

**WSR 22-20-110**  
**PROPOSED RULES**  
**DEPARTMENT OF**  
**CHILDREN, YOUTH, AND FAMILIES**  
[Filed October 5, 2022, 10:01 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-12-064.

Title of Rule and Other Identifying Information: For license-exempt child care: WAC 110-16-0005 Definitions and 110-16-0045 Waiver from department rules—WAC.

Hearing Location(s): On November 8, 2022, telephonic. Make oral comments by calling 360-522-2826 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 November 8, 2022, will be considered.

Date of Intended Adoption: November 10, 2022.

Submit Written Comments to: Rules Coordinator, email dcyf.rulescoordinator@dcyf.wa.gov, by November 8, 2022.

Assistance for Persons with Disabilities: Contact rules coordinator, email dcyf.rulescoordinator@dcyf.wa.gov, by November 4, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Allow DCYF to grant waivers that allow license-exempt family, friend, and neighbor (FFN) child care providers to not comply with a rule due to the specific needs of a child who is in their care. The proposals clarify the conditions under which DCYF may not grant a waiver, that FFN providers whose requests are denied may request a department management review, and that FFN providers whose requests are denied do not have administrative hearing rights.

Reasons Supporting Proposal: The license-exempt child care program authorizes payment of child care subsidies to FFN providers who care for children from eligible families. In Washington, and around the country, FFN care is the most common type of child care for infants and toddlers, as well as before- and after-school care. Families may choose FFN child care for the benefits of shared language, culture, and values, existing bonds of love and trust between their children, FFNs' flexibility to meet nontraditional work hours, or because it's the best option to meet their childrens' special needs. Allowing waivers that do not compromise the health, safety, and welfare of the children in care will remove barriers for potential providers and allow the department to authorize a greater number of FFNs to provide this much needed type of child care.

Statutory Authority for Adoption: 42 U.S.C. 9858; RCW 43.216.055 and 43.216.065.

Statute Being Implemented: RCW 43.216.136.

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

Name of Proponent: DCYF, governmental.

Name of Agency Personnel Responsible for Drafting: Judy Jaramillo, 360-529-6542; 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(4).

Scope of exemption for rule proposal:

Is fully exempt.

October 5, 2022  
Brenda Villarreal  
Rules Coordinator

## OTS-4033.2

AMENDATORY SECTION (Amending WSR 21-15-022, filed 7/12/21, effective 8/12/21)

**WAC 110-16-0005 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

((1)) **"Benefit"** means a regular payment made by a government agency on behalf of a person eligible to receive it.

((2)) **"Child"** or **"children,"** except when otherwise specified, means a child or children eligible for WCCC benefits under chapter 110-15 WAC.

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

((4)) **"Department"** or **"DCYF"** means the department of children, youth, and families.

((5)) **"In-home/relative provider"** or **"family, friends, and neighbors (FFN) provider"** means an individual who is exempt from child care licensing requirements and is approved for WCCC payments under WAC 110-15-0125. Reference in this chapter to the term "provider" means an in-home/relative or FFN provider, except when otherwise specified.

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

((7)) **"Infant"** is a child birth through ~~((eleven))~~ 11 months of age.

((8)) **"Lockdown"** or **"shelter-in-place"** means to remain inside the home when police or an official emergency response agency notifies a provider that it is unsafe to leave or be outdoors during an emergency situation.

((9)) **"Parent"** means, for the purposes of this chapter, the "in loco parentis" or the biological, adoptive, or step-parent, court-ordered guardian, or custodian eligible for WCCC benefits under this chapter.

((10)) **"State plan"** means the DCYF child care and development fund plan submitted by DCYF that must be approved by the United States Department of Health and Human Services.

**"Subsidy payment begin date"** means the first day a provider is authorized to start billing for care provided to eligible children.

~~((11))~~ **"Supervise"** or **"supervision"** means a provider must be able to see or hear the children they are responsible for at all times. Providers must use their knowledge of each child's development and behavior to anticipate what may occur to prevent unsafe or unhealthy events or conduct, or to intervene in such circumstances as soon as possible. Providers must also reposition themselves or the children to be aware of where children are and what they are doing during care. Providers must reassess and adjust their supervision each time child care activities change.

~~((12))~~ **"Swimming pool"** means a pool that has a water depth greater than two feet.

~~((13))~~ **"Technical assistance"** means the provision of customized supports to develop or strengthen processes, knowledge application, or implementation of services by providers.

~~((14))~~ **"Toddler"** means a child (~~((twelve))~~) 12 months through (~~((twenty-nine))~~) 29 months of age.

~~((15))~~ **"Wading pool"** means a pool that has a water depth of less than two feet. A portable wading pool is one that is formed of molded plastic or inflatable parts and can be removed after use.

~~((16))~~ **"Waiver"** is an official approval by the department allowing an FFN provider not to meet or satisfy a rule in this chapter due to specific needs of a child who is in the FFN provider's care.

**"Water activities"** refers to the activities in which children in care swim or play in a body of water that poses a risk of drowning for children.

~~((17))~~ **"WCCC"** means the working connections child care program, a child care subsidy program available to eligible families to help pay for child care.

[Statutory Authority: RCW 43.216.055, 43.216.065 and chapter 43.216 RCW. WSR 21-15-022, § 110-16-0005, filed 7/12/21, effective 8/12/21. Statutory Authority: RCW 43.216.055, 43.216.065, chapter 43.216 RCW and 42 U.S.C. 9858 et seq. WSR 18-20-081, § 110-16-0005, filed 10/1/18, effective 11/1/18.]

#### NEW SECTION

**WAC 110-16-0045 Waiver from department rules—WAC.** (1) The department may grant a request for a waiver if the proposed waiver provides clear and convincing evidence that the health, welfare, and safety of all WCCC eligible children in their care is not jeopardized.

(2) The department cannot waive the following:

(a) Requirements described in a federal statute.

(b) Requirements described in a Washington state statute.

(c) State and federal regulations and policies that must be followed by FFN participants and that are referenced in the state plan. If authorized by the state plan, such requirements, regulations, and policies may be waived by DCYF.

(d) Requirements described in a state rule or regulation that is not codified in Title 110 WAC.

(3) The department may approve a waiver from a rule in this chapter if:

(a) The waiver does not jeopardize the health, safety, and welfare of the WCCC-eligible children in care; and

(b) The waiver is not in conflict with the requirements described in subsection (2) of this section.

(4) An FFN provider's request for a waiver from a rule in this chapter must be:

(a) Submitted in writing on the department's form to the department's license exempt team;

(b) Approved in writing by the department secretary or the secretary's designee prior to the FFN provider implementing the waiver from the rule; and

(c) For a specific FFN provider need or WCCC-eligible child.

(5) A granted waiver may be time specific or may remain in effect for as long as the FFN provider continues to comply with the conditions of the waiver. If the waiver from the rule is time limited, the FFN provider must not exceed the time frame established by the department.

(6) The department may revoke a granted waiver if a rule in this chapter was considered in granting the waiver and the rule is materially altered or amended.

(7) An FFN provider does not have the right to appeal the department's disapproval of a waiver request to the office of administrative hearings under chapter 110-03 WAC (Administrative hearings). An FFN provider may request a management review of the disapproval using a department-provided form.

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