a) Tell us if you are pregnant, in need of immediate medical care, experiencing an emergency such as having no money for food, or facing an eviction so we can process your request for benefits as soon as possible;

(b) Report the following expenses so we can decide if you can get more food assistance:

(i) Shelter costs;

(ii) Child or dependent care costs;

(iii) Child support that is legally obligated;

(iv) Medical expenses; and

(v) Self-employment expenses.

(c) Report changes as required under WAC 388-418-0005 and 388-418-0007.

(d) Give us the information needed to determine eligibility;

(e) Give us proof of information when needed. If you have trouble getting proof, we help you get the proof or contact other persons or agencies for it;

(f) Cooperate in the collection of child support or medical support unless you fear the noncustodial parent may harm you, your children, or the children in your care;

(g) Apply for and get any benefits from other agencies or programs prior to getting cash assistance from us;

(h) Complete reports and reviews when asked;

(i) Look for, get, and keep a job or participate in other activities if required for cash or food assistance;

(j) Give your Provider One services card to your medical care provider;

(k) Cooperate with the quality control review process;

(l) Keep track of your EBT card for cash and food assistance and keep your personal identification number (PIN) secure. If you receive multiple replacement EBT cards, this may trigger an investigation to determine if you are trafficking benefits as described under WAC 388-412-0046 (2)(d); and

(m) Use your cash and food assistance benefits only as allowed under WAC 388-412-0046.

(3) If you are eligible for necessary supplemental accommodation (NSA) services under chapter 388-472 WAC, we help you comply with the requirements of this section.

AMENDATORY SECTION (Amending WSR 11-21-025, filed 10/11/11, effective 10/29/11)

WAC 388-450-0015 What types of income are not used by the department to figure out my benefits? This section applies to cash assistance, children's, family, or pregnancy medical, and basic food benefits.

(1) There are some types of income we do not count to figure out if you can get benefits and the amount you can get. Some examples of income we do not count are:

(a) Bona fide loans as defined in WAC 388-470-0045, except certain student loans as specified under WAC 388-450-0035;

(b) Federal income tax refunds and earned income tax credit (EITC) payments in the month received;

(c) Federal economic stimulus payments that are excluded for federal and federally assisted state programs;

(d) Federal twenty-five dollar supplemental weekly unemployment compensation payment authorized by the American Recovery and Reinvestment Act of 2009;

(e) Title IV-E and state foster care maintenance payments if you choose not to include the foster child in your assistance unit;

(f) Energy assistance payments;

(g) Educational assistance we do not count under WAC 388-450-0035;

(h) Native American benefits and payments we do not count under WAC 388-450-0040;

(i) Income from employment and training programs we do not count under WAC 388-450-0045;

(j) Money withheld from a benefit to repay an overpayment from the same income source. For Basic Food, we **do not** exclude money that is withheld because you were overpaid for purposely not meeting requirements of a federal, state, or local means tested program such as TANF/SFA, ~~((GA))~~ aged, blind, or disabled (ABD) cash assistance, pregnant women assistance (PWA), and SSI;

(k) Legally obligated child support payments received by someone who gets TANF/SFA benefits;

(l) One-time payments issued under the Department of State or Department of Justice Reception and Replacement Programs, such as Voluntary Agency (VOLAG) payments; and

(m) Payments we are directly told to exclude as income under state or federal law.

(n) **For cash and Basic Food:** Payments made to someone outside of the household for the benefits of the assistance unit using funds that are not owed to the household;

(o) **For Basic Food only:** The total monthly amount of all legally obligated current or back child support payments paid by the assistance unit to someone outside of the assistance unit for:

(i) A person who is not in the assistance unit; or

(ii) A person who is in the assistance unit to cover a period of time when they were not living with the member of the assistance unit responsible for paying the child support on their behalf.

(p) **For medical assistance:** Only the portion of income used to repay the cost of obtaining that income source.

(2) For children's, family, or pregnancy medical, we also do not count any insurance proceeds or other income you have recovered as a result of being a Holocaust survivor.

