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TO: Interested Stakeholders

FROM: Saul Olivarez, Department of Early Learning Rules Coordinator

SUBJECT: **Concise Explanatory Statement
Final Adoption of Amended WAC sections 170-296A-1800, 170-296A-1975, 170-296A-2075, 170-296A-2375, 170-296A-2425, 170-296A-7075, 170-296A-7100.**

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 15-14-104. A public hearing was held on August 4, 2015 in Olympia. No one attended or testified at the hearing but several comments were received in writing before the August 5, 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 170-296A-1800, 170-296A-1975, 170-296A-2075, 170-296A-2375, 170-296A-2425, 170-296A-7075, 170-296A-7100.</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 170-296A-1800. Ongoing training.</p> <p>Comment 1: DEL is not explaining what it means to a a [sic] "department approved safe sleep" training...will the training be by DEL itself? Or can a Stars Trainer conduct a class that includes Safe Sleep...I cannot see hour long class on this subject</p> <p>Comment 2: This is a vague rule change because it doesn't specifically state who must do the training. Is it all the center's staff, or just the staff that work directly with the infants?</p> <p>Comment 3: Will assistants and volunteers be allowed to lay infants to sleep without annual DEL approved Safe Sleep training? WAC does not state they cannot care for children. Without this annual training requirement is this one form of caretaking they will not be allowed to do for infants?</p> <p>Comment 4: As a parent who's [sic] infant attends family home care, I feel educating providers and other caregivers about safe practices of infants is a very good thing! My comment is that your proposed change to WAC 170-296A-1800(1)(b) seems vague as to whether or not safe sleep training is a requirement or optional. The WAC states that "the training may include" which could leave it open to interpretation. Additionally, the proposed WAC changes</p>	<p>1. Keeping children healthy is paramount to the department’s vision. “Department approved safe sleep” training is not a defined term as the department is guided by the latest research and best practices currently available. Those standards are constantly evolving.</p> <p>Proper staff training is the responsibility of the licensee. See WAC 170-296A-2425. 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>When caring for children, including infants, assistants and volunteers require supervision at all times by the licensee or primary staff person. See WAC 170-296A-1925.</p> <p>The DEL acknowledges the lack of clarity with the wording of this particular rule, but other rules related to the safe sleep training requirement show the intent of the rule is to require yearly safe sleep training. See proposed rules WAC 170-296A-1975, 2075, 2425. The DEL is in the process of aligning and streamlining its rulesets and will correct the discrepancy at that time. References to other rules regarding word or sentence structure changes are beyond</p>

<p>goes [sic] on to use the term "if applicable." Rather than using "if applicable" perhaps clarify when would it be applicable. Does "if applicable" imply that those who care for infants are subject to this regulation? Why not clarify instead and state "if approved to care for infants...licensee and their staff must complete annual safe sleep training."</p>	<p>the scope of this rulemaking.</p> <p>2. The proposed rule will not be revised at this time.</p>
<p>WAC 170-296A-1975. Licensee/staff qualifications and requirements table.</p> <p>Comment 1: Assistants and volunteers should be required to take annual safe sleep training from DEL or any other state-approved agency that trains licensees & primary staff. The licensee should not be required to train them.</p>	<p>1. Proper staff training is the responsibility of the licensee. See WAC 170-296A-2425. When caring for children, including infants, assistants and volunteers require supervision at all times by the licensee or primary staff person. See WAC 170-296A-1925. The proposed rules do address the retention of safe sleep training documentation in the staff's file. See proposed rule WAC 170-296A-2075.</p> <p>2. The proposed rule will not be revised at this time.</p>
<p>WAC 170-296A-2075. Licensee and staff records.</p> <p>Comment 1: Licensee should not be required to train assistants/volunteers on safe sleep. They should receive annual safe sleep training from DEL or any other state-approved agency that trains licensees & primary staff. Please also add language stating that documentation of such training should be kept on file.</p>	<p>1. Proper staff training is the responsibility of the licensee. See WAC 170-296A-2425. When caring for children, including infants, assistants and volunteers require supervision at all times by the licensee or primary staff person. See WAC 170-296A-1925. The proposed rules do address the retention of safe sleep training documentation in the staff's file. See proposed rule WAC 170-296A-2075.</p> <p>2. The proposed rule will not be revised at this time.</p>
<p>WAC 170-296A-2375. Parent/guardian policies (handbook).</p> <p>Comment 1: Handbooks should include information on what documents must be posted as per WAC 170-296A-2175 and where in the daycare they can be found. Handbooks should also include a link to Child Care Check and what information can be found there. For those without</p>	<p>1. While the DEL appreciates these suggestions, they are beyond the scope of this rulemaking. The DEL will take them under consideration for future rulemaking.</p> <p>2. The proposed rule will not be revised at this time.</p>

