



DEPARTMENT OF EARLY LEARNING
P.O. Box 40970, Olympia, Washington 98504-0970
(360) 725-4523 • FAX (360) 725-4925

TO: Interested Stakeholders

FROM: Saul Olivarez, Department of Early Learning Rules Coordinator

SUBJECT: **Concise Explanatory Statement
Final Adoption of Amended WAC sections 170-295-1070, 170-295-1080, 170-295-1090, 170-295-3010, 170-295-4100, 170-295-4110, 170-295-7050.**

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 February 5, 2015, the DEL filed a CR-101 preproposal statement of inquiry as WSR 15-05-007 opening up WAC chapters 170-295 and 170-296A, for rulemaking to update licensing rules pertaining to safe sleep practices.

On June 30, 2015, the DEL filed a CR-102 proposed rulemaking “[t]o update health and safety standards relating to safe sleep practices for infants napping or sleeping in licensed child care settings.” The reason the proposed rules are necessary is to update licensing rules pertaining to safe sleep practices in order to reduce sleep related incidents in licensed child care settings.

Public Comment. The DEL filed proposed rules on June 30, 2015 as WSR 15-14-105. A public hearing was held on August 5, 2015 in Olympia. Three individuals attended and testified at the hearing and several comments were received in writing before the August 6, 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 sections 170-295-1070, 170-295-1080, 170-295-1090, 170-295-3010, 170-295-4100, 170-295-4110, 170-295-7050.</p>	<p>B. 1. DEL Response; and 2. Was the proposed rule changed as a result of the comment? If yes, how?</p>
<p>WAC 170-295-0100. When can my license application be denied and when can my license be suspended or revoked?</p> <p>Section 3(c): Remove this sentence: "However, if you demonstrate by clear and convincing evidence that you have taken enough corrective action and rehabilitation to justify the public trust to operate the center according to the rules of this chapter, we consider issuing you a license"</p>	<p>1. This rule is not a part of the proposed rulemaking presented for comment. It is beyond the scope of this rulemaking.</p> <p>2. The proposed rule will not be revised at this time.</p>
<p>WAC 170-295-1080. What topics must my new staff orientation include?</p> <p>Comment 1: I definitely support all staff being trained annually in safe sleep practices. However, all staff should take annual safe sleep training from DEL or any other state-approved agency that trains licensees & primary staff. The center should not be required to train them.</p>	<p>1. Proper staff training is the responsibility of the licensee. See WAC 170-295-1080. A DEL approved stars trainer can conduct safe sleep training. The DEL encourages licensees and staff to attend a wide array of training opportunities to meet their yearly requirements. This will only enhance their skillset and services.</p> <p>2. The proposed rule will not be revised at this time.</p>
<p>WAC 170-295-2080. What must I communicate to parents?</p> <p>Section 2: Please add: Centers should provide written documentation that includes information on what documents much [sic] be posted as per RCW 43.215.525 and where in the daycare they can be found. Centers should provide written documentation that includes a link to Child Care Check and what information</p>	<p>1. This rule is not a part of the proposed rulemaking presented for comment. It is beyond the scope of this rulemaking.</p> <p>2. The proposed rule will not be revised at this time.</p>

<p>can be found there. For those without internet access, DEL's phone number should be listed with information about how to ask about a provider's record.</p> <p>Section 2(p): Add safe sleep practices to written information that centers must provide.</p>	
<p>WAC 170-295-4100. What sleep equipment do I need for infants?</p> <p>Comment 1: Section 5(b): Remove the requirement for "A clean light weight blanket or suitable cover for the child." Infants should not sleep with blankets according to American Academy of Pediatrics [sic] safe sleep recommendations.</p> <p>Comment 2: I am also concerned about the conflict between two of the rules in section 170-295-4100. We either allow blankets or we do not. You cannot have both in the same WAC. I believe best practice is to not allow blankets, so I would opt for that and be consistent.</p> <p>Comment 3: I'm concerned about the conflict between two of the rules. The old 170-295-4100 remained unchanged, and it requires the licensee to provide a light weight blanket for infants. But the new 170-295-4110 states that blankets are not to be allowed in infant sleeping equipment.</p> <p>I would suggest the 4100(b) get deleted to make the rules consistent. WAC 170-295-4100 What sleep equipment do I need for infants? (5) You must provide: (b) A clean light weight blanket or suitable cover for the child. WAC 170-295-4110 What are infant safe sleep practices? (1) Infant safe sleep practices must be followed when infants are napping or sleeping. The staff must: (c) Not allow blankets, stuffed toys, pillows, crib bumpers and similar items in the infant sleeping equipment,</p> <p>Comment 4: Please review WAC 170-</p>	<ol style="list-style-type: none"> 1. The conflict between WAC 170-295-4100 and WAC 170-295-4110 in the proposed rules was an oversight in the rule drafting stage and will be corrected. 2. Subsection (5)(b) will be removed from WAC 170-295-4100 to end the rule conflict with WAC 170-295-4110(1)(c).