AMENDATORY SECTION (Amending WSR 11-21-025, filed 10/11/11, effective 10/29/11)

WAC 388-470-0055 How do my resources count toward the resource limit for Basic Food? (1) For Basic Food, if your assistance unit (AU) is not categorically eligible (CE) under WAC 388-414-0001, we count the following resources toward your AU's resource limit to decide if you are eligible for benefits under WAC 388-470-0005:

(a) Liquid resources. These are resources that are easily changed into cash. Some examples of liquid resources are:

(i) Cash on hand;

(ii) Money in checking or savings accounts;

(iii) Money market accounts or certificates of deposit (CDs) less any withdrawal penalty;

(iv) Stocks, bonds, annuities, or mutual funds less any early withdrawal penalty;

(v) Available trusts or trust accounts; or

(vi) Lump sum payments. A lump sum payment is money owed to you from a past period of time that you get but do not expect to get on a continuing basis.

(b) Nonliquid resources, personal property, and real property not specifically excluded in subsection (2) below.

(c) Vehicles as described in WAC 388-470-0075.

(d) The resources of a sponsor as described in WAC 388-470-0060.

(2) The following resources do not count toward your resource limit:

(a) Your home and the surrounding property that you, your spouse, or your dependents live in;

(b) A house you do not live in, if you plan on returning to the home and you are out of the home because of:

(i) Employment;

(ii) Training for future employment;

(iii) Illness; or

(iv) Natural disaster or casualty.

(c) Property that:

(i) You are making a good faith effort to sell;

(ii) You intend to build a home on, if you do not already own a home;

(iii) Produces income consistent with its fair market value, even if used only on a seasonal basis;

(iv) Is essential to the employment or self-employment of a household member. Property excluded under this section and used by a self-employed farmer or fisher retains its exclusion for one year after the household member stops farming or fishing; or

(v) Is essential for the maintenance or use of an income-producing vehicle; or

(vi) Has an equity value equal to or less than half of the resource limit as described in WAC 388-470-0005.

(d) Household goods

(e) Personal effects;

(f) Life insurance policies, including policies with cash surrender value (CSV);

(g) One burial plot per household member;

(h) One funeral agreement per household member, up to fifteen hundred dollars;

(i) Pension plans or retirement funds not specifically counted in subsection (1) above;

(j) Sales contracts, if the contract is producing income consistent with its fair market value;

(k) Government payments issued for the restoration of a home damaged in a disaster;

(l) Indian lands held jointly with the Tribe, or land that can be sold only with the approval of the Bureau of Indian Affairs;

(m) Nonliquid resources that have a lien placed against them;

(n) Earned Income Tax Credits (EITC):

(i) For twelve months, if you were a Basic Food recipient when you got the EITC and you remain on Basic Food for all twelve months; or

(ii) The month you get it and the month after, if you were not getting Basic Food when you got the EITC.

(o) Energy assistance payments or allowances;

(p) The resources of a household member who gets SSI, TANF/SFA, ABD assistance, or ~~((GA))~~ PWA benefits;

(q) Retirement funds or accounts that are tax exempt under the Internal Revenue Code;

(r) Education funds or accounts in a tuition program under section 529 or 530 of the Internal Revenue Code;

(s) Resources specifically excluded by federal law; and

(t) Federal income tax refunds for twelve months whether or not you were receiving Basic Food assistance at the time you got the refund.

(3) If you deposit excluded liquid resources into a bank account with countable liquid resources, we do not count the excluded liquid resources for six months from the date of deposit. **Exception:** Federal tax refunds are not counted for twelve months even when mixed with countable resources.

(4) If you sell your home, you have ninety days to reinvest the proceeds from the sale of a home into an exempt resource.

(a) If you do not reinvest within ninety days, we will determine whether there is good cause to allow more time. Some examples of good cause are:

(i) Closing on your new home is taking longer than anticipated;

(ii) You are unable to find a new home that you can afford;

(iii) Someone in your household is receiving emergent medical care; or

(iv) Your children are in school and moving would require them to change schools.

(b) If you have good cause, we will give you more time based on your circumstances.

(c) If you do not have good cause, we count the money you got from the sale as a resource.

