

WSR 07-17-004
EXPEDITED RULES
DEPARTMENT OF
EARLY LEARNING

[Filed August 2, 2007, 2:39 p.m.]

Title of Rule and Other Identifying Information: Child care business regulations for family home child care; WAC 170-296-0020 What definitions do I need to know to understand this chapter?, 170-296-0450 When will my license be denied, suspended or revoked?, and 170-296-0520 How long must I keep child records and what am I required to document while operating my business?

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Gary Burris, Department of Early Learning, P.O. Box 40970, Olympia, WA 98504-0970, or deliver to 649 Woodland Square Loop, Lacey, WA 98503, e-mail gary.burris@del.wa.gov, fax (360) 413-3482, AND RECEIVED BY October 22, 2007.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: Amend WAC 170-296-0020, 170-296-0450 and 170-296-0520, to bring the department rules into compliance with an oral ruling in *DeLaO v. Arnold-Williams* and *Fernandez v. DSHS*. WAC 170-296-0020 clarifies the definition of licensed space as areas of a licensed family child care home that are "accessible to children." WAC 170-296-0450 would limit licensing inspections to the "licensed space" of a family home, rather than the entire home. In addition, state inspector access is limited to times in which "licensed activities are conducted" (when the home is open for business). WAC 170-296-0520 also limits the department's access to child care records only during times that "licensed activities are conducted." These records must be kept in "the licensed space."

Reasons Supporting Proposal: To avoid filing emergency rules repeatedly while rules are being negotiated through the negotiated rule-making process with the Service Employees International Union (SEIU). See above for specific changes.

Statutory Authority for Adoption: Chapter 43.215 RCW.

Rule is necessary because of federal court decision, Oral ruling, *DeLaO v. Arnold-Williams* and *Fernandez v. DSHS*.

Name of Proponent: Department of early learning, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation and Enforcement: Gary Burris, 649 Woodland Square Loop S.E., Lacey, WA, (360) 725-4679.

Jone M. Bosworth
Director

AMENDATORY SECTION (Amending WSR06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-296-0020 What definitions do I need to know to understand this chapter? For the purpose of this chapter:

"Accessible to children" means areas of the facility and materials that children can easily get to on their own.

"Age appropriate" means the developing stages of growth typical of children within a given age group.

"American Indian child" means any unmarried person under the age of eighteen who is:

(1) A member of 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 to be Indian by the Secretary of the Interior, including through issuance of a certificate of degree of Indian blood;

(3) Considered to be Indian by a federally 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.

"Antibias" is an approach that recognizes when others are treated unfairly or oppressively based on race, color, national origin, marital status, sexual orientation, gender, class, religion, creed, disability, or age.

"Assistant" means a person fourteen years or older (whether a volunteer or an employee) who assists a licensed home provider in the operation of the family home child care and is not solely responsible for the supervision of children.

"Capacity" means the highest number of children you can care for at any time, as written on your license.

"Character, competence, and suitability assessment" means a determination of whether an applicant should be allowed access to vulnerable people if that applicant has a conviction record, pending charges and/or findings of abuse, neglect, exploitation or abandonment of a child or vulnerable adult and child protective services(CPS) adverse referral history.

"Child" means a person who has not yet reached the age of twelve years.

"Child care" means the developmentally appropriate care, protection and supervision of children that is designed to promote positive growth and educational experiences for children outside of their home for periods of less than twenty-four hours a day.

"Child abuse and neglect" means the injury, sexual abuse, sexual exploitation, negligent treatment or maltreatment of a child by any person indicating that the child's health, welfare, and safety is harmed.

"Communicable disease" means an illness that can be spread from one person to another, in the child care setting, by either direct or indirect contact.

"Conditions of the license" means what you must do to keep a license.

"Confidentiality" means the protection of personal information, such as the child's records, from persons who are not authorized to see or hear it.

"Corporal punishment" means the infliction of pain by any means for the purpose of punishment, correction, discipline, instruction or any other reason.

