

WSR 21-12-014
PERMANENT RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES

[Filed May 20, 2021, 12:32 p.m., effective June 20, 2021]

Effective Date of Rule: Thirty-one days after filing.

Purpose: 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.

Citation of Rules Affected by this Order: New WAC 110-05-0001, 110-05-0005, 110-05-0010, [110-05-0015,] 110-05-0020, 110-05-0025, 110-05-0030, and 110-05-0035.

Statutory Authority for Adoption: RCW 74.13.720(7).

Adopted under notice filed as WSR 21-01-183 on December 21, 2020.
Changes Other than Editing from Proposed to Adopted Version:

- Definition for child abuse and neglect (CA/N) inserted in WAC 110-01-0005;
- Insert in WAC 110-05-0010: *An email address, if available, must be included when applying for a certificate;*
- In WAC 110-05-0020: *First-class mail and email, if available, replaces certified mail, return receipt requested, for delivering certificates. For denial delivery methods, first class mail and email, when available, are added to certified mail, return receipt requested;*
- In WAC 110-05-0025: *First-class mail and email, if available, inserted as additional methods for delivering review determinations that do not alter CPI denials and email, if available, inserted as additional method for delivering a certificate when the review determination overturns a denial;*
- WAC 110-05-0030(5) deleted; and
- "Requestor" changed to "subject individual" throughout the chapter.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 7, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 7, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.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: May 20, 2021.

Brenda Villarreal
Rules Coordinator

OTS-2775.7

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 (CA/N) 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 CA/N 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.

"CA/N" means child abuse or neglect as defined in chapter 26.44 RCW.

"Certificate of parental improvement (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 an individual's child was found dependent as a result of a finding the individual 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.

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

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

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

"Secretary" means the secretary of the department.

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

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NEW SECTION

WAC 110-05-0010 Procedures for requesting a CPI and department consideration. (1) **Requesting a CPI.** The request for a CPI must contain the following information:

(a) The individual's current name, mailing address, telephone number, and email address if available;

(b) The individual'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 individual; 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 individual for more information to complete the request.

(4) **Department consideration.** When determining whether to issue a CPI:

(a) The department considers:

(i) Documentation of any founded finding of CA/N and the underlying documentation the entity that issued the finding relied upon to make that finding;

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

(iii) Referral history alleging CA/N against the individual;

(iv) The length of time that has elapsed since the founded finding of CA/N;

(v) Whether a court made a finding that the individual's child or youth 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 or youth was returned to the individual's home;

(vi) Any documentation submitted by the individual indicating whether the individual successfully addressed the circumstances that led to the founded finding of physical abuse or negligent treatment or maltreatment including, but not limited to:

(A) A declaration by the individual signed under penalty of perjury;

(B) Recent assessments or evaluations of the individual; and

(C) Completion or progress toward completion of recommended court-ordered treatment, services, or programs;

(vii) Any pending criminal or civil actions against the individual;

(viii) Results of background checks as authorized under RCW 10.97.050, 43.43.833, and 43.43.834, and the Federal Bureau of Investigation;

(ix) Personal and professional references submitted by the individual from employers, professionals, and agencies familiar with the individual who can address the individual's current character, suitability, or competence;

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

(xi) Any additional information the department deems relevant; and

(b) The department 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 department must issue a CPI if, on a more probable than not basis, the individual 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.

(6) The decision to issue or not issue a CPI will be mailed to the individual 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 department 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 individual's last founded finding of CA/N;

(2) Fewer than two years have passed since the department denied the individual's request for a CPI;

(3) The individual 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 individual 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 individual applying for a CPI has previously received a CPI and is the alleged perpetrator in a subsequent founded finding of CA/N.

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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 to grant a CPI must be sent by first-class mail to the individual's last known address and to their email address, when available.

(3) If the department denies a CPI, the written decision must be sent certified mail, return-receipt requested, first-class mail, and email, when available, and include the following information:

(a) The reasons for the denial, including identifying any information relied upon that was not provided by the applicant;

(b) Copies of any information relied upon that was not provided by the applicant or directions on how to obtain copies of the information;

(c) Notice that the individual has a right to request a review of the denial and instructions for requesting a review; and

(d) A statement that the individual 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 Procedures for requesting review of a denied CPI and the secretary's review. (1) **Requesting a review.** An individual whose request for a CPI is denied may request that the secretary or designee review the denial. The request for review must:

(a) Be in writing;

(b) Clearly state why the individual disagrees with the denial;

(c) Include any relevant supporting information and documentation; and

(d) Be received by the department within forty-five calendar days of when the decision described in WAC 110-05-0020 was mailed to the individual's last known address.

(2) The failure by an individual 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.

(3) **The secretary's review.** 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. The department must:

(a) Complete its review within thirty days after receiving the request for review;

(b) Notify the individual in writing of its review determination by sending the review determination to the individual's last known address.

(i) If the review determination does not alter the CPI denial decision, the department will send the review determination by certified mail, return-receipt requested, first-class mail, and email, when available.

(ii) If the CPI denial decision is overturned, the department will send the review decision by first-class mail and email, when available; and

(c) Include instructions for requesting an administrative hearing under chapter 34.05 RCW when the review determination does not alter the CPI denial decision.

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NEW SECTION

WAC 110-05-0030 Procedures for requesting an administrative hearing. (1) An individual who is denied a CPI under WAC 110-05-0025 has the right to request 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 with 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 individual.

(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) An individual 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 individual, 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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