WSR 12-02-084

PROPOSED RULES

DEPARTMENT OF REVENUE

[Filed January 4, 2012, 11:32 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 11-17-115.

Title of Rule and Other Identifying Information: WAC 458-20-164 (Rule 164) Insurance (~~(agents, brokers and solicitors))~~ producers, adjusters—Title insurance agents—Surplus line brokers and 458-20-212 (Rule 212) Insurance adjusters.

Hearing Location(s): Capital Plaza Building, 4th Floor L&P Conference Room, 1025 Union Avenue S.E., Olympia, WA 98504, on February 7, 2012, at 10:00 a.m. Copies of draft rules are available for viewing and printing on our web site at Rules Agenda.

Date of Intended Adoption: February 16, 2012.

Submit Written Comments to: Gayle Carlson, e-mail GayleC@dor.wa.gov, P.O. Box 47453, Olympia, WA 98504-7453, by February 7, 2012.

Assistance for Persons with Disabilities: Contact Mary Carol LaPalm, (360) 725-7499, or Renee Cosare, (360) 725-7514, no later than ten days before the hearing date. For hearing impaired please contact us via the Washington relay operator at (800) 833-6384.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The department is proposing to update Rule 164 to:

- Recognize legislation changing terms from "insurance agents, brokers, or solicitors" to "insurance producers," and the addition of "title insurance agents" in chapter 82.04 RCW (chapter 217, Laws of 2008);
- Add language pertaining to economic nexus;
- Add language pertaining to "surplus line brokers" (chapter 162, Laws of 2009);
- Add a new subsection providing tax information for insurance adjusters, which is currently addressed in Rule 212;
- Delete portions of subsection (5) *Special classification for certain managing general agents* as no longer needed. These taxpayers report under the "Insurance producers, title insurance agents, or surplus line broker commissions" B&O tax classification;
- Add a new subsection covering purchases subject to retail sales or use tax; and
- Add examples and subsection headings to provide information to readers in a more useful manner.

The department is proposing to repeal Rule 212 because the information is being incorporated into Rule 164.

Reasons Supporting Proposal: To update information provided in these rules, including the recognition of legislation, and to consolidate tax guidance for insurance adjusters from Rule 212 into Rule 164.

Statutory Authority for Adoption: RCW 82.32.300 and 82.01.060(2).

Statute Being Implemented: RCW 82.04.260.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of revenue, governmental.

Name of Agency Personnel Responsible for Drafting: Gayle Carlson, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1576; Implementation: Alan R. Lynn, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1599; and Enforcement: Russ Brubaker, 1025 Union Avenue S.E., Suite #544, Olympia, WA, (360) 534-1505.

No small business economic impact statement has been prepared under chapter 19.85 RCW. The rule does not impose any new performance requirement or administrative burden on any small business not required by statute.

A cost-benefit analysis is not required under RCW 34.05.328. The proposed rule is not a significant legislative rule as defined by RCW 34.05.328.

January 4, 2012

Alan R. Lynn
Rules Coordinator

AMENDATORY SECTION (Amending WSR 92-19-004, filed 9/3/92, effective 10/4/92)

WAC 458-20-164 Insurance (~~(agents, brokers and solicitors)~~) producers, adjusters—Title insurance agents—Surplus line brokers. (1) **Introduction.** This section explains the taxability of amounts (~~(received)~~) earned by insurance (~~(agents, brokers, or solicitors)~~) producers, title insurance agents, and surplus line brokers, which include persons commonly referred to as insurance agents, solicitors, representatives, brokers, or dealers.

(a) **Economic nexus.** Nonresident individuals or business entities organized or commercially domiciled outside the state of Washington and Washington businesses conducting business for customers receiving benefits outside Washington should refer to WAC 458-20-19401, Minimum nexus thresholds for apportionable activities, which include engaging in business as an insurance producer, title insurance agent, or a surplus line broker, to determine if they meet the minimum thresholds for apportioning activities.

(b) **Examples.** This section contains examples which identify a number of facts and then state a conclusion. The examples should be used only as a general guide. Tax results must be determined after a review of all the facts and circumstances.

