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TO: Interested Stakeholders

FROM: Saul Olivarez, Department of Early Learning Rules Coordinator

Date: November 20, 2015

SUBJECT: **Concise Explanatory Statement
Revisions to the DEL background check rules Chapter 170-06 WAC
and the Early Childhood Education and Assistance Program
(ECEAP) Chapter 170-100 WAC to require employees of the ECEAP
who have access to children to submit to fingerprint background
checks.**

RCW [34.05.325](#)(6) requires that when a state agency adopts a permanent rule (known as Washington Administrative Code or WAC), the agency must prepare a “*Concise Explanatory Statement*” (CES). This statement is a public document that summarizes:

- Comments, summarized by category, received at public hearings or in written form on the proposed version of the rule;
- Whether the final rule was changed as a result of the comments; and
- Changes from the proposed to the final version of the rule.

The Department of Early Learning (DEL) sends the Concise Explanatory Statement to everyone who testified at public hearings, sent a written comment, or asks to receive the CES. The CES is also posted on the DEL website (see <http://www.del.wa.gov/laws/development/Default.aspx>, *DEL Rules Under Development*).

This document also serves as the summary of public hearing comments to the agency head required under RCW [34.05.325](#)(4).

I. Background

On July 29, 2015, the DEL filed a CR-101 preproposal statement of inquiry as WSR 15-16-046 opening up WAC chapters 170-06 and 170-100 for rulemaking to ensure alignment with the Early Start Act legislation passed in 2015.

On September 23, 2015, the DEL filed a CR-102 proposed rulemaking to adopt fingerprint background check rules for ECEAP employees who have access to children. The proposed rules are necessary to enhance and promote the health and safety of children in these programs.

Public Comment. The DEL filed proposed rules on September 23, 2015 as WSR 15-19-169. Public hearings were held on October 27, 28, 29, 2015 in Tacoma, WA.,

Spokane, WA., and Pasco, WA., respectively. No one attended or testified at the hearing but two comments were received in writing before the October 30, 2015 comment deadline. The comments were taken directly from their source and were not edited for grammar, spelling or syntax. Multiple comments related to a specific rule were combined and addressed together. If an individual provided recommended WAC edits/changes or additional information such as documentation that supports their comments, then those documents will become a part of the record for this rulemaking and will be made available upon request. The comments on the proposed rules are summarized in section II of this document.

II. Summary of Issues Raised in Public Comments, and DEL’s Responses, Noting if the Proposed Rule was Changed as a Result

<p>A. Public Comments regarding WAC Chapters 170-06 and 170-100.</p>	<p>B. 1. DEL Response; and 2. Was the proposed rule changed as a result of the comment? If yes, how?</p>
<p>General Comments.</p> <p>Comment 1: Neutral - Sentences do not flow. Please clean-up for clearer understanding.</p> <p>Comment 2: When, as here, the Department adds an essential definition that is used throughout the regulatory scheme, it is crucial that the meaning be clear, comprehensible, and easily applied. Ambiguity invites confusion, inconsistency, and litigation. We ask the Department to revise and clarify a new definition.</p> <p>Proposed WAC 170-06-0020 Definition of "Early Learning Services."</p> <p>The definition of "Early Learning Services" does not define the services involved. Instead of clearly listing out the services that require background checks, the definition says that if a fingerprint or background check is required, that is an early learning service. This turns the definition on its head. The definition becomes murkier with the "include, but not limited to" clause, leaving us to guess what else could be included. When the term "early learning services" is used in context, the meaning is circular. For example, WAC 170-06-0010(2) states:</p>	<p>1. The department agrees with both comments. The department corrected sentences for a clearer understanding and revised the “early learning services” definition.</p> <p>2. The proposed rules for WAC Chapter 170-06 were revised as a result of these comments.</p>

<p>The Department conducts background checks on subject individuals who are authorized to care for or have unsupervised access to children in early learning services.</p> <p>When the definition is applied a confusing tautology results:</p> <p>The Department conducts background checks on subject individuals who are authorized to care for or have unsupervised access to children in [DEL programs including child care that are required to have the Department conduct their fingerprint and background checks....]</p> <p>The Department must either functionally define "early learning services" or clearly name what services are included.</p>	
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III. Changes to the final rule compared to the proposed rule.

The proposed rules for WAC Chapter 170-06 were revised as a result of the comments received. No changes were made to WAC Chapter 170-100.