WAC Alignment Update

ELAC Webinar

March 13, 2017
Today’s Topics

- WAC Alignment Update
- Proposed WAC Drafts Clarifications
- ELAC Questions
- Negotiated Rulemaking & Public Comments
Alignment of Licensing Rules

The Early Start Act mandated that DEL update our licensing rules so that the early learning system has a unified set of foundational health, safety and child development regulations that are easy to understand and align with other requirements by providers in the field.

(RCW 43.215.201)

DEL is taking a transparent, methodical, and inclusive approach to this legislatively-mandated process.
Alignment Principles

**Evaluation and Observation**: ongoing evaluation and observation of the standards monitoring compliance in a variety of settings;

**Simplicity**: establish plain, consistent and measurable language for the standards;

**Efficiency**: eliminate duplication and inconsistencies in the standards;

**Transparency**: clearly defined levels that align with each other;

**Community Engagement**: an ongoing state to local collaboration process to seek stakeholders expertise;

**Equity and Community Impact**: be aware of racial, cultural, linguistic, and other education systems inequalities that impact the state opportunity gap populations;

**Cultural Humility**: maintain an interpersonal stance that is other-oriented (or open to the other) in relation to aspects of cultural identity that are most important to the [person].
Standards Alignment – Progression of Quality

- Licensing Standards: All licensed programs meet the same basic health, safety, and quality standards
- Early Achievers enrollment and Level 2: Programs move beyond licensing standards on a quality pathway
- ECEAP and Early Achievers Level 3 – 5: Programs are meeting licensing, Early Achievers, and ECEAP standards

Clear Quality Progression
Licensing Alignment – Public Process

DEL has made provider and stakeholder feedback and inclusion a cornerstone of this process

- Nov. and Dec. 2015 – 22 community input meetings across the state, more than 650 participants
  - Online portal available for public comments
  - Translation and Interpretation support

- April and May 2016 – 23 state-wide feedback meetings with 467 stakeholders
  - Online portal available for public comment as well
  - Translation & Interpretation support

- Monthly Alignment Advisory Committee meetings

- Weighting process: focus groups, community survey (in progress)

- Negotiated rulemaking: providers, families, stakeholders (upcoming)

- Public comment period (upcoming)

- Online survey on the whole process: (in progress)
  
  [Link to online survey](https://www.surveymonkey.com/r/DELrulesfeedback)
Licensing Standards Alignment – DEL’s Approach

- Align Family Home and Child Care Center
- Washington Administrative Code (WAC)

- Incorporate new Child Care and Development Fund (federal) health and safety requirements
- Incorporate cultural responsiveness and special education inclusion
Licensing Standards Alignment – DEL’s Approach

- Create a progression of standards between licensed childcare, Early Achievers, and ECEAP
- Weight the aligned WACs
- Negotiate aligned WACs with providers, stakeholders, families
Busting Myths about DEL’s Standards

Part of being transparent and inclusive means that DEL has routinely circulated draft WACs and ideas for improvement with the field. Some misunderstandings and myths have grown out of this, and some natural concerns. *(see handout)*

- Square footage
- Developmental screenings
- Education requirements
- Tooth brushing
- Frequency and repetition of foods served
- Continuity of care

Whenever possible, DEL has been flexible in response to feedback from providers and stakeholders.
Questions?
ELAC Questions
• How should ELAC be involved in the weighted WAC process?

• What about the Small Business Economics Impact?

• DEL will share the regional profiles used to invite participants to the focus groups
(Q1)
Involvement in the Weighting Process

Continue to be the Main Partner by -

• Providing advise, input and feedback
• Educating our EL community and public
• Representing a provider/stakeholder community
• Supporting Standards Alignment process
Small Business Economic Impact Statement (SBEIS)

- SBEIS under chapter 19.85 RCW must be prepared for a proposed rule that would impose more than minor costs on small business required to comply.
- “Small business” means any business (sole prop, partnership, corporation or other form) that as fewer than 50 employees, and is independently operated.
- “Minor cost” means the cost per business that is less than:
  - 3/10 of one percent of annual revenue or income, or $100, whichever is greater
  - 1/10 of one percent of annual payroll
(Q2)
Small Business Economic Impact Statement (SBEIS)