(2) **Definitions.** (~~(The words "agent," "broker," and "solicitor" mean a person licensed as such under the provisions of chapter 48.17 RCW.)~~)

• Insurance producer. An insurance producer is a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance. An insurance producer may receive a license to sell insurance products including, but not limited to, life, disability, property, and/or casualty. "Insurance producer" does not include title insurance agents or surplus line brokers. RCW 48.17.010 and 48.17.170.

• Title insurance agent. A title insurance agent is a business entity licensed under the laws of this state and appointed by an authorized title insurance company to sell, solicit, or negotiate insurance on behalf of the title insurance company.

• Surplus line broker. A surplus line broker is a person specially licensed under chapter 48.15 RCW to procure policies from an insurer not licensed in Washington.

(3) **Business and occupation (B&O) tax.** (~~(Every)~~) Persons engaging in business (~~(as an insurance agent, broker, or solicitor is)~~) in this state as an insurance producer or a title insurance agent licensed under chapter 48.17 RCW, or a surplus line broker licensed under chapter 48.15 RCW are taxable on gross income earned from such licensed activities, including commissions, fees, and renewals, under the insurance (~~(agents and brokers)~~) producers/title insurance agents/surplus line broker commissions B&O tax classification (~~(upon the gross income of the business)~~). (See WAC 458-20-156, Abstract, title insurance and escrow businesses for taxability of fees/premiums charged to consumers for title insurance.)

Persons engaging in this state as an agent, broker, representative, or solicitor licensed under chapter 48.18A RCW are taxable on gross income earned from such licensed activities under the service and other activities B&O tax classification.

(a) **How is gross income determined?** The gross income of the business is determined by the amount of gross commissions received, not by the gross premiums paid by the insured. The term "gross income of the business" includes gross receipts from commissions, fees, renewals, or other amounts which the ~~((agent, broker, or solicitor))~~ insurance producer, title insurance agent, or surplus line broker receives or becomes entitled to receive. RCW 82.04.080. The gross income of the business does not include amounts held in trust for the insurer or the client. (See ~~((also))~~ WAC 458-20-111, Advances and reimbursements.)

(b) **Are commissions and expenses deductible?** No deduction is allowed for commissions, fees, or salaries paid to other ~~((agents, brokers, or solicitors nor))~~ insurance producers, title insurance agents, or surplus line brokers or for other expenses of doing business.

(c) **Examples.**

(i) ABC Financial Services (ABC) is a full-service broker-dealer firm with independent contractors, referred to as "representatives," licensed to sell insurance products (chapter 48.17 RCW) and securities (chapter 48.18A RCW). ABC's top selling representative is John. When John sells an insurance policy to a client, ABC receives a commission from the insurer and pays a portion of that commission to John, which John reports under the insurance producers/title insurance agents/surplus line broker commissions B&O tax classification. When John sells securities, ABC charges the purchaser a fee and pays a portion of that fee to John as a commission, which John reports under the service and other activities B&O tax classification. ABC is taxable on the total commissions received from the sale of insurance products (under the insurance producers/title insurance agents/surplus line broker commissions classification) and fees charged for security transactions, (under the service and other activities classification), including the amount in commissions paid to John.

(ii) Tom is an independent contractor with agency agreements with several insurance companies that authorize him to accept applications for insurance. Tom also has an agreement with William, who will market insurance policies for Tom. When William sells a policy for Tom, William collects the entire gross premium from the customer. William deposits the entire amount, and sends Tom a check for the balance remaining after William deducts his commission. Tom deposits the check and writes a check to the insurance company for the net premium. As Tom, not William, has the contractual relationship with the insurance company, Tom owes B&O tax on the gross commission income including the amount retained by William. Tom cannot deduct the amount William kept as it is a cost of doing business for Tom. He will report under the insurance producers/title insurance agent/surplus line broker commissions B&O tax classification. William will also report his commission income on his excise tax return under the insurance producers/title insurance agent/surplus line broker commissions B&O tax classification.

(iii) Lisa sells life insurance and variable annuities. Lisa is not an employee of the insurance company and is taxable under the insurance producers/title insurance agent/surplus line broker commissions B&O tax classification on the commissions she earns from selling insurance. Commissions

earned from selling variable annuities are taxable under the service and other business activities B&O tax classification. See RCW 48.18A.030.