<p>internet access, DEL's phone number should be listed with information about how to ask about a provider's record.</p>	
<p>WAC 170-296A-2425. Staff Policies.</p> <p>Comment 1: Licensee should not be required to train assistants/volunteers on safe sleep. They should receive annual safe sleep training from DEL or any other state-approved agency that trains licensees & primary staff. Please also add language stating that documentation of such training should be kept on file.</p>	<ol style="list-style-type: none"> 1. Proper staff training is the responsibility of the licensee. See WAC 170-296A-2425. When caring for children, including infants, assistants and volunteers require supervision at all times by the licensee or primary staff person. See WAC 170-296A-1925. The proposed rules do address the retention of safe sleep training documentation in the staff's file. See proposed rule WAC 170-296A-2075. 2. The proposed rule will not be revised at this time.
<p>WAC 170-296A-7100. Infant care – Procedures to reduce the risk of sudden infant death syndrome (SIDS).</p> <p>Comment 1: Where is the parent's choice[sic]. I have parents that demand their infant have a blanket. The rule does not cover swaddling infants? What about infants with a disability that require swaddling?</p> <p>Comment 2: I am the Program Supervisor at a center in Everett, WA who works primarily with infants who were prenatally exposed to drugs or alcohol. 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..[sic] 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. This WAC law will require children who have already suffered through addiction withdraws to suffer even more as they try to control too many actions they</p>	<ol style="list-style-type: none"> 1. 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. <p>Proper staff training is the responsibility of the licensee. See WAC 170-296A-2425. When caring for children, including infants, assistants and volunteers require supervision at all times by the licensee or primary staff person. See WAC 170-296A-1925. The proposed rules do address the retention of safe sleep training documentation in the staff's file. See proposed rule WAC 170-296A-2075.</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 notify all parents when a safe sleep</p>

are not cognitively able to control. It is an amazing experience to pick up a crying infant, swaddle them and see how quickly they calm down. We can not [sic] allow the DEL to take away this tactic for the children who truly benefit from it.

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(a): Add "loose-fitting sheet".
- Section 2: Licensee should not be required to train assistants/volunteers on safe sleep. They should receive annual safe sleep training from DEL or any other state-approved agency that trains licensees & primary staff. Please also add language stating that documentation of such training should be kept on file.
- Section 3: I hope this means that the licensee must inform all parents whose children attend the child care of the sleep violation (not just the parents of the affected child). I do not agree with the idea that only the parents of the affected child be informed. All parents should be informed of a violation as serious as safe sleep.
- 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.

Comment 4: Thank you for the opportunity to provide feedback for Child Care and In Home Safe Sleep WACs.

violation has occurred.

2. The proposed rule will not be revised at this time.

<p>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.</p> <p>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)</p> <p>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.</p> <p>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.</p> <p>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.</p>	
<p>WAC 170-296A-8225. Notice of license denial, suspension, revocation, or modification.</p> <p>Please introduce regulations stating that licensors should make three (3) unannounced visits to a child care whose license has recently been suspended to ensure that the facility is closed. I</p>	<ol style="list-style-type: none"> 1. This rule is not a part of the proposed rulemaking presented for comment. It is beyond the scope of this rulemaking. 2. The proposed rule will not be revised at this time.

understand that this WAC is not addressed in this proposal but I feel it is a loophole that needs to be closed.	
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III. Changes to the final rule compared to the proposed rule.

The proposed rules were not changed as a result of the above comments.