<p>295-4100 (5) (b) A clean light weight blanket or suitable cover for the child. This language needs to be removed from this WAC as it does not align with current safe sleep practice of no blankets or covers for the child.</p>	
<p>WAC 170-295-4110. What additional sleeping arrangements must I make to reduce the risk of sudden infant death syndrome (SIDS)?</p> <p>Comment 1: I'm concerned about the conflict between two of the rules. The old 170-295-4100 remained unchanged, and it requires the licensee to provide a light weight blanket for infants. But the new 170-295-4110 states that blankets are not to be allowed in infant sleeping equipment. I would suggest the 4100(b) get deleted to make the rules consistent. WAC 170-295-4100 What sleep equipment do I need for infants? (5) You must provide: (b) A clean light weight blanket or suitable cover for the child. WAC 170-295-4110 What are infant safe sleep practices? (1) Infant safe sleep practices must be followed when infants are napping or sleeping. The staff must: (c) Not allow blankets, stuffed toys, pillows, crib bumpers and similar items in the infant sleeping equipment,</p> <p>Comment 2: While I agree that safe sleep practice training needs to occur statewide, I hope that DEL gives time for centers to get the training and not expect it to happen over night [<i>sic</i>]. There is a lack of trainers available in the Spokane area for continuing education, and those trainers that are available will need to be trained so they can offer the class. DEL must also consider cultural aspects. In the Native American culture, babies are put into a cradle board for their first couple of years. Should a family, or doctor, request or prescribe a different practice other than the proposed changes, it should be in writing and proper training to use any alternative equipment must occur and be</p>	<p>1. The conflict between WAC 170-295-4100 and WAC 170-295-4110 was an oversight in the rule drafting stage and will be corrected.</p> <p>The risk of SIDS and other sleep related incidents that can cause infant injury or death is reduced when safe sleep practices are implemented. References to SIDS were removed because safe sleep practices reduce the risk of all sleep related incidents including SIDS. Other sleeping positions or the use of a sleep positioning device is permissible with a written medical directive or order from the infant's medical provider. The medical directive or order must be in the infant's file. See proposed rule WAC 170-295-4110(1)(f)</p> <p>Proper staff training is the responsibility of the licensee. See WAC 170-295-1080. When caring for children, including infants, assistants and volunteers require direct supervision of a lead child care staff person. See WAC 170-295-1040 and WAC 170-295-1050. The proposed rules do address the retention of safe sleep training documentation in the staff's file. See proposed rule WAC 170-295-7050.</p> <p>A DEL approved STARS trainer can conduct safe sleep training. The DEL encourages licensees and staff to attend a wide array of training opportunities to meet their yearly requirements. This will only enhance their skillset and services.</p> <p>The DEL has established protocol and plans of correction in place for when a licensee is in violation of current regulations including safe sleep practice violations. The licensee will be required to</p>

<p>documented by both parents and teachers.</p> <p>Comment 3: Why has language been changed to remove all reference to SIDS? I can't approve or disapprove without understanding the rationale. Section 1(c): Add language prohibiting loose-fitting sheets.</p> <p>Section 3: Please add language stating that when the department finds a sleep violation, they will return for a follow-up visit to ensure the child care is practicing safe sleep. Also, the department should inform parents of the safe sleep violation directly rather than leaving it to the provider. After 3 safe sleep violations, the licensee should lose their ability to care for infants. I agree with the procedures detailed in this proposal, provided the above is added. On its own, this proposal is not effective.</p> <p>Comment 4: I am writing to express my concern over the current changes to the purposed Washington State Licensing code, regarding WAC 170-295. I am the director of Little Sprouts Child Care in Everett and Little Sprouts II in Seattle Washington. Our child care centers are located in Evergreen Recovery Center's long term residential Pregnant and Parenting Women's treatment centers. A large percentage of our infants have been prenatally exposed to either drugs or alcohol and are experiencing withdrawal symptoms.</p> <p>Research shows that these infants are unable to sooth themselves or eat or sleep properly unless they are assisted. The number one technique used to comfort these infants is swaddling. We use a light receiving blanket wrapped around the infant's arms and upper body. This allows the infant to be calm enough to eat or sleep appropriately to assist in their growth and development. I have been at Evergreen Recovery Center for 9 1/2</p>	<p>notify all parents when a safe sleep violation has occurred.</p> <p>2. The proposed rule will not be revised at this time.</p>
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years and have found personally how beneficial swaddling is for these infants.

