

WSR 21-16-035
EMERGENCY RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES

[Filed July 26, 2021, 3:06 p.m., effective July 26, 2021, 3:06 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: Modify the early achievers quality rating and improvement system requirements during the COVID-19 pandemic. More specifically, remove the deadline by which a provider must enroll in the program and the requirement to reach quality rating levels. Child care and early learning providers who participate in working connections and seasonal child care must still enroll in the early achievers program, follow its operating guidelines, submit attendance records electronically, and renew their facility ratings every three years.

Citation of Rules Affected by this Order: Amending WAC 110-15-0125 and 110-15-3750.

Statutory Authority for Adoption: RCW 43.216.055 and 43.216.065.

Under RCW 34.05.350 the agency for good cause finds that immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

Reasons for this Finding: Governor Jay Inslee issued Proclamation 20-05 declaring a State of Emergency in all counties in the state of Washington as a result of the outbreak of COVID-19. The governor's proclamation directed state agencies to do everything reasonably possible to respond to and recover from the COVID-19 outbreak. As of March 11, 2020, the World Health Organization has classified COVID-19 as a pandemic. The effects of its extreme risk of person-to-person transmission throughout Washington state significantly impact the life and health of our people, as well as our economy, and pose particular challenges to the availability of quality early learning and child care services for families with low incomes. The emergency amendments to WAC 110-15-0125 and 110-15-3750 address these challenges by waving and suspending some of the regulatory system requirements that delay child care providers from making child care available to the children of essential staff who are from low-income families who require child care services during the COVID-19 pandemic. WAC 110-15-0125 and 110-15-3750 were amended on an emergency basis on March 30, 2020, under WSR 20-08-098; July 29, 2020, under WSR 20-16-072; November 25, 2020, under WSR 20-24-090; and March XX [26], 2021, under WSR 21-08-014. Proclamation 20-31.11 issued January 19, 2021, relieves providers from meeting certain early achievers program deadlines until the state of emergency terminates or the proclamation is rescinded. This change in circumstances makes it necessary for the emergency rules filed under WSR 21-08-014 to remain in force.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: July 26, 2021.

Brenda Villarreal
Rules Coordinator

AMENDATORY SECTION (Amending WSR 19-01-111, filed 12/18/18, effective 1/18/19)

WAC 110-15-0125 Approved child care providers. (1) In-home/relative providers. To be approved to receive benefits under the WCCC program, an in-home/relative provider must comply with the applicable requirements contained in this chapter, chapter 43.216 RCW, and chapters 110-06 and 110-16 WAC.

(2) Licensed providers.

(a) To be approved to receive payment under the WCCC program, a licensed provider must comply with the requirements of this chapter, chapter 43.216 RCW, ((and)) chapter((s)) 110-06, 110-300((, 110-300A, 110-300B, and)) or 110-305 WAC.

(b) A provider who cares for a child who is a Washington resident in a state that borders Washington must:

- (i) Be licensed to provide care in the bordering state;
- (ii) Comply with the bordering state's licensing regulations;
- (iii) Comply with the electronic attendance requirements contained in WAC 110-15-0126.

(c) The lesser of the following will be paid to a qualified, licensed child care provider in a state that borders Washington:

- (i) The provider's private pay rate for that child; or
- (ii) The DCYF maximum WCCC subsidy daily rate for the DCYF region where the child resides.

(d) A licensed provider in a state that borders Washington that receives WCCC subsidy payment to care for a child who is a Washington resident is not required or eligible to participate in the early achievers program or to receive quality improvement awards, tiered reimbursements, or other awards and incentives associated with the early achievers program.

(3) Certified providers. To be approved to receive payment under the WCCC program, a certified provider must comply with the certification requirements contained in this chapter, chapter 43.216 RCW, ((and)) chapter((s)) 110-06, 110-300((, 110-300A, 110-300B, and)) or 110-305 WAC. Certified providers include:

- (a) Tribal child care facilities that meet the requirements of tribal law;
- (b) Child care facilities on a military installation;
- (c) Child care facilities operated on public school property by a school district; and
- (d) Seasonal day camps that contract with DCYF to provide subsidized child care.

(4) ((Early achievers program requirements for licensed and certified child care providers that)) To be eligible to receive WCCC pay-

ments, licensed or certified Early Achiever program participants who receive their first WCCC payment on or after July 1, 2016 must:

~~(a) ((A licensed or certified child care provider that first receives a WCCC subsidy payment on or after July 1, 2016, for providing nonschool age child care must complete the following activities to be eligible to receive additional WCCC payments:~~

~~(i) Enroll in the early achievers program; and ((within thirty days of receiving the first WCCC subsidy payment. A licensed or certified provider that fails to meet this requirement will lose DCYF approval to receive WCCC subsidy payments for providing nonschool age child care;~~

~~(ii) Complete level 2 activities in the early achievers program within twelve months of enrollment. A licensed or certified provider that fails to meet this requirement will lose DCYF approval to receive DCYF subsidy payments for providing nonschool age child care;~~

