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TO: Interested Stakeholders

FROM: Saul Olivarez, Department of Early Learning Rules Coordinator

Date: April 15, 2016

SUBJECT: **Concise Explanatory Statement
Amending chapter WAC 170-290 to correct outdated language and grammatical style for an anticipated clearer understanding of the rules, specifically describing which applicants will receive priority in the event of a waitlist for services occurring and adopting a recommendation that separates child care subsidy eligibility from payment authorization for child care.**

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 DEL’s 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, DEL filed a CR-101 preproposal statement of inquiry as WSR 15-16-046 opening up WAC chapter 170-290 for rulemaking to revise the department’s rules to update, streamline, and improve efficiencies across all programs it administers, and to implement legislation as required by the 2015 legislature.

On February 26, 2016, DEL filed a CR-102 proposed rulemaking to correct outdated language and grammatical style for an anticipated clearer understanding of the rules, specifically describing which applicants will receive priority in the event of a waitlist for services occurring and adopting a recommendation that separates child care subsidy eligibility from payment authorization for child care.

Public Comment. DEL filed proposed rules on February 26, 2016 as WSR 16-06-083. Public hearings were held on April 5 and 6, 2016 in Tacoma and Spokane, Washington, respectfully. No one attended or testified at the hearing but several comments were received in writing before the midnight April 7, 2016 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

A. Public Comments regarding WAC Chapters 170-290.	B. 1. DEL Response; and 2. Was the proposed rule changed as a result of the comment? If yes, how?
<p>WAC 170-290-0034</p> <p>Comment 1: I got a notice today about proposed WCCC and DEL rules and thought I would review the proposed rules for possible changes in costs. I have several comments</p> <p>Once you unpack the changes, number (8) on page 17 [DEL notation – referencing WAC 170-290-0034] near the bottom appears to read that the provider must do the following:</p> <p>(8) Not claim a payment in any month: (a) A child attended at least one day in that month; and (b) The day attended is within the authorization period.</p> <p>Removal of the word ((not)) from (a) between child and attended changes the meaning. If interpreted the way I read it (and wrote it above), this provision could save a lot of money. I’m not sure that was intended though. I think this language should be reviewed. Once the intent of the language is determined, this section could be clearly worded to convey the intended meaning.</p>	<p>1. The department agrees with the comments referencing WAC 170-290-0034, and has made the correction reinserting the word “not”.</p> <p>2. WAC 170-290-0034 was revised as a result of the comments.</p>

<p>Comment 2: I was reading through the WCCC WACs to see where I will need to draft language to add HCCP to WCCC. I noticed the following WAC.</p> <p>WAC 170-290-0034 Providers' responsibilities</p> <p><u>(8)</u> Not claim a payment in any month (in which);</p> <p><u>(a)</u> A child has (not) attended at least one day in that month; <u>and</u></p> <p>((8)) <u>(b)</u> The day attended is within the authorization period.</p> <p>“Not claim a payment in any month a child has attended at least one day in that month.” This means the provider cannot claim for anything if the child attended. I think “not” needs to be left in (a) so the provider cannot claim if the child did not attend.</p> <p>Is there still time to change this?</p>	
<p>WAC 170-290-0085</p> <p>Comment: Please change the language in 170-290-0085 (2) to reflect that copayment changes are effective the first of the month following the date that the Department of Social and Health Services becomes aware of the change.</p> <p>This is important for payment accuracy, to reduce payment improper payments and consistency.</p>	<ol style="list-style-type: none"> 1. WAC changes on the issue of when a copayment change takes effect is beyond the scope of this rulemaking. 2. The proposed rules were not changed as a result of this comment.
<p>WAC 170-290-0190</p> <p>Comment: Next, on page 36 the full-day/half-day definition is clarified [DEL notation – referencing WAC 170-290-0190]. The new language says:</p> <p>(a) Full-day child care to licensed or certified facilities and DEL contracted seasonal day camps when a consumer's children need care between five and ten</p>	<ol style="list-style-type: none"> 1. The department agrees with the comment referencing WAC 170-290-0190 regarding the full-day/half-day language, and has added additional language specifying units authorized when parents work 110 or more hours per month. 2. WAC 170-290-0190 were revised as a result of the comments.