The new WAC code would not allow us to swaddle the infants. The code states that sleeping infants would be wrapped with their arms free, which would not have the same calming affects as swaddling. We are asking that the code be changed to allow the arms and upper body to be wrapped. Proper techniques are taught to all our staff members and volunteers. Our children are very closely supervised for any over heating [*sic*] or breathing problems. If this rule were to pass, we request an exception for the population of infants that we serve.

Thank you for consideration of our position and the infants that are already affected by the drugs and alcohol. We want to be able to continue to assist these infants to be well and healthy in the early months of their lives.

Comment 5: I am writing to you today to express my concern over the current changes to the purposed Washington State Licensing code, regarding WAC 170-295. I am the program supervisor at Little Sprouts Child Care in Everett, Washington. We are located on campus of Evergreen Recovery Centers which supports pregnant and parenting women who have a history of drug or alcohol related addictions. Each child that attends our facility has been exposed to drugs and/or alcohol whether physical or emotional.

There are many signs of infants who were exposed to drugs. They have unpredictable sleep patterns, feeding difficulties, irritability, delayed language development and poor fine motor development. It has been proven that infants who are prenatally affected by drug use are unable to focus enough to do three main tasks at one time. For example

an infant has the inability to breathe, eat and control their arms or legs. As a caregiver I cannot breathe or eat for the infant, but I can help control their arm and leg movements for them. We use a well known [sic] technique called swaddling. We use a light swaddling blanket and wrap the blanket snug around the arms of the infant with the arms of the infant controlled at their side. This allows the infant to concentrate on eating or sleeping without losing focus due to their lack of control. This allows the infant to have a much more relaxing and rewarding experience. Research shows when it comes to infants who are affected by drugs and alcohol that swaddling continually helps with a longer feeding and a more restful sleep pattern.

The new WAC code will not allow us to swaddle the infants, as the code specifically states that sleeping infants are to be wrapped only with their hands free. This completely defeats the purpose of swaddling. We have spoken with our licensor, Wendy Lin, on multiple occasions trying to come to a consensus regarding how we can still continue to practice this calming, safe technique which is universally used on the demographic of infants we work with. We were told that she would not grant us an exception, even after explaining the sensitive nature of the children we serve.

The enactment of WAC 170-295 will be severely detrimental to this community. If we continue to swaddle infants we will be publically shamed by being forced to place a notice on our door saying we are in violation of a Washington State code when we are simply doing what years of research has proved as a calming and soothing practice for children who have already experienced narcotic withdrawals and pain, which no child ever should experience. We need to take a proactive stance on improving the quality of life for infants in our care and WAC 170-295 will

severely prohibit our ability to care for them and progress in their recovery. These children already have enough to deal with in life, while we cannot change what has happened in their past we can take a proactive stance to change what happens in their future, assuring them that they are allowed to feel calm, safe and protected.

Comment 6: This letter is in reference to the recent requirements about the non-swaddling of drug or alcohol-affected babies.

I have been in the childcare industry for 16 years. I received an Associates [sic] Degree in Early Childhood Development in 2003, being honored with the Early Childhood Education Student of the year award.

For the last ten years I have been employed at the Drug Abuse Prevention Center in Longview, WA in the Childcare Center, where my primary job is to care for the drug and alcohol – affected babies. My experience with these infants definitely indicates the need for swaddling for the well-being of the child and the childcare worker.

My reasons for the preference of the swaddling of infants is as follows for these infants:

- 1) Swaddling lessens their jerky movements so they can relax and fall asleep, experiencing better and longer sleep.
- 2) Swaddling improves alertness in the infant after a calm, restful nap. This leads to better drinking of their bottle to fulfill their hunger instead of using it as comfort.
- 3) Swaddling helps in their learning to self-soothe so they can comfort and calm themselves, building on the skill to fall asleep on their own, which is a skill we

need for the rest of our lives.