(d) **Engaging in business.** Every person acting in the capacity of ~~((agent, broker, or solicitor))~~ an insurance producer, title insurance agent, or surplus line broker is presumed to be engaging in business and subject to the ~~((business and occupation))~~ B&O tax unless ((such)) the person can demonstrate he or she is a bona fide employee. The burden is ((upon such)) on the person to establish the fact of his or her status as an employee. (See WAC 458-20-105, Employees distinguished from persons engaging in business.)

(e) **How do I apportion my income?** Income earned from engaging in business as insurance producers, title insurance agents, and surplus line brokers is apportionable income. The portion that is taxable income for B&O tax purposes must be determined by using the apportionment method provided in WAC 458-20-19402. Single factor receipts apportionment—Generally.

(4) **Full-time life insurance salespersons.** ~~((After June 30, 1991-))~~ Persons who sell life insurance on a full-time basis, as provided in section 3121 (d)(3)(B) of the Internal Revenue Code (statutory employee), will be considered employees. ((Such)) These persons will not be subject to the ((business and occupation)) B&O tax on amounts received in their capacity as statutory employees.

(a) **What are the criteria for full-time life insurance salespersons?** For purposes of this subsection (4), a full-time life insurance salesperson is an individual who meets all of the following criteria:

(i) The person's principal business activity is devoted to the solicitation of life insurance or annuity contracts, or both, primarily for one insurance company;

(ii) The contract between the individual and the primary life insurance company contemplates that substantially all of such services are to be performed personally by such individual;

(iii) The individual does not have a substantial investment in facilities used in connection with the sale of life insurance or annuity contracts (other than in facilities for transportation); and

(iv) The sale of life insurance by such individual occurs in the course of a continuing relationship with the primary life insurance company.

(b) **What is a principal business activity?** A person's principal business activity is the activity from which he or she generally receives the greatest remuneration. All business activities, including acting as an employee, will be considered in determining a person's principal business activity.

(c) **What is considered a facility?** The facilities referred to in (a)~~((iii))~~ (iii) of this subsection include such things as office space, office equipment, and secretarial services. The term facilities does not include ~~((such))~~ tools, instruments, or clothing as are commonly furnished by employees. An investment is substantial if a deduction for the item is taken in calculating the person's federal income tax liability.

(d) **What will disqualify a person?** Failure to satisfy any one of the criteria listed in (a) of this subsection will dis-

qualify a person from treatment as an employee under this subsection.

(e) **You can be an employee for only one life insurance company.** A person will be considered an employee under this subsection (4):

(i) **With only one company, even if selling on behalf of more than one insurance company; and**

(ii) **Only as to amounts received as compensation for the sale of life insurance or annuity contracts, or both, from one life insurance company, regardless of whether the person sells life insurance on behalf of other companies.**

(f) **Receiving a Form W-2 as a statutory employee.** A person will be presumed to be a full-time life insurance salesperson within the meaning of section 3121 (d)(3)(B) of the Internal Revenue Code if they receive a Form W-2 (federal income tax wage and tax statement) indicating that they are a statutory employee. A person receiving a W-2 as a statutory employee will be presumed to be an employee under this subsection only as to amounts reported on the W-2 as compensation for the sale of life insurance.

(g) A person who does not receive a properly marked W-2 has the burden of establishing that they are a full-time life insurance salesperson as provided in (a) of this subsection.

(h) (g) **Examples.**

(i) A person sells life insurance on a full-time basis on behalf of one company. The company issues a Form W-2 which indicates that the person is a statutory employee. Under these circumstances, the person will be presumed an employee as to amounts reported on the Form W-2 as compensation for the sale of life insurance and will not be taxable under the ~~(business and occupation)~~ **B&O** tax on ~~(such)~~ **these** amounts.

(ii) A person sells insurance on behalf of several insurance companies two of which are life insurance companies and the others are casualty insurance companies. The person sells both life insurance and casualty insurance. One of the life insurance companies issues a Form W-2 indicating that the person is a statutory employee. The person will be presumed an employee as to amounts reported on the Form W-2 as compensation for the sale of life insurance and will not be taxable under the ~~(business and occupation)~~ **B&O** tax on ~~(such)~~ **these** amounts.