~~(iii) Rate at a level 3 or higher in the early achievers program within thirty months of enrollment. A licensed or certified provider that fails to meet this requirement within thirty months of enrollment in the early achievers program, must complete remedial activities with DCYF and rate at a level 3 or higher within six months of beginning remedial activities. A licensed or certified provider that fails to rate at a level 3 or higher within six months of beginning remedial activities will lose DCYF approval to receive WCCC subsidy payments for providing nonschool age child care; and~~

~~(iv)) (b) Renew their facility rating every three years ((and maintain a rating level 3 or higher)). If a licensed or certified provider fails to renew their facility rating ((or maintain a rating level 3 or higher)), the licensed or certified provider will lose DCYF approval to receive WCCC subsidy payments for providing nonschool age child care.~~

~~((b)) (c) Licensed and certified providers must comply with the provisions for participation as outlined in the early achievers operating guidelines. Failure to comply with these guidelines may result in a licensed or certified provider's loss of DCYF approval to receive WCCC subsidy payments for providing nonschool age child care.~~

~~(5) ((Early achievers program requirements for licensed and certified child care providers that received a WCCC payment on or between July 1, 2015, and June 30, 2016:~~

~~(a)) A licensed or certified child care provider that received a WCCC subsidy payment on or between July 1, 2015, and June 30, 2016 ((, for providing nonschool age child care, must complete the following activities to be eligible to receive additional WCCC subsidy payments:~~

~~(i) Enroll in the early achievers program by August 1, 2016. A licensed or certified provider that fails to meet this requirement will lose DCYF approval to receive WCCC subsidy payments for providing nonschool age child care;~~

~~(ii) Complete level 2 activities in the early achievers program by August 1, 2017. A provider who failed to meet this requirement will lose DCYF approval to receive WCCC subsidy payments for nonschool age child care; and~~

~~(iii) Rate at a level 3 or higher in the early achievers program by December 31, 2019. A licensed or certified provider that fails to meet this requirement by December 31, 2019, must complete remedial activities with DCYF and rate at a level 3 or higher by June 30, 2020. A licensed or certified provider that fails to receive a rating by December 31, 2019, or fails to rate at a level 3 or higher by June 30,~~

2020, after completing remedial activities will lose DCYF approval to receive WCCC subsidy payments for providing nonschool age child care.

~~(b) Licensed and certified providers~~) must renew their facility rating every three years. ~~((and maintain a rating level 3 or higher))~~. If a licensed or certified provider fails to renew their facility rating ~~((or maintain a rating level 3 or higher, licensed or certified providers))~~ they will lose DCYF approval to receive WCCC subsidy payments for providing nonschool age child care.

(6) If a licensed or certified child care provider receiving WCCC subsidy payment for providing nonschool age has successfully completed all level 2 activities and is waiting to be rated, the licensed or certified provider may continue to receive WCCC subsidy payments ~~((pending the successful completion of the level 3 rating activity))~~.

(7) DCYF-contracted seasonal day camps have a contract with ~~((DEL))~~ DCYF to provide subsidized child care.

[Statutory Authority: RCW 43.216.055, 43.216.065, chapter 43.216 RCW and 42 U.S.C. 9858 et seq.; 45 C.F.R. Part 98. WSR 19-01-111, § 110-15-0125, filed 12/18/18, effective 1/18/19. WSR 18-14-078, recodified as § 110-15-0125, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.070, chapter 43.215 RCW. WSR 16-19-107, § 170-290-0125, filed 9/21/16, effective 10/22/16. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 16-09-059, § 170-290-0125, filed 4/15/16, effective 5/16/16. Statutory Authority: RCW 43.215.060, 43.215.070, 43.43.832(6), 2006 c 265, and chapter 43.215 RCW. WSR 09-22-043, § 170-290-0125, filed 10/28/09, effective 12/1/09. WSR 08-08-047, recodified as § 170-290-0125, filed 3/27/08, effective 3/27/08. Statutory Authority: RCW 74.04.050, 74.12.340, 74.13.085, and 2003 1st sp.s. c 25. WSR 04-08-021 and 04-08-134, § 388-290-0125, filed 3/29/04 and 4/7/04, effective 5/28/04. Statutory Authority: RCW 74.04.050, 74.13.085. WSR 02-12-069, § 388-290-0125, filed 5/31/02, effective 7/1/02. Statutory Authority: RCW 74.04.050 and C.F.R. Parts 98 and 99 (Child Care Development Fund Rules). WSR 02-01-135, § 388-290-0125, filed 12/19/01, effective 1/19/02.]

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-15-3750 Eligible child care providers. To receive payment under the SCC program, a consumer's child care provider must be:

(1) Currently licensed as required by chapter ~~((43.215))~~ 43.216 RCW and ~~((170-295, 170-296A, or 170-297))~~ chapters 110-300 or 110-305 WAC;

(2) Meeting their state's licensing regulations, for providers who care for children in states bordering Washington. The SCC program pays the lesser of the following to qualified child care facilities in bordering states:

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

(b) The state maximum child care subsidy rate for the ~~((DSHS))~~ DCYF region where the child resides; or

(3) Exempt from licensing but certified by ~~((DEL))~~ DCYF, such as:

- (a) Tribal child care facilities that meet the requirements of tribal law;
- (b) Child care facilities on a military installation; and
- (c) Child care facilities operated on public school property by a school district.