"Cultural relevancy" means an environment in which the learning experiences, play materials and activities are meaningful, inclusive and respectful for the participating children, their families and the community at large.

"Department," "we," "us," or "our" refers to and means the state department of social and health services (DSHS), including but not limited to the division of child care and early learning (DCCEL).

"Department of health" means the state department of health.

"Developmentally appropriate" means activities and interactions that recognize and address how children learn and what they can do at each stage of development - socially, emotionally, cognitively, and physically.

"Discipline" means a process of guiding children to develop internal, positive social behaviors through methods that include consistent use of the following: Modeling appropriate behavior, positive reinforcement, active listening, limit setting, redirecting and modifying the environment.

"Division" or "DCCEL" means the division of child care and early learning within the department of social and health services (DSHS).

"Facility licensing compliance agreement" means a written notice of rule violations and the intention to initiate enforcement, including a corrective action plan.

"Family home" means a single dwelling unit and accessory buildings occupied for living purposes by a family which provides permanent provisions for living, sleeping, eating, cooking, and sanitation.

"Family home child care" means a facility licensed to provide direct care, supervision and early learning opportunities for twelve or fewer children, in the home of the licensee where the licensee resides and is the primary provider.

"Family home child care provider" means a person who provides direct care, supervision, behavior management, and early learning opportunities for twelve or fewer children in their family home living quarters for periods of less than twenty-four hours.

"I," "you," and "your" refer to and mean the licensee or applicant for a child care license.

"Inaccessible to children" means areas kept or items stored in a manner that makes it impossible for children to reach, enter, or use potentially hazardous items or areas. Examples of how this can be accomplished are through the use of locks, gates, or other means that are effective to prevent access by the children in your care.

"Infant" means a child birth through eleven months of age.

"License" means an official document that certifies you have been granted permission by the department to operate a family home child care in compliance with the rules.

"Licensed space," means the indoor and outdoor space approved by the department as useable space where children in care may be present, or space that is otherwise accessible to children.

"Licensee" means the person or persons named on the license as having been issued the license and who are responsible for maintaining compliance with the regulations.

"Licensor" means the person with authority to grant licenses.

"Parent" means a child's parent or legal guardian.

"Premises" means the buildings where the home is located and the adjoining grounds (at the same address) over which the licensee has control.

"Preschool age child" means a child thirty months through five years of age not attending kindergarten or elementary school.

"Primary staff person" means a person who has been approved by the department, age eighteen years or older, who has responsibilities for the operation of the program and the direct supervision, behavior management and care of children.

"Provider" means the same as licensee.

"Repeatedly" means a violation of a licensing regulation that is written on a facility licensing compliance agreement that occurs more than once during a twelve-month time frame.

"Reportable communicable disease" means an illness that can be spread from one person to another by either direct or indirect contact, and is of the type that is required by law to be reported to the department of health. Examples include Hepatitis, measles, smallpox, and tuberculosis.

"Revocation" means the formal act of closing your child care business and taking your license from you due to your failure to follow the rules.

"Sanitize" means a surface must be clean and the number of germs reduced to a level where disease transmissions by that surface are unlikely.

"Staff" means a child care giver or group of child care givers employed by the licensee to assist with or supervise children served at the family home child care.

"STARS" (Washington state training and registry system) means the entity approved by the department to determine the classes, courses, and workshops that licensees and staff may take to satisfy training requirements.

"Summary suspension" means the formal act of immediately stopping your license for a certain time because the health, safety or well being of a child is at risk.

"Supervision of children," means the knowledge of and responsibility for the activity and whereabouts of each child in care and assuring immediate intervention of staff to safeguard a child from harm.

"Terms of the license" means the address, number and ages of children, and the beginning and ending dates listed on the license issued by the department.

"Toddler" means a child twelve months through twenty-nine months of age.

"Unsupervised access" means not in the absence of the licensed child care provider or primary staff person. (Anyone sixteen years or older who lives at the same address as the provider must pass a complete criminal history background check.)

"Useable space" means the space actually available for children to engage in developmentally appropriate activities,

that has been inspected and approved by the department for providing child care.