• RCW 34.05.310(4) (referenced in RCW 19.85.025) is defining categorical exemptions from preparing a SBEIS

• Exemptions include: emergency rules; internal agency operating rules, rules that adopt language or by reference state or federal laws, other state agency rules, or national consensus codes that establish industry standards; housekeeping rules; rule content that is explicitly required by law; rules that set fees by legislative standard; or procedural rules for agency hearings, or for applying for a license or permit.

• If no SBEIS is prepared, but DEL believes there may be (real or perceived) some compliance costs of the rule that would not trigger a full analysis, DEL should consider preparing a pre-analysis of costs and impacts for the rule making file.
(Q3)
Weighted WAC, Focus Groups Regional Profiles

• 10 Regional EL Coalitions Regions Profiles: Central, King, N Central, Northeast, Northwest, Olympic-Kitsap, Pierce, Southeast, Southwest, W Central

• Statewide representative sample had been established based on the following 10 regional profiles’ data:
  o % of FH and Center providers,
  o % of “private” and “subsidy” providers
  o Race and ethnicity
  o Language
  o Full and extended day HS and ECEAP
Weighted WAC Update

Focus Groups and Survey:
Intentionally structured to ensure representative responses – geographically and from the various diversity groups with licensing content expertise and experience
Weighted WAC Timeline

- Nov. - Dec. 2015: Initial community input process
- July 2016: Rule-making proposal filed for the aligned and weighted rules
- Nov. 2016: Second draft of aligned rules
- May - Aug. 2017: Negotiated rule-making and public comments
- Aug. 2018: Rules enforcement begins

- April 2016: Initial draft of aligned rules
- April - June 2016: Community feedback on initial draft rules
- Oct. 2016: Begin Early Achievers/ECEAP progression writing
- Nov. - March 2017: Weighted rules process
- May 2017: Finalize Early Achievers/ECEAP progression
- Nov. 2017: Final rule filing and training begins
Weighted WAC
all licensing rules will have an assigned weight

GOALS

- Focus the state’s licensing resources - Providers get tailored technical assistance for improvement
- Support increased provider and consumer understanding - Identifies the relative importance of rules for health and safety
- Reduce variance in decision-making - All licensors, statewide will use the same metrics for health and safety
- Facilitate taking the right licensing action at the right time - Uses data to ID “high-risk” programs for legal and enforcement actions
Weighted WAC: Process and Methodology

✓ **Step One:** Focus groups will inform the creation of the survey

**Step Two:** Survey creation, deployment and, collection

**Step Three:** Analysis of the survey data

**Step Four:** Training, pilot, evaluation and communication
Weighted WAC, Focus Groups

14 focus groups total
196 participants
Weighted WAC, 14 Regional Focus Groups

196 participant
- FH providers = 69
- Center providers = 71
- Other partners/stakeholders = 58
- Associated with SEIU = 42
- Parents = 20

representing the racial, ethnical, linguistic, and cultural diversity of WA state licensing system across the state (volunteered info)

- African American providers = 18
- Spanish speaking providers = 27
- Tribal providers = 10
- E African providers = 20
Questions?
Weighted WAC Survey, Process and Methodology

**Focus Groups:** Determine the set of rules (from the WAC) that will be included in the “Washington Weighted WAC Survey”

**Survey Participants:** Determine the weight for each rules (from the WAC)

Weighting is a way to identify:
- Licensing standards that are crucial to the health and safety of children
- Licensing standards that – while important for high-quality child care services – do not put children at risk of harm
Weighted WAC, Survey Participants

Random Representative Sample

- 420 participants; 95% Confidence Level
- Representative by stakeholder group, geography and demographics