<p>hours per day;</p> <p>(b) Half-day child care to licensed or certified facilities and DEL contracted seasonal day camps when a consumer's children need care for less than five hours per day;</p> <p>(c) Hourly child care for in-home/relative care;</p> <p>(d) Full-time care when the consumer participates in one hundred ten or more of approved activities per calendar month based on the consumer's approved activity schedule.</p> <p>What does full-time mean as opposed to full-day? Does the 110 hour rule trump or not trump the number of hours indicated by the child's need for care? All of the child activity schedule references have been deleted from the full and half-day language deleted at the bottom of page 38 and top of page 39. I don't see the term full-time defined in the fee schedule. I assume it means full-day. (a) (b) and (d) may be in conflict with each other and I don't think these proposed rules clearly explain how that conflict would be resolved. Also, does the hourly child care for in-home/relative care no longer have a 110 hour rule?</p> <p>I think the intent of this language should be determined and the section written with greater clarity.</p>	
<p>WAC 170-290-0247 and WAC 170-290-0249</p> <p>Comment: There are also fee increases provided on page 45 for quality enhancement fees [DEL notation – referencing WAC 170-290-0247]. On page 46 the non-standard hour bonus is increased [DEL notation – referencing WAC 170-290-0249]. These changes are clear, but I am wondering about the amount these changes might cost and</p>	<p>1. The changes made to WAC 170-290-247 and WAC 170-290-249 regarding filed trip fees and nonstandard hours bonuses were made to update the respective WACs to conform to the Collective Bargaining Agreement with SEIU 925. The new amounts reflect current practice per agreements effective July 1, 2015 and result in no additional costs.</p> <p>2. WAC 170-290-247 and WAC 170-290-249 were not changed as a result of this</p>

<p>whether money is available in the budget to cover these costs.</p>	<p>comment.</p>
<p>General Comment</p> <p>Comment: I was only able to read the WAC through page 83. My comments are in Track Changes.</p> <p>I wasn't sure if you wanted to replace every "his or her" with "consumer." I changed a few more but wasn't sure what your intent was. I do think the WAC should be consistent, using the same language throughout the document.</p> <p>Most of my changes were to make the sections start the same.</p>	<ol style="list-style-type: none"> 1. The department agrees with the comment and has made some of the stylistic correction suggestions in sections contained in the proposed rules. DEL will continue to track outstanding grammatical, style, and typographical issues in the Chapter 170-290 for possible future rulemaking. 2. Various rules were revised as a result of this comment but others were not.
<p>General Question</p> <p>Comment: I thought WCCC was going to track families who had been homeless in the past 12 months based on the McKinney-Vento definition, for reporting. I didn't think they were going to get priority on the waiting list.</p> <p>I thought families who are currently homeless and access WCCC with HCCP contractors help, were going to get priority for authorizations and wouldn't be on the waiting list.</p>	<ol style="list-style-type: none"> 1. DEL has opted to prioritize homeless families with respect to the wait list but did not specify in this rulemaking the timeframe to be under consideration in determining whether a family qualifies as homeless. DEL is considering options for how to specifically implement this prioritization. 2. The proposed rules were not changed as a result of this comment.
<p>Policy Question</p> <p>Comment: My question concerns the policy on absent days. We know from the state's CCDF plan that current policy has been that providers can bill for unlimited absent days each month for children who are authorized and scheduled to attend. The language in the rule changes does not appear to represent a change in that policy, but we want to be sure.</p> <p>The policy in question states that providers cannot "<u>charge subsidized families for: Absent days on days in which the child is scheduled to attend and authorized for care.</u>"</p>	<ol style="list-style-type: none"> 1. The proposed change does not represent a change in policy but rather updates WAC to conform to the Collective Bargaining Agreement with SEIU 925 effective July 1, 2013 as it relates to absent days. 2. The proposed rules were not changed as a result of this comment.

<p>What I am trying to find out is whether the other policy---that providers can bill the state for unlimited absent days—still applies even though those families cannot be charged. <i>In other words, will the state still pay for absent days that providers cannot charge families for?</i></p>	
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III. Changes to the final rule compared to the proposed rule.

As a result of the comments above the Department made typographical and stylistic changes to the proposed rules and inserted a word incorrectly deleted in the proposed rules in WAC 170-290-0034. The Department also edited language in WAC 170-290-0190 to clarify what is meant by “full-time” care to be consistent with current practice. The proposed rules had deleted old language that was not consistent with current practice.