



PROPOSED RULE MAKING

CR-102 (December 2017) (Implements RCW 34.05.320)

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FILED

DATE: September 22, 2021

TIME: 12:17 PM

WSR 21-20-002

Agency: Department of Children, Youth, and Families

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR 21-18-107

Preproposal Statement of Inquiry was filed as WSR 19-20-096 ; or

Expedited Rule Making--Proposed notice was filed as WSR _____; or

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or

Proposal is exempt under RCW _____.

Title of rule and other identifying information: (describe subject) WAC 110-04-0020 What definitions apply to WAC 110-04-0030 through 110-04-0180 of this chapter?, 110-04-0040 Who must have background checks?, 110-04-0080 What does the background check cover?, 110-04-0090 Who pays for the background check?, 110-04-0100 Will a criminal conviction permanently prohibit me from being licensed, contracted, certified, authorized to be employed at a group care facility, or authorized to have unsupervised access to children?, 110-04-0110 Are there other criminal convictions that will prohibit me from being licensed, contracted, certified, authorized to be employed at a group care facility, or authorized to have unsupervised access to children or from working with children?, 110-04-0120 If I have a conviction, may I ever be authorized to be employed at a group care facility or have unsupervised access to children?, 110-04-0130 Will I be disqualified if there are pending criminal charges on my background check?, 110-04-0140 Will you license, contract, authorize my employment at a group care facility, or authorize me to have unsupervised access to children if my conviction has been expunged, vacated from my record, or I have been pardoned for a crime?, 110-04-0160, What may I do if I disagree with the department's decision to deny me a license, certification, contract, or authorization based on the results of the background check?, 110-04-0170 Is the background check information released to my employer or prospective employer? 110-06-0010 Purpose and scope; 110-06-0020 Definitions; 110-06-0040 Background clearance requirements; 110-06-0042 Departmental investigation and redetermination; 110-06-0043 Failure to report nonconviction and conviction information; 110-06-0044 Background check fees; 110-06-0045 Background checks for minor individuals under sixteen years of age; 110-06-0046 Requirements for license-exempt in-home/relative providers; 110-06-0050 Department action following completion of background inquiry; 110-06-0070 Disqualification. Background information that will disqualify a subject individual; 110-06-0080 Notification of disqualification; 110-06-0100 Request for administrative hearing; 110-06-0110 Limitations on challenges to disqualifications; 110-06-0115 Reconsideration of disqualification; and 110-06-0120 Secretary's list.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
October 26, 2021		telephonic	Oral comments may be made by calling (360) 902-8084 and leaving a voicemail that includes the comment and an email or physical mailing address where DCYF will send its response. Comments received through and including October 26, 2021 will be considered.

Date of intended adoption: October 28, 2021 (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: DCYF Rules Coordinator

Address: P. O. Box 40975

Email: dcyf.dcyfrulescoordinator@dcyf.wa.gov

Fax:

Other: submit comments online at <https://www.dcyf.wa.gov/practice/policy-laws-rules/rule-making/participate/online>

By (date) October 26, 2021

Assistance for persons with disabilities:

Contact DCYF Rules Coordinator

Phone: (360) 902-7956

Fax:
TTY:
Email: dcyf.dcyfrulescoordinator@dcyf.wa.gov
Other:
By (date) October 22, 2021

Purpose of the proposal and its anticipated effects, including any changes in existing rules: Proposed amendments to chapters 110-04 and 110-06 WAC explain when certificates of restoration of opportunity (CROP) and certificates of parental improvement (CPI) will be included in criminal history record reports, qualifying letters, or other assessments during a background check and when they will not.

Proposed amendments to chapter 110-06 WAC also:

- better clarify that the background check process includes requesting information from other states in which an applicant has lived during the five years before their background check;
- allow DCYF to disqualify a previously authorized provider who:
 - (1) used illegal drugs or misused or abused prescription drugs or alcohol that either affected their ability to perform their job duties while on the premises when children were present, or presented a risk of harm to any child receiving early learning services, or
 - (2) attempted, committed, permitted, or assisted in an illegal act on child care premises; and
- more clearly explain which criminal convictions must disqualify an individual from being licensed, contracted, certified, or authorized to have unsupervised access to children and which trigger further review to determine whether the background check results demonstrate that an applicant possesses the character, suitability, and competence to have unsupervised access to children.