Stakeholder Groups

- Child Care Providers
  - Center
  - Home-based
  - Size
  - Age groups served
  - Non-profit/for-profit
  - Head Start
  - ECEAP
  - Early Achievers
- Washington DEL Child Care Licensing Staff
- Parents
  - Licensed Care
  - Subsidy & Non-Subsidy
- Health & Safety Professionals
  - Nurse Consultants
  - Health Care Professionals
  - Mental Health & Special Needs Professionals
  - Safety Professionals
  - Department of Health Staff
- College/University Programs
Weighted WAC, Survey Questions

Participants asked to assess the level of risk of harm by considering both direct and indirect harm:

- **Direct Harm**: Any injury/illness requiring immediate or follow up medical treatment or hospitalization and/or situations which can immediately negatively affect a child’s physical, psychological or emotional well-being.

- **Indirect Harm**: Situations where non-compliance may not immediately impact children’s health/safety; however, may result in harm with repeat non-compliance and/or in combination with other non-compliance.
Weighted WAC Survey, Update (3/3/2017)

**Expert** subgroup representation - Target: 358
Number of full and partial submissions (3/3/2017) – 217
Groups’ submissions (3/11/2017) – 90

**Non-Experts** subgroup representation - Target: 62
Number of full and partial submissions (3/3/2017) – 55
Questions?
WAC Alignment

*Negotiated Rule Making & Public Comments Approach*
Integrated Effort
Implementing NRM and Public Comments
NRM & Public Comments Timeline

- **Nov. - Dec. 2015:** Initial community input process
- **April 2016:** Initial draft of aligned rules
- **April - June 2016:** Community feedback on initial draft rules
- **Oct. 2016:** Begin Early Achievers/ECEAP progression writing
- **Nov. - March 2017:** Weighted rules process
- **May - Aug. 2017:** Negotiated rule-making and public comments
- **May 2017:** Finalize Early Achievers/ECEAP progression.
- **Nov. 2017:** Final rule filing and training begins
- **Aug. 2018:** Rules enforcement begins
Public Comments
ensure that no one has been left out

RCW 34.05.310

• (1)(a) To meet the intent of providing greater public access to administrative rule making and to promote consensus among interested parties, agencies must solicit comments from the public on a subject of possible rule making before filing with the code reviser a notice of proposed rulemaking under RCW 34.05.320
Negotiated Rulemaking

RCW 34.05.310(2)(a)

What is Negotiated Rule Making?

Negotiated rule making is a process by which representatives of an agency and of the interests affected by a subject of rule making seek to reach consensus on the terms of a proposed rule and on the process by which it is negotiated.

Negotiated rule making has the following attributes:

- Participants usually represent stakeholder groups or interests, and not simply themselves.
- All necessary interests are represented or at least supportive of the discussions.
- Participants share responsibility for both process and outcome.
- An impartial facilitator or mediator, accountable to all participants, manages the process.
- The intent is to make decisions through consensus rather than by voting.
- The agency is a party at the negotiating table; it does not just facilitate a consensus among the other participants.
- The product is a proposed rule that all parties can support or at least accept.
Negotiated Rulemaking

- DEL is required by statute to negotiate rule making with the FH provider Union on behalf of represented family child care licensees and include all other affected parties in the negotiation.

- Decisions are made by consensus and participants understand that *consensus means support for or at least acceptance of the proposed rule*.

- All positions and agreements on specific issues are tentative and may be modified until there is a final decision on an acceptable package that addresses all issues.

- Constituents may have to ratify decisions agreed to by their representatives at the negotiating table and that all parties, including DEL representatives, may have to seek approval from organization representatives who have final decision making authority.
Negotiated Rulemaking
DEL Responsibilities

• Organizer of the NRM Process
  o NRM Framework & protocol
  o Communications Structure
  o Support to negotiation teams
  o Collaboration & coordination with stakeholders

• Mediator and Facilitator of the NRM Process
  o Consensus decisions
  o Fidelity of the process

• Negotiator, representing DEL at the NRM (DEL negotiation team)

• Ultimate decision maker
Questions?
Licensing Alignment – Negotiation Process

- Contact SEIU or Thrive
- Participate in NRM
- Participate in public comments process
- Organize/support local alignment café
- Communicate with the NRM teams

