STATE OF WASHINGTON
DEPARTMENT OF EARLY LEARNING
PO BOX 40970, Olympia, Washington 98504-0970
(360) 725-4665 • FAX (360) 413-3482

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To: Interested Parties

From: Marci Hixson, Rules Coordinator
Department of Early Learning

SUBJECT: Revised WAC Chapters 170-151 and 170-295 unlicensed child care and maximum civil fines a child care center or school-age program may be charged for violation of DEL rules or RCW 43.215 Concise Explanatory Statement

RCW 34.05.325(6) requires the Department to prepare a "concise explanatory statement" before any rule is filed for permanent adoption. The concise explanatory statement:

- Identifies the Department's reasons for adopting the rule.
- Describes any differences between the proposed rule and the final rule, other than editing, and the reasons for the differences; and
- Summarizes all comments by category received on the proposal rules during the official comment period, the Department's response to the comments, and whether any comments resulted in a change to the final rules, or giving the Department's reasons if the rule was not changed.

The Department sends the concise explanatory statement to everyone who commented on the proposed rules, or to anyone who requests it.

Reasons for Adopting the Rule.
SB 5504 increases the maximum civil fine that may be assessed by DEL for a child care agency that violates chapter 43.215 RCW or rules adopted under this law, or when an individual or entity is suspected of providing child care without a license (unlicensed care), when a license is required by law. SB 5504 also changed the content of the notice DEL must give an individual or entity suspected of providing unlicensed care, and other actions the Department may take to let the public know about agencies providing unlicensed care. The provision of unlicensed child care is a significant public health, safety and welfare concern. The legislature in chapter 43.215

RCW defines the types of child care agencies that must be licensed. Without licensing oversight, unlicensed child care operators may:

- Be caring for children without adequate monitoring;
- Not have had their facilities inspected for health and safety, particularly for fire safety and emergency evacuation of infants and other children who cannot walk;
- Be caring for more children than would be safe, even if the facility was licensed;
- Not be providing adequate early learning or developmental activities;
- Not have staff with adequate child care or child development training; and/or
- Not have done background checks on individuals caring for or having access to the children.

The Legislature established DEL in part to "safeguard and promote the health, safety and well-being of children receiving child care and early learning assistance, which is paramount over the right of any person to provide care..." RCW 43.215.005(4)(c). These rules are needed to provide the tools for the department to address suspected unlicensed child care, as well as to protect the safety, health and well-being of children who may be in unlicensed child care.

Proceeding with these rules is consistent with state Office of Financial Management guidance regarding Executive Order 10-06 suspending non-critical rule making, 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."

Revising these rules is necessary to comply with the revised state law, and to protect the health, safety and welfare of children being cared for in suspected unlicensed and unmonitored child care environments.

Rule Development Process. On May 31, 2011, DEL filed a CR 101 pre-proposal public notice that began the rule development process.

On January 4, 2012, DEL filed the formal proposed rules (CR-102 notice). Formal public hearings were held in the evening on February 7, 2012 in Tumwater, and on Saturday, February 11, 2012 in Spokane. No one from the public attended the February 7 hearing. One person attended the Spokane hearing, and formal testimony was given by Laura Bowman, a licensed child care center director, in support of this change.

Differences between the Proposed Rule and the Final Rule, other than editing. No changes were made to the rules proposed as WSR 11-12-080.

Summary of Comments; Department Response, and effect on the Final Rule. DEL received no written or public hearing comments on the proposed rules.