Reasons supporting proposal: RCW 9.97.020(4) directs the department to adopt rules that implement CROP consideration during the background check process, and it is necessary to align chapters 110-04 and 110-06 WAC with Chapter 270, Laws of 2020 that authorized licensing of providers regulated by the department who have been issued CPIs.

The additional proposed amendments to chapter 110-06 WAC better explain for potential applicants when the background check will include history from other states in which they have lived, and, for providers authorized to have unsupervised access to children, the proposed rules clearly explain under what circumstances the department will redetermine authorization.

Finally, proposed revisions to the mandatory and potential disqualifying crimes lists in WAC 110-06-0120 align with the federal Child Care Development Fund disqualifying crimes lists and are necessary to preserve federal appropriations that fund Washington State's child care subsidy programs.

Statutory authority for adoption: RCW 43.43.832(2), 43.216.065 and 43.216.271

Statute being implemented: RCW 9.97.020, 43.216.170, 43.216.270, 43.43.837

Is rule necessary because of a:

Federal Law?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

If yes, CITATION: 42 U.S.C. § 9858

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

Name of proponent: (person or organization) Department of Children, Youth, and Families Private
 Public
 Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Chris Parvin	Olympia, WA	(360) 890-0464

Implementation: DCYF statewide

Enforcement: DCYF statewide

Is a school district fiscal impact statement required under RCW 28A.305.135? Yes No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

- Name:
- Address:
- Phone:
- Fax:
- TTY:
- Email:
- Other:

Is a cost-benefit analysis required under RCW 34.05.328?

Yes: A preliminary cost-benefit analysis may be obtained by contacting:

- Name:
- Address:
- Phone:
- Fax:
- TTY:
- Email:
- Other:

No: Please explain: A cost benefit analysis is not required under RCW 34.05.328. DCYF is not among the agencies listed as required to comply with RCW 34.05.328(5)(i). Further, DCYF does not voluntarily make that section applicable to the adoption of these rules.

Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description: For sections contained in chapter 110-06 WAC: 42 U.S.C. § 9858. Failure to comply jeopardizes receipt of federal funds that are used for child care subsidies.

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

- | | |
|---|---|
| <input type="checkbox"/> RCW 34.05.310 (4)(b)
(Internal government operations) | <input checked="" type="checkbox"/> RCW 34.05.310 (4)(e)
(Dictated by statute) |
| <input type="checkbox"/> RCW 34.05.310 (4)(c)
(Incorporation by reference) | <input type="checkbox"/> RCW 34.05.310 (4)(f)
(Set or adjust fees) |
| <input type="checkbox"/> RCW 34.05.310 (4)(d)
(Correct or clarify language) | <input checked="" type="checkbox"/> RCW 34.05.310 (4)(g)
((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit) |

This rule proposal, or portions of the proposal, is exempt under RCW .

Explanation of exemptions, if necessary:

COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

No Briefly summarize the agency's analysis showing how costs were calculated. _____

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name:

Address:

Phone:

Fax:

TTY:

Email:

Other:

Date: September 22, 2021

Name: Brenda Villarreal

Title: DCYF Rules Coordinator

Signature:



Chapter 110-04 WAC
BACKGROUND CHECK REQUIREMENTS ((FOR CHILDREN'S ADMINISTRATION)) CHILD
WELFARE

AMENDATORY SECTION (Amending WSR 20-05-024, filed 2/7/20, effective 3/9/20)

WAC 110-04-0020 What definitions apply to ((~~WAC 110-04-0030 through 110-04-0180 of~~)) this chapter? The following definitions apply to ((~~WAC 110-04-0030 through 110-04-0180 of~~)) this chapter:

"Authorized" or **"authorization"** means not disqualified by the department to work in a group care facility or have unsupervised access to children. This includes persons who are certified, contracted, allowed to receive payments from department funded programs, or volunteer.

"Certification" means department or child placing agency (CPA) approval of a person, foster home, or facility that is exempt from licensing but meets the licensing requirements.