- Contact CCA
  - Participate in NRM
  - Participate in public comments process
  - Support & participate in local alignment café
  - Communicate with the NRM teams

- Contact DEL
  - Organize/support local alignment café
  - Help to organize providers and parents participation
  - Provide translation & interpretation to local providers & parents
  - Collect and submit public comments data

- Contact DEL and/or main partners
  - Participate in public comments process
  - Support & participate in local alignment café
  - Communicate with the NRM teams

*NRM = Negotiated Rule Making
Licensing Alignment – Negotiation Process

Providers and Parents are the main groups effected by the proposed licensing rules. They will be inclusively organized and represented in the negotiation process.

- **Family Home providers**: SEIU, ELRCs, other stakeholders.
- **Child Care Center providers**: Thrive, with support from CCA, ELRCs, local center directors’ groups.
- **ECEAP/Head Start providers**: WSA, with support from CCA, ELRCs, local center directors’ groups.
- **Parents**: CCA with support from PAG, WSA, RELCs, Thrive, other stakeholders

“Come together, right now.” —John Lennon
Negotiated Rulemaking Framework & Protocol
commitment to participation and a set of ground rules

• Each main stakeholder group will be represented by a team of up to 20 members including a FH providers team, a Center providers team, an ECEAP/HS team, a Parents team, and a DEL team. Each team will have a leadership structure which will be organized by the each team participants, and guided by the NRM framework and protocol.

• DEL will develop and present the NRM Framework and Protocol to the negotiation teams

• DEL will negotiate the NRM Framework and Protocol with the negotiation teams – pledge to negotiate in good faith with fidelity to the process, and make it public
Negotiated Rulemaking Logistics

- Use K20 broadcasting system (ESDs)
- Establish 4 main K20 locations and the regional/local K20 locations
- Identify and train regional/local facilitators and interpreters

*June and July negotiation dates include 2 days of the negotiation results relevant to the previously negotiated bucket of WACs*
Questions?
Public Comments
ensure that no one has been left out

- Parallel and interconnected with Negotiated Rulemaking
- Alignment Community Café - local group of providers and/or parents *self organized* by the stakeholders and supported by DEL to review the proposed rules and solicit the group comments
- Online Public Comments Portal for individual and group comments

How to get involved?

- FH – SEIU
- Centers – Thrive
- Parents – CCA
- ECEAP/HS - WSA

Alignment Café
- Group review
- Submission of group comments

Individual
- Independent review
- Submission of individual comments

Public Comments
Online Portal
Communication Plan

• Key messages –
  o purpose and interconnectivity of the negotiated rulemaking and public comments processes
  o inclusiveness of the negotiated rulemaking process, re: all stakeholders’ groups who are directly impacted by the proposed rules
• Negotiation meetings are open for public
• Progress reports and the meetings’ videos are posted online
• Ongoing communication loop between public and the negotiation teams
Communication Loop
between public and the negotiation teams
Negotiate Rulemaking & Public Comments
Timeline & Action Steps, Update

- Establishing NRM/Public Comments webpage
- Having initial conversations with main partners
- Developing NRM framework & protocol
- Scheduling NRM meetings
- Developing Public Comments Online Portal

January – April
Prep work

May
1st bucket of WACs review – 2 days
Negotiation - 3 days

June
1st bucket of WACs review – 2 days
2nd bucket of WACs negotiation – 3 days

July
2nd bucket of WACs review – 2 days
3rd bucket of WACs negotiation – 3 days

August
Final negotiation 5 days

May – August, ongoing solicitation of public comments
Questions?
Questions for ELAC

Please submit your input to slc@del.wa.gov by 3/27/2017

1. What community stakeholders/organizations could be leading/facilitating the coordination of a community alignment café activity?
   - Regional EL Coalitions
   - Regional CCA teams
   - WSA – HS and ECEAP
   - Montessori Association
   - Other?

2. What additional participation venues for providers, parents, stakeholders and the public would you recommend we consider?
   - Review slide 37, and provide input