(iii) A person sells life insurance on behalf of several life insurance companies and does not engage in any other business activity. Most of the policies sold by the person are written with one company. The person does not receive a Form W-2 from any of the companies for which life insurance is sold. The person's sales activities are conducted from an office which he or she leases. The office lease payments are deducted by the salesperson in computing his or her federal income tax liability. In addition, the salesperson has an employee whose salary is also deducted for federal income tax purposes. Because the person does not receive a Form W-2, he or she will not be presumed to be an employee. Instead, the person has the burden of proving the existence of each of the criteria listed in subsection (4)(a) of this section. In this example, the salesperson will not be considered an employee under this subsection (4) of this section because they have a substantial investment in facilities.

(5) ~~((Special classification for certain))~~ **Licensed producer appointed as a managing general agent((s)).** ~~((Under RCW 82.04.280(5))~~ A person((s)) representing and performing services for fire or casualty insurance companies as an independent resident managing general agent((s-are)) is subject to tax ~~((at the prevailing rate upon))~~ on the gross income of ~~((the))~~ such business activities and will report under the insurance producers/title insurance agents/surplus line broker commissions B&O tax classification.

~~((a) In view of the small number of persons falling in this special category, no separate classification line on the combined excise tax return has been provided for reporting this income; it should be shown on line 1 of the combined excise tax return with the explanatory note: "Income for insurance managing general agent taxable under RCW 82.04.280(5)."~~

~~(b))~~ Any person claiming to fall within this tax classification must demonstrate:

~~((i))~~ (a) That ~~((he))~~ the person is licensed as a resident ~~((general agent))~~ producer by the insurance commissioner; and

~~((ii))~~ (b) That ~~((he))~~ the person performs the following independent manager functions:

~~((A))~~ (i) Pays all sales and/or production expense; including salaries of special field representatives, underwriters, and inspectors as well as all office expenses of rent, supplies, secretarial help, etc.

~~((B))~~ (ii) Bills all premiums for the company so represented.

~~((C))~~ (iii) Directly contracts for or hires all selling agents.

~~((D))~~ (iv) Exercises final responsibility with respect to selecting risks and underwriting matters.

~~((E))~~ (v) Makes all arrangements for reinsurance.

~~((F))~~ (vi) Handles all claims adjustments directly with the insured (by his own staff or through hiring an independent adjuster).

~~((e) Persons wishing to claim qualification for this special insurance agent classification should request application forms from the department of revenue.))~~ (6) **Insurance adjusters.** For the purpose of this section, adjuster means a person licensed as such under the provisions of chapter 48.17 RCW. Persons engaged in business as insurance adjusters are taxable under the service and other business activities classification upon the gross income of the business.

Gross income includes all fees received for services rendered, and all charges recovered for expenses incurred in performing services, such as transportation costs, hotel, restaurant, and telephone charges, etc.

In computing tax liability, there may be deducted from the gross income (if included therein) money or credits received as reimbursement of advances made for:

- Towing;
- Storage of damaged automobiles;
- Repairs to damaged automobiles;
- Advances for doctor, hospital, and ambulance fees and charges; and
- Other such expenditures made with respect to damaged property or injured persons.

The words "advance" and "reimbursement" apply only when the insurer or the insured alone is liable for the payment of the fees or costs and when the adjuster making the payment has no personal liability therefore, either primarily or secondarily, other than as agent for the insurer or the insured. Refer to WAC 458-20-111, Advances and reimbursements.

(7) **Purchases subject to retail sales tax.** Retail sales tax is owed on purchases of:

- Tangible personal property such as office equipment, supplies, furnishings, computers, prewritten software;
- Digital products, unless specifically exempt; and
- Retail services, such as telephone service, construction services, landscape services, repair services.

If retail sales tax is not paid at the time of purchase, deferred sales tax or use tax is owed by the purchaser. See WAC 458-20-178, Use tax.

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 458-20-212 Insurance adjusters.