"Certificate of parental improvement (CPI)" means a certificate issued under chapter 74.13 RCW.

"Certificate of restoration of opportunity (CROP)" means a certificate issued under chapter 9.97 RCW.

"Child," "children," or "youth" means a person who is one of the following:

- (a) Under eighteen years old;
- (b) Up to twenty-one years of age and enrolled in services through the department of social and health services (DSHS) developmental disabilities administration (DDA) the day prior to their eighteenth birthday and pursuing either a high school or equivalency course of study (GED/HSEC) or vocational program;
- (c) ~~((Up to twenty-one years of age and))~~ Participating in the extended foster care program; ((or))
- (d) Up to twenty-one years of age with intellectual and developmental disabilities; or
- (e) Up to twenty-five years of age and under the custody of DCYF in juvenile rehabilitation.

"Civil adjudication proceeding" is a judicial or administrative adjudicative proceeding that results in a finding of, or upholds an agency finding of, domestic violence, abuse, sexual abuse, neglect, abandonment, violation of a professional licensing standard regarding a child or vulnerable adult, or exploitation or financial exploitation of a child or vulnerable adult under any provision of law, including but not limited to chapter 13.34, 26.44 or 74.34 RCW, or rules adopted under chapters 18.51 and 74.42 RCW. "Civil adjudication proceeding" also includes judicial or administrative findings that become final due to the failure of the alleged perpetrator to timely exercise a legal right to administratively challenge such findings.

"Department" or **"DCYF"** means the department of children, youth, and families.

"I" and **"you"** refers to anyone who has unsupervised access to children in a home, facility, or program. This includes, but is not limited to, persons seeking employment, a volunteer opportunity, an

internship, a contract, certification, or a license for a home or facility.

"Licensing division" or **"LD"** means the licensing division within DCYF. LD licenses and monitors foster homes, child placing agencies, and licensed group care facilities.

"Licensor" means either:

(a) An LD employee who recommends approvals for, or monitors licenses or certifications for facilities and agencies that provide or certify foster family homes or group care facilities under chapters 110-145, 110-147, and 110-148 WAC; or

(b) An employee of a child-placing agency who certifies or monitors foster homes supervised by the child-placing agency.

"Negative action" means a court order, court judgment or an adverse action taken by an agency, in any state, federal, tribal or foreign jurisdiction, which results in a finding against the subject individual reasonably related to the subject individual's character, suitability, and competence to care for or have unsupervised access to children receiving child welfare services. This may include, but is not limited to:

(a) A decision issued by an administrative law judge.

(b) A final determination, decision or finding made by an agency following an investigation.

(c) An adverse agency action, including termination, revocation, or denial of a license or certification, or if pending adverse agency action, the voluntary surrender of a license, certification or contract in lieu of the adverse action.

(d) A revocation, denial, or restriction placed on any professional license.

(e) A final decision of a disciplinary board.

"Secretary's list" means a list of crimes or negative actions that are federally disqualifying or may relate directly to child safety, permanence, or well-being and require DCYF to assess a subject individual's character, suitability, and competence to care for or have unsupervised access to children receiving child welfare services. The secretary's list is available at <https://www.dcyf.wa.gov/sites/default/files/pdf/secretaryslist.pdf>.

"Unsupervised" means will not or may not be in the presence of:

(a) The licensee, another employee, or volunteer from the same business or organization as the applicant who has not been disqualified by the background check; or

(b) Another individual who has been previously approved by DCYF.

"We" refers to the department, including licensors and caseworkers.

"WSP" refers to the Washington state patrol.

AMENDATORY SECTION (Amending WSR 20-05-024, filed 2/7/20, effective 3/9/20)

WAC 110-04-0040 Who must have background checks? (1) Under RCW 74.15.030, prior to authorizing unsupervised access to children, the department requires background checks on all providers who may have unsupervised access to children. This includes licensed, certified, or contracted providers, their current or prospective employees and prospective adoptive parents as defined in RCW 26.33.020.