"Weapons" means an instrument or device of any kind that is designed to be used to inflict harm on another person. For example, BB guns, pellet guns, air rifles, stun guns, antique guns, bows and arrows, handguns, rifles, shotguns, knives.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-296-0450 When will my license be denied, suspended or revoked? (1) When you demonstrate that you cannot provide the required care for children in a way that promotes their safety, health and well-being we must deny, suspend or revoke your license.

(2) We must deny, suspend or revoke your license if you:

(a) Have been disqualified by your background check (see DSHS secretary's list of disqualifying convictions for ESA at http://www1.dshs.wa.gov/esa/dccel/pdf/Crime_and_Backg_Chex.pdf);

(b) Have been found to have committed or have allowed others to commit child abuse, child neglect or exploitation, or you or others you supervise treat, permit or assist in treating children in your care with cruelty, or indifference;

(c) Fail to report instances of alleged child abuse, child neglect and exploitation to children's administration intake or law enforcement when an allegation of abuse, neglect or exploitation is reported to you;

(d) Or anyone residing at the same address as you had a license denied or revoked by an agency that provided care to children or vulnerable adults;

(e) Try to get or keep a license by deceitful means, such as making false statements or leaving out important information on the application;

(f) Commit, permit or assist in an illegal act at the address of your child care business;

(g) Use illegal drugs, or excessively use alcohol or abuse prescription drugs;

(h) Knowingly allow employees or volunteers with false statements on their applications to work at your facility;

(i) Repeatedly lack the required number of qualified staff to care for the number and types of children under your care;

(j) Repeatedly fail to provide the required level of supervision for a child in care;

(k) Repeatedly care for more children than your license allows;

(l) Refuse to allow our authorized staff and inspectors requested information or access to your licensed space (~~and premises~~), child and program files, or staff and children in care during times when licensed activities are conducted; or

(m) Are unable to manage the property, fiscal responsibilities, or staff in your facility.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-296-0520 How long must I keep child records and what am I required to document while operating my business? (1) A child's presence in the child care must be documented, on a daily basis, by the child's parent or

guardian or an authorized person by using the sign-in and sign-out procedure for each child in attendance. The parent, guardian or authorized person must use their full signature when signing the child in and out of the child care.

(2) When the school age child arrives at or leaves the child care home due to school or off-site activities as authorized by the parent, you or your staff must sign out the child, and sign in the child on return to the home.

(3) Daily attendance records, listing the dates and hours of attendance of each child must be kept up-to-date and maintained in the licensed space of the family home child care for five years.

(4) When a child is no longer enrolled, the date of the child's withdrawal must be recorded in the child's file. You must maintain the child's file for at least five years from the child's last date of attendance. After five years the file may be destroyed or returned to the parent. The child's file must be made available for review by the child's parents and us during this period.

(5) You must call and report, within twenty-four hours to:

(a) Children's administration intake an incident or injury that required the services of a medical professional, including a dentist, that occurred while the child was in attendance.

(b) DCCEL and to animal control any incident where a child is bitten by an animal while in attendance.

(c) DCCEL any fire on your premises that required the use of a fire extinguisher or the services of a fire department.

(6) You must submit a written incident report to the child's parent and to your licensor within two working days of the same incident or injury as described in subsection (3) of this section.

(7) You must acquire written parental permission for field trips. You must notify parents in advance when you plan to use vehicles to transport children. Parents may grant general authorization for walking field trips.

(8) You must maintain all records and reports required by these regulations in an up-to-date manner ~~((at))~~ in the licensed space of the facility. The records and reports are subject to inspection and you must allow us access to them ~~((at the time we request them))~~ during all hours in which licensed activities are conducted.

WSR 07-17-155

EXPEDITED RULES

DEPARTMENT OF

LABOR AND INDUSTRIES

[Filed August 21, 2007, 2:09 p.m.]