4) Swaddling helps in general for the baby to calm him or herself when the body and brain is overwhelmed or over-stimulated.

5) Swaddling lessens the scratching of their faces and bodies when they are not jerking and flailing.

6) Swaddling protects the childcare worker when she/he is trying to comfort, clam soothe, or get the child to sleep. Flailing can cause scratching, pinching, and hitting to the worker. It is more difficult to safely hold the infant.

7) Swaddling helps promote attachment, bonding, and safety feelings with the caregiver/teacher by the infant experiencing and trusting the ability of the caregiver to help him or her calm more quickly.

Please reconsider the ban on swaddling infants in childcare situations, especially those that are associated with treatment centers.

Comment 7: Thank you for the opportunity to provide feedback for Child Care and In Home Safe Sleep WACs.

The Child Care Health Program (CCHP) of Public Health Seattle & King County is submitting our recommendations for Safe Sleep. CCHP strongly recommends that the Center and Home WACs for Safe Sleep follow these standards to ensure that all infants in out of home care in Washington State are provided a safe sleep environment.

CCHP would ask for your consideration to add a statement on the practice of swaddling. With the emerging evidence showing swaddling has the potential for serious health risks to infants we recommend Washington State Department of Early Learning endorse the American Academy of Pediatrics

statement on Swaddling in Childcare and In- Home Family care. (please see attachments)

Areas highlighted are not currently in either WAC. The CCHP highly recommends these suggestions be added to both Child Care and In Home WAC's.

The CCHP uses "Caring for Our Children National Health and Safety Performance Standards Guidelines for Early Care and Education Programs" to guide our programs health and safety practices.

With the emerging evidence showing swaddling has the potential for serious health risks to infants we recommend Washington State Department of Early Learning endorses the American Academy of Pediatrics statement on Swaddling in Childcare and In- Home Family care.

Comment 8: I oppose.

I don't know the number but it's the one with the swaddling and they're proposing to say that we can only wrap a light blanket around the trunk of the body and need to leave the arms free. Well, the population that we serve are drug affected, prenatally drug affected infants. We're licensed for 8 at both of our centers. Many, many of our children who come in are born to mothers who are on drugs and alcohol and are withdrawing from those drugs or else or methadone that the mother's been placed on. During that withdrawal period, the children just cannot control their own bodies. They can't eat, sleep and do all these things all at once. They need help controlling their bodies and swaddling's been proven to be very effective method to do that. We train all of our teachers in our swaddling technique. They use a light receiving blanket. They wrap the child, like . . . you know, not snuggly and firmly but so that the arms are restricted. We don't restrict the hips so there's no problem with hip displacement or anything

like that. And you can see an instant calm come over the children when you swaddle them and so we're proposing that the swaddling piece be taken out and or propose that more training standards are proposed or exemptions offered to those with our particular population of children.

Just to reiterate in all of the research and things that you talk about techniques to deal with drug affected infants. The number one thing that they suggest you do is to swaddle them.

We've already submitted these online [referring to previously sent comments]. So I didn't read them but many of, much of what is said in here backs up what Crystal said with her information and how swaddling really does soothe and is a very effective technique.

Comment 9: I am a clinical supervisor of the PPMU Chemical Dependency Program under Family Health Center. We are similar to prior witness in the fact that we run and operate a licensed child care center within our facility. We are contracted to have 16 children.

I oppose, just the swaddling.

If you don't mind, we kind of brainstormed our notes and I would just like to briefly kind of go through that. So each year an estimated four hundred thousand to four hundred-forty thousand infants, which is roughly about eleven percent of all births are affected by alcohol or illicit drug exposure prenatally. Prenatal exposure to alcohol, tobacco and illicit drugs has the potential to cause a wide spectrum of physical, emotional and developmental problems for these infants. The harm caused to the child is significant and long lasting especially if the exposure is not detected and so, we end up seeing a lot of these children returned to our child care center straight from NICU, PIC Units or they are born like within our facility and