(2) Under RCW 74.15.030, prior to authorizing unsupervised access to children, the department also requires background checks on other individuals who may have unsupervised access to children in department licensed or contracted homes((~~r~~)) or facilities that provide care, except for a normal childhood activity that lasts less than seventy-two hours, as stated in RCW 74.13.710. The department requires background checks on all of the following people:

(a) A volunteer or intern with regular or unsupervised access to children.

(b) Any person who regularly has unsupervised access to a child. ((However, a background check is not required when a caregiver approves the unsupervised access for a normal childhood activity that lasts less than seventy-two hours, as stated in RCW 74.13.710.))

(c) A relative other than a parent who may be caring for a child.

(d) A person who is at least sixteen years old and resides in a foster, relative, or other suitable person's home and is not a foster child.

(e) A person who is younger than sixteen years old in situations where it may be warranted to ((ensure)) verify the safety of children in out-of-home care. ((The department may require a background check for persons younger than sixteen years old in situations where it may be warranted to ensure the safety of children in out-of-home care.))

(3) Any person employed at a group care facility, including those not directly working with children.

(4) Under RCW 13.34.138, prior to returning a dependent child home, the department requires a background check on all adults residing in the home, including the parents.

AMENDATORY SECTION (Amending WSR 20-05-024, filed 2/7/20, effective 3/9/20)

WAC 110-04-0080 What does the background check cover? (1) The department must review criminal convictions and pending charges based on identifying information provided by you. The background check may include, but is not limited to, the following information sources:

(a) Washington state patrol.

(b) Washington courts.

(c) Department of corrections.

(d) Department of health.

(e) Civil adjudication proceedings.

(f) Applicant's self-disclosure.

(g) Out-of-state law enforcement and court records.

(2) Background checks conducted for DCYF also includes:

(a) A review of child protective services case files information or other applicable information system.

(b) Administrative hearing decisions related to any DSHS or DCYF license that has been revoked, suspended, or denied.

(3) In addition to the requirements in subsections (1) and (2) of this section, background checks conducted by DCYF for placement of a child in out-of-home care, including foster homes, group care facilities, adoptive homes, relative placements, and placement with other suitable persons under chapter 13.34 RCW, include the following for each person over eighteen years of age residing in the home, all staff

working in a group care facility, including those not directly working with children, and group care volunteers who provide direct care:

(a) Child abuse ~~((and))~~ or neglect registries in each state in which a person has lived ~~((in,))~~ in the five years prior to conducting the background check.

(b) Washington state patrol (WSP) and Federal Bureau of Investigation (FBI) fingerprint-based background checks regardless of how long you have resided in Washington state.

(4) Except as required in subsection (3)(b) of this section, DCYF will conduct a fingerprint-based background check on any individual who has resided in the state less than three consecutive years before application.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-04-0090 Who pays for the background check? (1) ~~((Children's administration (CA)))~~ DCYF pays the DSHS general administrative costs ~~((for background checks for))~~ and WSP and FBI fingerprint processing fees for foster home applicants, ~~((CA))~~ DCYF relative and other suitable caregivers, ~~((and CA))~~ DCYF adoptive home applicants, and other adults associated with the home requiring clearances under chapter 13.34 RCW.

~~((2))~~ ~~((Children's administration pays the WSP and FBI fingerprint processing fees for foster home applicants, CA relative and other suitable caregivers, CA adoptive home applicants, and other adults associated with the home requiring background clearances under chapter 13.34 RCW.~~

~~((3))~~ ~~((Children's administration))~~ DCYF does not pay WSP and FBI fingerprint processing fees or expenses for:

(a) Employees, contractors, or volunteers associated with facilities other than foster homes~~((,))~~;

(b) Adoptive homes proposed by ~~((the children's administration,))~~ DCYF; or

(c) Relative or other suitable caregiver homes.

