

WSR 21-01-183
PROPOSED RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES
[Filed December 21, 2020, 2:57 p.m.]

Original Notice.

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Title of Rule and Other Identifying Information: New chapter 110-05 WAC, Background Checks—Certificates of parental improvement; WAC 110-05-0001 Scope and purpose, 110-05-0005 Definitions, 110-05-0010 Request for CPI—Consideration, 110-05-0015 CPI—Exclusions, 110-05-0020 Determination—Notice, 110-05-0025 Denial of a CPI—Department review, 110-05-0030 Denial of a CPI—Administrative hearing, and 110-05-0035 Confidentiality.

Hearing Location(s): On January 26, 2021, telephonic. Oral comments may be made by calling 360-902-8084 and leaving a voicemail that includes the comment and an email or physical mailing address where the department of children, youth, and families (DCYF) will send its response. Comments received through and including January 26, 2021, will be considered.

Date of Intended Adoption: January 27, 2021.

Submit Written Comments to: DCYF Rules Coordinator, P.O. Box 40975, email dcyf.rulescoordinator@dcyf.wa.gov, submit comments online at <https://dcyf.wa.gov/practice/policy-laws-rules/rule-making/participate/online>, by January 26, 2021.

Assistance for Persons with Disabilities: Contact DCYF rules coordinator, phone 360-902-7956, email dcyf.rulescoordinator@dcyf.wa.gov, by January 22, 2021.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Clarify the certificate for parental improvement application process, who is eligible to receive a certificate, and the review process and administrative hearing rights for applications that are denied.

Reasons Supporting Proposal: Section 1, chapter 270, Laws of 2020, directs the department to enact rules that implement a process by which an individual who is the subject of a founded finding of negligent treatment or maltreatment or physical abuse as defined in RCW 26.44.020 or by rule or an individual whose child was found by a court to be dependent as a result of a finding that the individual abused or neglected their child pursuant to RCW 13.34.030 (6)(b) may request the secretary issue a certificate of parental improvement. Section 2, chapter 270, Laws of 2020, directs the department to enact rules that establish procedures for reviewing requests for certificates of parental improvement and requests to alter the decision to deny a request.

Statutory Authority for Adoption: Chapter 270, Laws of 2020.

Statute Being Implemented: RCW 74.13.720 and 74.13.730.

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

Name of Proponent: DCYF, governmental.

Name of Agency Personnel Responsible for Drafting: Chris Parvin, Olympia, Washington, 360-407-5501; Implementation and Enforcement: DCYF, statewide.

A school district fiscal impact statement is not required under RCW 28A.305.135.

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

34.05.328 (5) [a] (i). Further, DCYF does not voluntarily make that section applicable to the adoption of this rule.

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rules relate only to internal governmental operations that are not subject to violation by a nongovernment party; and rule content is explicitly and specifically dictated by statute.

December 21, 2020
Brenda Villarreal
Rules Coordinator

OTS-2775.4

Chapter 110-05 WAC
BACKGROUND CHECKS—CERTIFICATES OF PARENTAL IMPROVEMENT

NEW SECTION

WAC 110-05-0001 Scope and purpose. (1) Chapter 26.44 RCW authorizes the department to investigate allegations of child abuse or neglect and to determine if allegations are founded or unfounded as defined in RCW 26.44.020. Prior to the creation of the department, these determinations were made by the department of social and health services, children's administration.

(2) RCW 74.13.720 directs the department to establish a process that allows the secretary to issue a certificate of parental improvement to an individual who is the subject of a founded finding of abuse or neglect or a court determination that the individual's child was dependent as a result of a finding that the individual abused or neglected their child.

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NEW SECTION

WAC 110-05-0005 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

"Abuse or neglect" has the same meaning as "abuse or neglect" in RCW 26.44.020.

"Certificate of parental improvement" or "CPI" has the same meaning as "certificate of parental improvement" in RCW 74.13.020(2).

"Department" means the department of children, youth, and families.

"Dependency finding" means a court determination that a requestor's child was found dependent as a result of a finding the requestor abused or neglected their child, pursuant to RCW 13.34.030 (6) (b).