Title of Rule and Other Identifying Information: Chapter 296-62 WAC, Part L—Atmospheres and ventilation.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE

RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Josh Swanson, Department of Labor and Industries, P.O. Box 44001, Olympia, WA 98504-4001, AND RECEIVED BY October 22, 2007.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: On February 20, 2007, the department adopted changes to chapter 296-62 WAC, Part L—Atmospheres and ventilation. Two sections were accidentally repealed in the rule making. This rule making will correct the error by putting the language back into the rule, which will keep it as-effective-as the federal equivalent.

WAC 296-62-100 Oxygen deficient atmospheres and 296-62-110 Ventilation will be added back into chapter 296-62 WAC as WAC 296-62-135 and 296-62-136.

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

Name of Proponent: Department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting: Tracy Spencer, Tumwater, Washington, (360) 902-5530; Implementation and Enforcement: Stephen M. Cant, Tumwater, Washington, (360) 902-5495.

August 21, 2007

Judy Schurke

Director

NEW SECTION

WAC 296-62-135 Oxygen deficient atmospheres. (1) **Definition.** A lack of sufficient oxygen is deemed to exist if the atmosphere at sea level has less than 19.5% oxygen by volume or has a partial pressure of oxygen of 148 millimeters of mercury (mm Hg) or less. This may deviate when working at higher elevations and should be determined for an individual location. Factors such as acclimatization, physical conditions of the persons involved, etc., must be considered for such circumstances and conditions.

(2) **Entering areas with possible oxygen deficient atmospheres.** Workers entering any area where a lack of sufficient oxygen is probable shall be supplied with and shall use approved equipment (for specific requirements see applicable provisions of chapters 296-62, 296-307 (Part-U3), 296-809 and 296-841 WAC) capable of providing safe respirable air, or prior to entry and at all times when workers are in such areas a sufficient supply of safe, respirable air shall be provided. All workers so exposed shall be under constant observation. If the oxygen content is unknown or may change during occupation, tests shall be required prior to and during occupation of questionable areas.

NEW SECTION

WAC 296-62-136 Ventilation.

NEW SECTION

WAC 296-62-13605 Definition. Ventilation shall mean the provision, circulation or exhausting of air into or from an area or space.

(1) **"Local exhaust ventilation"** shall mean the mechanical removal of contaminated air from the point where the contaminant is being generated or liberated.

(2) **"Dilution ventilation"** means inducing and mixing uncontaminated air with contaminated air in such quantities that the resultant mixture in the breathing zone will not exceed the permissible exposure limit (PEL) specified for any contaminant.

(3) **"Exhaust ventilation"** means the general movement of air out of the area or permit-required confined space by mechanical or natural means.

(4) **"Tempered make-up air"** means air which has been conditioned by changing its heat content to obtain a specific desired temperature.

NEW SECTION

WAC 296-62-13610 Ventilation guide. In addition to those mandatory controls as set forth in WAC 296-62-11019, chapter 296-818 WAC, Abrasive blasting, chapter 296-835 WAC, Dipping and coating operations (dip tanks), the *Industrial Ventilation Manual of Recommended Practices* as compiled and approved by the American Conference of Governmental Industrial Hygienists, applicable ANSI Standard or other National Consensus Standards recommended by the federal government, should be used as a guide for ventilation requirements.

NEW SECTION

WAC 296-62-13615 Adequate system. Adequate ventilation systems shall be installed as needed to control concentrations of airborne contaminants below applicable threshold limit values.

NEW SECTION

WAC 296-62-13620 Exhaust. Exhaust from ventilation systems shall discharge in such a manner that the contaminated air being exhausted will not present a health hazard to any workman or reenter buildings in harmful amounts.

NEW SECTION

WAC 296-62-13625 Make-up air quantity. Make-up air shall be of ample quantity to replace the exhausted air and shall be tempered when necessary.

NEW SECTION

WAC 296-62-13630 Design and operation. Ventilation systems shall be designed and operated in such a manner that employees will not be subjected to excessive air velocities.

NEW SECTION

WAC 296-62-13635 Compatibility of systems. Make-up air systems shall be designed and operated in such a manner that they will not interfere with the effectiveness of the exhaust air system.