

WSR 22-12-069
PROPOSED RULES
DEPARTMENT OF
CHILDREN, YOUTH, AND FAMILIES
[Filed May 27, 2022, 1:29 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-24-004.

Title of Rule and Other Identifying Information: Licensing—Foundational quality standards for early learning programs. WAC 110-300-0221 Diaper changing areas and disposal.

Hearing Location(s): On July 5, 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 department of children, youth, and families (DCYF) will send its response. Comments received through and including July 5, 2022, will be considered.

Date of Intended Adoption: July 6, 2022.

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 July 5, 2022.

Assistance for Persons with Disabilities: Contact DCYF rules coordinator, phone 360-522-3691, email dcyf.rulescoordinator@dcyf.wa.gov, by July 1, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of the proposed rule is to prevent someone not affiliated with an early learning program and not on its premises from viewing its diaper changing area. The proposed change to the existing rule requires early learning providers to cover, or otherwise obscure, any windows through which someone on the public right-of-way could view the program's diaper changing area to eliminate the possibility of someone on the public right-of-way from viewing undressed, or partially undressed, infants and toddlers during diaper changes. Providers working in programs housed in buildings with occupants offering other services will be required to prevent visibility of their diaper changing areas for people in the building not affiliated with their programs and not entering the licensee's premises.

Reasons Supporting Proposal: DCYF was petitioned to amend WAC 110-300-0221, more specifically to "add a subsection to specifically detailing [sic] what a diaper-changing area must NOT have/be." Petitioner noted that his child attends a day care with a diaper changing area "directly adjacent to external windows," and that his daughter's diaper changes were visible from the public sidewalk in front of the building. Since early learning providers are not necessarily able, nor are they expected to, control the activities happening on sidewalks or other areas external to their programs' licensed space, DCYF must protect the safety of children in care by preventing the potential for viewing, photographing, or filming diaper changes.

Statutory Authority for Adoption: RCW 43.216.055, 43.216.065, and 43.216.250.

Statute Being Implemented: RCW 43.216.250.

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

Agency Comments or Recommendations, if any, as to Statutory Language, Implementation, Enforcement, and Fiscal Matters: DCYF believes the proposed rule protects children while allowing impacted providers the flexibility to choose the modification that works best for their

program, including no- or low-cost options such as covering windows with paper, fabrics, program-related posters, or purchased vinyl cling privacy film.

Name of Proponent: Michael C. Bennett, petitioner, and DCYF, private and governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Tyler Farmer, Olympia; 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). DCYF does not voluntarily make that section applicable to the adoption of the proposed rules.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. DCYF staff circulated a draft rule to all licensed early learning program providers and solicited their comments. The comments were considered, the draft rule was revised, and staff met with groups of family home child cares and child care centers to share the revised draft and hear comments.

Early learning programs that require diaper changing areas are located in family homes or centers. A family home-based program must have one diaper changing area; a center-based program must have one diaper changing area per classroom or age grouping of children that require diapering. The licensee or program staff determine where to locate the diaper changing area within the licensed space.

DCYF staff discussed with family home and center providers no- or lost [low-cost] options for covering windows, such as paper, fabric, or program-related posters. Some providers expressed reluctance to cover their windows and block the natural light they provide and reluctance to relocate their diaper changing area.

Privacy control frosted window film obscures visibility through the window without blocking the natural light. This window film is available from home improvement stores and mail order sources at a cost of no more than \$35 for a 48-in. x 78-in. panel. The film is a vinyl cling with easy do-it-yourself installation that requires only a spray bottle, water, towels or paper towels, a squeegee, and, if necessary, scissors to cut the vinyl to the window size. A 48-in. x 78-in. panel covers one pane of a standard-sized sliding glass door.

DCYF staff believes the vinyl cling window film to be the highest-cost compliance option, and it is well below the \$2,992 (minor cost calculation) or \$1,015 (0.3 percent of average annual gross business income) minor cost thresholds that trigger a small business economic impact statement.

May 27, 2022
Brenda Villarreal
Rules Coordinator

OTS-3766.1

AMENDATORY SECTION (Amending WSR 18-15-001, filed 7/5/18, effective 7/5/18)

WAC 110-300-0221 Diaper changing areas, privacy, and disposal.

(1) ((A)) Center early learning providers must have a designated diaper changing area, including stand-up diapering, for each classroom or for every age grouping of children who require diapering. Only one diaper changing area is required ((at a)) for family home early learning ((provider)) programs.

(a) ((A)) Diaper changing areas must:

(i) Be separate from areas where food is stored, prepared, or served;

(ii) Have a sink with hot and cold running water, not used for food preparation and clean up;

(iii) Have a sturdy surface or mat that:

(A) Is not torn or repaired with tape;

(B) Is washable;

(C) Has a moisture resistant surface that is cleanable; and

(D) Is large enough to prevent the area underneath the diaper changing area from being contaminated with bodily fluids.

(iv) Be on moisture resistant, washable material that horizontally or vertically surrounds and extends at least two feet from the diaper changing station and handwashing area; and

(v) Be uncluttered and not used for storage of any items not used in diapering a child.

(b) ((An)) Early learning providers must not leave ((a child)) children unattended on the diaper changing surface or mat during the diaper changing process;

(c) ((An)) Early learning providers must not use safety belts on diaper changing tables because they are neither cleanable nor safe; ((and))

(d) ((An)) Early learning providers must post an easily viewable diaper changing procedure at each station and must follow each step described in the procedure; and

(e) Early learning providers must prevent the viewing of a partially or fully undressed child during diaper changes by members of the public who are not on the early learning premises. For the purpose of this subsection, "members of the public" means anyone not affiliated with the providers' early learning programs.

(2) If ((an)) early learning providers use((s)) a diaper changing station, the station must:

(a) Have a handwashing sink within arm's reach of, or be readily accessible to, an early learning provider to prevent cross contamination; and

(b) Be on moisture resistant, washable material that horizontally or vertically surrounds and extends at least two feet from the diaper changing station and handwashing area; and either:

(i) A table or counter large enough to accommodate the length of a child, with a protective barrier at least three and one-half inches high on all sides from the surface the child lays on; or

(ii) A wall mounted diaper changing station that meets manufacturer guidelines and specifications in addition to the requirements of this section.

(3) If ((an)) early learning providers use((s)) reusable or cloth diapers, the diapers must:

(a) Not be rinsed;

(b) Be placed in a securely sealed moisture impervious bag;

(c) Be stored in a separate disposal container; and

(d) Be delivered to a commercial laundry service or given to the child's parent or guardian at least daily.

(4) (~~An~~) Early learning providers must provide a container designated for disposing of soiled diapers and diapering supplies only. The diaper disposal container must be:

(a) Hands-free and covered with a lid to prevent cross contamination;

(b) Lined with a disposable plastic trash bag; and

(c) Within arm's length of the diaper changing area.

[WSR 18-15-001, recodified as § 110-300-0221, filed 7/5/18, effective 7/5/18. Statutory Authority: RCW 43.215.070, 43.215.201 and chapter 42.56 RCW. WSR 18-14-079, § 170-300-0221, filed 6/30/18, effective 8/1/19.]