~~(4) ((New child care providers, as defined in WAC 170-290-0003, who are)) To be eligible to receive a state subsidy payment, an agency as defined in RCW 43.217.010 that is subject to licensure, or ((are certified)) a person or facility authorized to receive state subsidy ((as required by chapter 43.215 RCW and as described by chapter 170-295, 170-296A, or 170-297 WAC)) under chapter 43.216 RCW, who received a subsidy payment for nonschool age child care on or after July 1, 2016, and received no such payments during the period July 1, 2015, through June 30, 2016, must:~~

~~(a) Enroll in the early achievers program ((within thirty days of receiving the initial state subsidy payment. A provider who fails to meet this requirement will lose eligibility to receive state subsidy payments for nonschool age child care;~~

~~(i) Out-of-state providers that provide care for children receiving Washington state child care subsidies are neither required nor eligible to participate in early achievers; and~~

~~(ii) Out-of-state providers are not eligible to receive quality improvement awards, tiered reimbursement, or other awards and incentives associated with participation in early achievers.))~~

~~(b) Adhere to the provisions for participation as outlined in the most recent version of the *Early Achievers Operating Guidelines*. Failure to adhere to these guidelines may result in a provider's loss of eligibility to receive state subsidy payments nonschool age child care; and~~

~~((c) Complete level 2 activities in the early achievers program within twelve months of enrollment. A provider who fails to meet this requirement will lose eligibility to receive state subsidy payments for nonschool age child care;~~

~~(d) Rate at a level 3 or higher in the early achievers program within thirty months of enrollment. If an eligible provider fails to rate at a level 3 or higher within thirty months of enrollment in the early achievers program, the provider must complete remedial activities with the department and rate at a level 3 or higher within six months of beginning remedial activities. A provider who fails to receive a rating within thirty months of enrollment or fails to rate at a level 3 or higher within six months of beginning remedial activities will lose eligibility to receive state subsidy payments for nonschool age child care; and~~

~~(e)) (c) Maintain an up to date rating by renewing their facility rating every three years ((and maintaining a rating level 3 or higher)). If a provider fails to renew their facility rating ((or maintain a rating level 3 or higher)), they will lose eligibility to receive state subsidy payments nonschool age child care.~~

~~(5) Existing child care providers who are subject to licensure or are certified to receive state subsidy as required by chapter ((43.215)) 43.216 RCW ((and as described by chapter 170-295, 170-296A, or 170-297 WAC,)) who have received a subsidy payment for a nonschool age child in the period July 1, 2015, through June 30, 2016, must:~~

~~((a) Enroll in the early achievers program by August 1, 2016. A provider who fails to meet this requirement will lose eligibility to receive state subsidy payments for nonschool age child care;~~

~~(i) Out-of-state providers that provide care for children receiving Washington state child care subsidies are neither required nor eligible to participate in early achievers; and~~

~~(ii) Out-of-state providers are not eligible to receive quality improvement awards, tiered reimbursement, or other awards and incentives associated with participation in early achievers.~~

~~(b) Complete level 2 activities in the early achievers program by August 1, 2017. A provider who fails to meet this requirement will lose eligibility to receive state subsidy payments for nonschool age child care;~~

~~(c) Rate at a level 3 or higher in the early achievers program by December 31, 2019;~~

~~(d) If an existing provider fails to rate at a level 3 or higher by December 31, 2019, in the early achievers program, the provider must complete remedial activities with the department and rate at a level 3 or higher by June 30, 2020. A provider who fails to receive a rating by December 31, 2019, or fails to rate at a level 3 or higher by June 30, 2020, after completing remedial activities will lose eligibility to receive state subsidy payments for nonschool age child care; and~~

~~(e)) Maintain an up to date rating by renewing their facility rating every three years ((and maintaining a rating level 3 or higher)). If a provider fails to renew their facility rating ((or maintain a rating level 3 or higher)), they will lose eligibility to receive state subsidy payments nonschool age child care.~~

~~(6) If a child care provider ((serving nonschool age children, as defined in WAC 170-290-0003, and)) receiving state subsidy payments for nonschool age child care has successfully completed all level 2 activities and is waiting to be rated, the provider may continue to receive a state subsidy. ((pending the successful completion of the level 3 rating activity.))~~

[WSR 18-14-078, recodified as § 110-15-3750, filed 6/29/18, effective 7/1/18. Statutory Authority: RCW 43.215.070, chapter 43.215 RCW. WSR 16-19-107, § 170-290-3750, filed 9/21/16, effective 10/22/16. Statutory Authority: RCW 43.215.060, 43.215.070, and chapter 43.215 RCW. WSR 16-09-059, § 170-290-3750, filed 4/15/16, effective 5/16/16; WSR 11-12-078, § 170-290-3750, filed 5/31/11, effective 7/1/11. Statutory Authority: RCW 43.215.060, 43.215.070, 2006 c 265, and chapter 43.215 RCW. WSR 09-22-043, § 170-290-3750, filed 10/28/09, effective 12/1/09.]