show withdrawal symptoms at that time and so we have quite a few of these infants in our center and what we know is that drug exposed infants cannot multi-task and do things simultaneously like regular infants would. They don't control their bodies, even they're breathing patterns, their sucking patterns, some of them are born not even able to root properly for food and so if they are constantly trying to regulate their emotions and their physical self they are not focusing on feeding, not focusing on sleeping, and so these are just some of the problems that we see: withdrawal, jitters, tremors, seizures, sneezing, vomiting, diarrhea, methamphetamine addicted infants may sleep and be difficult to wake up for feedings for several weeks, inconsolable crying up to a year old, the baby's cry is ear piercing and for long periods of time and don't seem to be consoled like your regular infant would with the diaper change or rocking, poor temperature control and circulation to begin with, muscle stiffness, difficulty with reflex, some infants are missing them altogether, the doctor, you know, they come without even those normal reflexes, feeding difficulties, having problem with nipple recognition, coordinating suck, swallow, breathe process, not waking up or wanting to eat all the time, we have infants that feel like they are hungry constantly, digestive disorders which could lead to failure to thrive, we see a lot of methamphetamine affected that have eating issues, that require a lot of special accommodations and food and they have a lot of indigestion issues, respiratory problems and allergies, sleep disorder, bonding difficulty, hypersensitivity to pain, behavioral disorders, hyperactivity or aggression. These are would obviously be long-term developmental delays, neurological abnormalities, and methamphetamine addicted infants may even have skin problems from their

mother's use. And we have put together some of the problems that perinatal exposed children have so hypertonicity [sic] – which is too rigid of muscle tone cause by an overdrive of the brain's response to muscle action, tremors of arms and legs, shaking, not being able to control irritability, in excess of crying, poor self-regulation of feeding, we kind of discussed that. The bottom line is that when they are in a medical setting such as a NICU or PIC unit where they have a perinatologist [sic] taking care of them, they are teaching our parents to swaddle, the number one thing, diagnosis, treatment swaddling for all of these problems, all of these problems are improved, if not significantly, even taken away with swaddling and that is what the NICU is going to be teaching the parents and that is where the parents are encouraged to do in order to do, to protect these children and, if we are not allowed to swaddle them they're going to be having all these symptoms 8 hours without their mother in a child care center. They won't feel safe and they are probably going to have secondary trauma, honestly.

In my opinion, this isn't necessary. I don't, I am somewhat, I refuse the word panic; I am somewhat in fear of what we will do as an alternative. I don't know how else we are going to provide for these babies and I don't know how else we are going to support the mother being an appropriate mother if what the doctors are telling her is something she can't even do while she is getting the treatment/services she needs to be a better person. I just, yeah, I don't know what the alternative would be so that would be nice for whoever makes the decisions if they could just consider what alternative they might want us to use. I think that they will come to the same point where we are, where there really is no other method that is as effective or tried and true as they are and there's also quite a few videos on YouTube of babies who are in the midst of withdrawal and it is

horrendous to watch and so if people are not educated about what that looks like then I would recommend educating themselves because some of these babies are literary three, four pound children writhing in pain like an adult and it is very difficult and so I would hope that they would consider where we're coming from.

Comment 10: I oppose.

I am also with the Family Health Center. We do have a licensed child care like prior witness was saying. Everything that she stated is absolute truth. I monitor, I observe, I take notes, I train the teachers how to swaddle and protect them as much as possible. I also allow the moms to learn the same way and like crystal is mentioning they even come to us from PIC unit, NICU and this is how they will learn and that's what I'm going to continue to do. I have a letter that I brought I would like to read from our infant lead teacher. She's been doing this now, in this particular program, therapeutically for over 10 years and these are her comments.

[Witness testifying proceeds to read and paraphrase infant lead teacher's letter. This comment is already posted]

Can I add one thing? I'm not totally opposed to training. I get where DEL is coming from, I do, and I'm not opposed at all to having the licenser be assertive in the training process of all child cares whether they be public, private or therapeutic. I encourage them. I don't want children to get hurt. I don't want them overstimulated so and I know that there are training programs out there. I've seen them. I've read them and I think they are great. So, if all else fails I would like that to be considered as well.

<p>WAC 170-295-7050. What personnel records and policies must I have?</p> <p>Section 2: The background check form should be submitted within 7 days of hire (not the first day of work). The background check form should be processed and a clear check returned before the employee begins work.</p> <p>Section 3: Employees should not be able to work, even supervised, without a completed clear background check.</p>	<ol style="list-style-type: none"> 1. While the DEL appreciates these suggestions, they are beyond the scope of this rulemaking. 2. The proposed rule will not be revised at this time.
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III. Changes to the final rule compared to the proposed rule.

One change was made to the proposed rules. Subsection (5)(b) will be removed from WAC 170-295-4100 to end the rule conflict with WAC 170-295-4110(1)(c).