



# PROPOSED RULE MAKING

## CR-102 (June 2004)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

Agency: Department of Early Learning (DEL)

- Preproposal Statement of Inquiry was filed as WSR 11-12-076, 10-15-116; or
- Expedited Rule Making--Proposed notice was filed as WSR \_\_\_\_\_; or
- Proposal is exempt under RCW 34.05.310(4).

- Original Notice
- Supplemental Notice to WSR \_\_\_\_\_
- Continuance of WSR \_\_\_\_\_

Title of rule and other identifying information: (Describe Subject)

The Department is proposing to revise rules in WAC chapters:

- 170-290 Working connections and seasonal child care subsidy programs
- 170-151 School age child care center minimum licensing requirements
- 170-295 Minimum licensing requirements for child care centers, and
- 170-296A Licensed family home child care standards

Hearing location(s):

See Attachment A

Date: \_\_\_\_\_ Time: \_\_\_\_\_

Submit written comments to:

Name: Department of Early Learning - Rules Coordinator

Address: PO Box 40970, Olympia, WA 98504-0970

Online at:

<https://apps.del.wa.gov/PolicyProposalComment/Detail.aspx>

e-mail [Rules@del.wa.gov](mailto:Rules@del.wa.gov)

fax (360)413-3482 by (date) February 13, 2012

Assistance for persons with disabilities: Contact

the DEL Rules Coordinator by February 2, 2012

TTY ( ) \_\_\_\_\_ or (360) 725-4424

Date of intended adoption: Not earlier than February 14, 2012

(Note: This is NOT the effective date)

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

The proposed rules are intended to update the rules for several purposes, including to:

- Improve child care subsidy program efficiencies, and to reduce potential fraud, waste and abuse by addressing issues identified in federal and state audits of the state's child care subsidy programs
- Implement applicable provisions of Engrossed Substitute Senate Bill [5921](#) (chapter 42, Laws of 2011, 1<sup>st</sup> Special Session)
- Improve the quality of child care by extending certain health and safety requirements to license-exempt in-home/relative providers who provide subsidized child care in their home or the home of the child, as a condition of receiving subsidy payments, and

(continued in Attachment B)

Reasons supporting proposal: The proposed rules are expected to increase accountability for receipt of federal monies under the Child Care and Development Fund (CCDF), reduce the potential for fraud, abuse or waste of child care subsidy funds, and improve safety and health for children in subsidized but license-exempt in-home/relative child care.

Statutory authority for adoption: RCW 43.215.070 and 43.215.060; chapter 43.215 RCW

Statute being implemented: Chapter 43.215 RCW as amended by chapter 42, Laws of 2011, 1<sup>st</sup> Spec. Session.

Is rule necessary because of a:

Federal Law?  Yes  No

Federal Court Decision?  Yes  No

State Court Decision?  Yes  No

If yes, CITATION:

DATE

January 4, 2012

NAME (type or print)

Elizabeth M. Hyde

SIGNATURE

TITLE DEL Director

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

DATE: January 04, 2012

TIME: 10:33 AM

WSR 12-02-077

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:**

The Working Connections and Seasonal Child Care programs are operated jointly by DEL and the Department of Social and Health Services. Under section 501 (uncodified) of chapter 265, Laws of 2006, DEL adopts rules and determines other policy for WCCC. DSHS accepts consumer applications for WCCC, determines each family's eligibility and manages payments to providers of subsidized child care. As of July 2011, these same roles apply to DEL and DSHS for the Seasonal Child Care program.

**Name of proponent:** (person or organization) Department of Early Learning  Private  
 Public  
 Governmental

<b>Name of agency personnel responsible for:</b>		
Name	Office Location	Phone
Drafting.....Lynne Shanafelt, Licensing Admin.	DEL State Office, PO Box 40970, Olympia, WA 98504	(360) 725-2829
Implementation....DEL Licensing Offices	Statewide	( )
Enforcement..... DEL licensing offices	Statewide	( )

**Has a small business economic impact statement been prepared under chapter 19.85 RCW?**

Yes. Attach copy of small business economic impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

phone ( ) \_\_\_\_\_

fax ( ) \_\_\_\_\_

e-mail \_\_\_\_\_

No. Explain why no statement was prepared.

The proposed rules are not expected to create new costs for child care businesses that would be "more than minor" as defined in chapter 19.85 RCW. New and revised health and safety requirements in this proposal that may impose new costs that apply to license-exempt in-home/relative child care providers. In-home/relative providers – typically a relative, friend or neighbor of the parent or guardian needing child care - do not provide child care as a business; if they operated as a business they would need to be licensed. Licensed child care providers must already comply with the requirements in this proposal that are being extended to license-exempt in-home/relative child care providers.

**Is a cost-benefit analysis required under RCW 34.05.328?**

Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name:

Address:

phone ( ) \_\_\_\_\_

fax ( ) \_\_\_\_\_

e-mail \_\_\_\_\_

No: Please explain:

DEL is not among the agencies listed as required to comply with RCW 34.05.328.

**Attachment A to CR-102  
WAC 170-290 and related chapters  
Working Connections and Seasonal Child Care Programs**

Public hearing locations, dates and times:

**1. Tumwater: Tuesday, February 7, 2012, 6:00 p.m.**

Department of Early Learning Tumwater office  
Tumwater office – Nisqually room  
6860 Capitol Boulevard SE – Building 2  
Tumwater, WA 98501

**2. Spokane: Saturday, February 11, 2012, 11:00 a.m.**

Northeast Washington Educational Services District 101  
4202 S. Regal  
Spokane, WA 99223

Individuals may arrive after the posted start time and still participate in these hearing. However, the presiding officer may close the hearing if there are no public participants in attendance, or after all persons who indicated they wish to testify have done so. The public is encouraged to give input in writing:

**The deadline for sending written comments on the proposed rules is midnight on Monday, February 13, 2012.** See the “submit written comments to” section of this notice about how to submit written input on this proposal.