"Founded" has the same meaning as "founded" in RCW 26.44.020.

"Negligent treatment or maltreatment" has the same meaning as "negligent treatment or maltreatment" in RCW 26.44.020.

"OAH" means the Washington state office of administrative hearings.

"Physical abuse" has the same meaning as "physical abuse" in WAC 110-30-0030.

"Requestor" means a person who has or is seeking a CPI.

"Secretary" means the secretary of the department.

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NEW SECTION

WAC 110-05-0010 Request for a CPI—Consideration. (1) The request for a CPI must contain the following information:

(a) The requestor's current name, mailing address, and telephone number;

(b) The requestor's name at the time the founded finding or dependency finding was issued;

(c) A description of the changed circumstances, from the date after the founded finding or dependency finding, that justify the issuance of a CPI to the requestor; and

(d) The information described in subsection (5) of this section.

(2) Application forms and instructions are available on the department's website.

(3) The department may return an incomplete request or contact the requestor for more information to complete the request.

(4) The secretary must accept the underlying founded finding or dependency finding as valid and may not review the merits of that founded finding or dependency finding.

(5) The secretary determines whether to issue a CPI by considering:

(a) Documentation of any founded finding of child abuse or neglect and the underlying documentation the entity that issued the finding relied upon to make that finding;

(b) Findings from any civil adjudication proceeding as defined in RCW 43.43.830;

(c) Referral history alleging child abuse or neglect against the requestor;

(d) The length of time that has elapsed since the founded finding of child abuse or neglect;

(e) Whether a court made a finding that the requestor's child was dependent pursuant to chapter 13.34 RCW, the length of time elapsed since that dependency proceeding was dismissed, and the outcome of the dependency proceeding, including whether the child was returned to the requestor's home;

(f) Any documentation submitted by the requestor indicating whether the requestor successfully addressed the circumstances that led to the founded finding of physical abuse or negligent treatment or maltreatment including, but not limited to: A declaration by the re-

questor signed under penalty of perjury; recent assessments or evaluations of the requestor; and completion or progress toward completion of recommended court-ordered treatment, services, or programs;

(g) Any pending criminal or civil actions against the requestor;

(h) Background checks as authorized under RCW 10.97.050, 43.43.833, and 43.43.834, and the Federal Bureau of Investigation;

(i) Personal and professional references submitted by the requestor from employers, professionals, and agencies familiar with the requestor who can address the requestor's current character;

(j) Any education, volunteer work, employment history, or community involvement of the requestor identified by the requestor; and

(k) Any additional information the secretary deems relevant.

(6) The secretary must issue a CPI if, on a more probable than not basis, the requestor has the character, suitability, and competence to care for children, youth, or vulnerable persons and meets the other requirements of RCW 74.13.720 at the time of the request.

(7) The decision to issue or not issue a CPI will be mailed to the requestor within sixty calendar days from the date a request for a CPI as described in WAC 110-05-0010 was received.

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NEW SECTION

WAC 110-05-0015 CPI—Exclusions. The secretary may not issue a CPI if:

(1) Fewer than five years have elapsed since the date the investigative assessment was issued that resulted in the requestor's last founded finding of child abuse or neglect;

(2) Fewer than two years have passed since the secretary's denial of the requestor's request for a CPI;

(3) The requestor has a founded finding for sexual abuse or sexual exploitation or has a founded finding for physical abuse and the conduct that was the basis for the physical abuse finding involved cutting, burning, interfering with a child's breathing, shaking a child under three, or threatening a child with a deadly weapon;

(4) The requestor was convicted of or is the subject of a pending criminal investigation for:

(a) Any felony offense involving the physical neglect of a child under chapter 9A.42 RCW;

(b) Any felony offense under chapter 9A.32 or 9A.36 RCW involving a physical injury or death of a child;

(c) Any felony domestic violence offense committed against a family or household member as defined in chapter 10.99 RCW;

(d) A felony offense against a child under chapter 9.68A RCW; or

(e) Any of the following felony offenses:

(i) Defined under any law as a class A felony or an attempt to commit a class A felony;

(ii) Criminal solicitation of or criminal conspiracy to commit a class A felony;

(iii) Manslaughter in the first or second degree;

(iv) Indecent liberties;

(v) Kidnapping in the second degree;

(vi) Arson in the second degree;

- (vii) Extortion in the first degree;
- (viii) Robbery in the second degree;
- (ix) Drive-by shooting; and
- (x) Vehicular homicide; or
- (f) Any out-of-state, federal, or state conviction for a felony offense that is comparable to an offense listed in subsection (4) of this section; or
- (5) The requestor applying for a CPI has previously received a CPI and is the alleged perpetrator in a subsequent, founded finding of child abuse or neglect.

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NEW SECTION

- WAC 110-05-0020 Determination—Notice.** (1) The department will issue a written decision that states whether a CPI is granted or denied.
- (2) The written decision must be sent by certified mail, return receipt requested, to the requestor's last known address.
- (3) If the secretary denies a CPI, the written decision must include the following information:
- (a) The reason or reasons for the denial, including identifying information relied upon that was not provided by the applicant;
 - (b) Copies of the information relied upon that was not provided by the applicant or directions on how to obtain copies of the information;
 - (c) Notice that the requestor has a right to challenge the secretary's decision, including a description of the process for requesting review of the decision denying the request for a CPI; and
 - (d) A statement that the requestor must wait two years from the date of the denial to request a CPI again, if the denial is not successfully appealed.

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NEW SECTION

- WAC 110-05-0025 Denial of a CPI—Department review.** (1) An individual whose request for a CPI is denied may request that the secretary or designee review the denial. The request for review must be in writing and must clearly state why the requestor disagrees with the denial. The request for review should include any relevant supporting information and documentation.
- (2) A request for review of the denial must be in writing and must be received by the department within forty-five calendar days of when the decision described in WAC 110-05-0020 was mailed to the requestor's last known address.
- (3) The failure by a requestor to timely request review of a CPI denial decision will result in the loss of any right to a hearing or further challenges to the denial.

(4) A department management level staff-person designated by the secretary who was not involved in the decision-making process will review the CPI denial decision.

(5) The department must complete its review within thirty days after receiving the request for review.

(6) The department will notify the requestor in writing of its review determination by sending the review determination to the requestor's last known address.

(a) If the review determination does not alter the CPI denial decision, the department will send the review determination by certified mail, return-receipt requested.

(b) If the CPI denial decision is overturned, the department will send the review decision by regular, first-class mail.

(7) The review determination will contain information that describes the process for how to request a hearing at the OAH under chapter 34.05 RCW.

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NEW SECTION

WAC 110-05-0030 Denial of a CPI—Administrative hearing. (1) An individual who is denied a CPI under WAC 110-05-0025 has the right to challenge that review determination by requesting an administrative hearing under chapters 34.05 RCW and 110-03 WAC.

(2) A request for hearing under chapter 34.05 RCW must be filed at the OAH, as defined in WAC 110-03-0020, within forty-five calendar days of the date the department placed the agency review determination in the mail addressed to the requestor.

(3) The failure to timely request an administrative hearing results in the loss of any right to a hearing or further challenges to the CPI denial.

(4) The request for administrative hearing filed with the OAH must include a copy of the review determination notice. OAH will conduct an administrative hearing and issue an initial order.

(5) A copy of the request for administrative hearing and review determination notice must be served, as defined in WAC 110-03-0020, on the department at the address provided in the review determination notice.

(6) A requestor who disagrees with the initial order issued by OAH may appeal it to the DCYF board of appeals as provided in WAC 110-03-0520 through 110-03-0580. If an appeal is not filed on or before the twenty-first calendar day after the initial order is served on the requestor, the initial order issued by OAH becomes the final order.

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NEW SECTION

WAC 110-05-0035 Confidentiality. Reviews and hearings conducted under this chapter are confidential and are not open to the public.

Information about reports, reviews, and hearings may be disclosed only in accordance with federal and state laws pertaining to child welfare records and child protective services reports.

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