DEL encourages the public to use of the Department Facebook and DEL blog pages on the internet to post input about DEL programs and initiatives. However, for a written comment to be considered part of the official record for this proposal, the comment must be received at the online, e-mail, fax or postal mail locations as described in this notice under “submit written comments to.”

Everyone who comments on the proposed rules either in writing as provided in this notice or at a public hearing will receive the department’s combined written response, called a *Concise Explanatory Statement*. This statement is also available to anyone who requests it, by writing to the DEL Rules Coordinator , PO Box 40970, Olympia, WA 98504-0970, or by e-mailing [Rules@del.wa.gov](mailto:Rules@del.wa.gov).

**End of Attachment A**

**Purpose of the proposal and its anticipated effects, including any changes in existing rules: (continued)**

- Otherwise improve clarity of existing child care subsidy requirements

Audits by the, [Joint Legislative Audit and Review Committee](#),<sup>1</sup> [State Auditor's Office](#),<sup>2</sup> and [U.S. General Accounting Office](#),<sup>3</sup> indicate that Washington and other states need to improve eligibility and payment verification rules and procedures to increase accountability and reduce potential fraud and abuse in child care subsidy programs.

Specifically, the State Auditor recommended: *"DEL and DSHS (should) strengthen administrative rules to compel all licensed, certified and exempt providers to make records available immediately upon request. This would include allowing DSHS and DEL access to original child care attendance records and on-site visits of licensed child care centers, licensed family homes, and license exempt providers for the purpose of investigating suspected overpayments and fraud. In addition, incentives should be built into the rules to compel provider to provide immediate access, such as immediate suspension of the provider's subsidy payments."*

Some of the changes recommended by these audits were made in DEL child care subsidy rules adopted on August 24, 2011 (filing number WSR [11-18-001](#)). This proposal further implements subsidy program improvements identified in the audits, including but not limited to:

- Verifying consumers' information supplied at initial application or re-application for child care subsidy benefits;
- Strengthening background check requirements for license exempt in-home/relative providers;
- Strengthening rules regarding child attendance records in subsidized child care, and providing sanctions for providers who don't keep accurate attendance records to support their subsidy invoices to the state;
- Requiring child providers to allow state auditors or investigators access to provider records related to children receiving subsidized child care;
- Clarifying that licensed providers may bill for not more children than their license capacity allows;
- Increasing child safety and health requirements for in-home/relative child care providers who are otherwise exempt from state licensing; and
- Clarifying requirements regarding monthly child care copayments and the consumers' obligation to pay the copayment to their child care provider.

Section 11 of Senate Bill 5921 requires a parent or guardian receiving or applying for WCCC or SCC seek Department of Social and Health Services Division of Child Support enforcement

services as a condition of receiving child care subsidy benefits, unless the parent/guardian has good cause not to. The Department revised WCCC rules in WAC chapter 170-290 consistent with SB 5921 in August 2011 – see permanent rules filed as WSR [11-18-001](#). The proposed rules revise Seasonal Child Care (SCC) eligibility requirements to align with SB 5921 as well as clarify for both WCCC and SCC when a consumer may qualify for a “good cause” exemption.

Section 12 of SB 5921 also directed DEL to study the use of electronic systems for recording child attendance in subsidized child care. The proposed rules allow, but do not require, providers who are paid for providing subsidized child care to use either paper or electronic attendance records, provided that any electronic system meets the requirements in the proposed rules. This proposal includes new and amended sections of WAC chapters 170-151 (School-age center programs), 170-295 (Child care centers) and 170-296A (Family home child care) regarding paper and electronic child attendance records.

Proposal of this rule is consistent with state Office of Financial Management guidance regarding implementation of Executive Order 10-06 suspending non-critical rule making (extended by Executive Order 11-03), but allowing rules to proceed that are:

*“Required by federal or state law or required to maintain federally delegated or authorized programs;” or*

*“Necessary to protect public health, safety, and welfare or necessary to avoid an immediate threat to the state’s natural resources...”*

DEL is the state’s lead agency for receiving federal Child Care and Development Funds (CCDF), and for assuring state compliance with CCDF rules under title 45 Code of Federal Regulations, chapter 98. The proposed rules are anticipated to help Washington State maintain accountability for CCDF funds and compliance with rules for this federally authorized program. The rules also implement applicable provisions of Senate Bill 5921, chapter 42 Laws of 2011, 1<sup>st</sup> Special Session.

Revised sections in this proposal increase health and safety requirements for non-licensed providers of state-subsidized child care. These requirements are necessary to protect the safety, health and welfare of children in these non-licensed care environments.

<sup>1</sup> [Department of Early Learning Review, Proposed Final Report June 21, 2011.](#)

<sup>2</sup> [Audit of State Payments to Child Care Providers, Report No. 1006484, September 21, 2011.](#)

<sup>3</sup> [Report to Congressional Addressees, September 2010 Child Care Development Fund, Undercover Tests Show Five State Programs Are Vulnerable to Fraud and Abuse. GAO-10-1062.](#)

**End of Attachment B**