AMENDATORY SECTION (Amending WSR 20-05-024, filed 2/7/20, effective 3/9/20)

WAC 110-04-0120 If I have a pending criminal charge, conviction, or negative action may I ever be authorized to be ~~((employed at a group care facility or))~~ licensed, contracted, certified, authorized to be employed at a group care facility, or authorized to have unsupervised access to children? (1) ~~((In two situations, DCYF may find))~~ DCYF must disqualify a person with convictions ~~((able to be authorized to be employed at a group care facility or have unsupervised access to children))~~ on the DCYF secretary's list that are:

~~((a))~~ ~~((If the conviction for any crime listed in WAC 110-04-0110 occurred more than five years ago))~~ Permanently disqualifying; or

~~(b) ((If the conviction was for a crime other than those listed in WAC 110-04-0100 or 110-04-0110)) Five-year disqualifying if less than five years have passed since the date of conviction.~~

~~(2) ((In both of these situations)) DCYF may authorize a person with convictions or negative actions on the DCYF secretary's list that are not listed in subsection (1) of this section. In this situation, DCYF must review your background ((to determine)) information and assess your character, suitability, and competence to have unsupervised access to children. In this ((review)) assessment, DCYF ((must)) will consider the following factors, among others, related to your background information:~~

~~(a) The amount of time that has passed since ((you were convicted)) the conviction information or negative action;~~

~~(b) The seriousness of the crime or incident that led to the conviction or negative action;~~

~~(c) The number ~~((and))~~, types, and age of other convictions or negative actions in your background;~~

~~(d) Your age at the time of conviction or negative action;~~

~~(e) ((Documentation indicating you have successfully completed all court-ordered programs and restitution)) Completion of services or other evidence of rehabilitation since conviction or negative action; and~~

~~(f) Your ~~((behavior since the conviction; and~~~~

~~(g) ~~The vulnerability of those that would be under your care)) role or purpose of the background check.~~~~

AMENDATORY SECTION (Amending WSR 20-05-024, filed 2/7/20, effective 3/9/20)

WAC 110-04-0140 Will you license, contract, authorize my employment at a group care facility, or authorize me to have unsupervised access to children if my conviction has been expunged, vacated from my record, ~~((or)) I have been pardoned for a crime, I have a CPI, or CROP?~~ (1) If you receive a pardon or a court of law acts to expunge or vacate a conviction on your record, the crime will not be considered a conviction for the purposes of licensing, contracting, certification, authorization for employment at a group care facility, or authorization for unsupervised access to children.

(2) When the background information contains a CPI or CROP, DCYF must:

(a) Disqualify if background information contains a pending charge or conviction of a crime or pending negative action on the secretary's list; or

(b) Assess character, suitability, or competence under WAC 110-04-0120.

(3) A CROP does not apply to founded findings of child abuse or neglect. No finding of child abuse or neglect may be destroyed based solely on a CROP.

(4) A CROP must be included as part of the criminal history record reports, qualifying letters, or other assessments pursuant to RCW 43.43.830 through 43.43.838.

(5) If you have a CPI, DCYF may still consider the facts that led to any founded findings for child abuse or neglect in determining

whether you have the character, suitability, or competence to have unsupervised access to children.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-04-0160 What may I do if I disagree with the department's decision to deny me a license, certification, contract, or authorization to have unsupervised access based on the results of the background check?

(1) If you are seeking a license ~~((r))~~ or employment with a home or facility licensed by ~~((the children's administration))~~ DCYF, you may ~~((request))~~ appeal the department's decision by requesting an administrative hearing to dispute a denial of authorization for unsupervised access to children ~~((chapter 34.05 RCW))~~. You cannot contest the conviction or negative action in the administrative hearing.

(2) Prospective volunteers or interns, contractors or their employees, or those seeking certification do not have the right to appeal the department's decision to deny authorization for unsupervised access to children.

(3) The employer or prospective employer cannot ~~((contest))~~ appeal the department's decision on your behalf.

(4) The administrative hearings ~~((will take place before an))~~ are conducted by administrative law judges employed by the office of administrative hearings ~~((chapter 34.05 RCW))~~, pursuant to chapters 34.05 RCW and 110-03 WAC.

AMENDATORY SECTION (Amending WSR 18-14-078, filed 6/29/18, effective 7/1/18)

WAC 110-04-0170 Is the background check information released to my employer or prospective employer?

(1) ~~((Children's administration))~~ DCYF will share with employers or approved care providers only that:

- (a) You are disqualified; or
- (b) You have not been disqualified by the background check.

(2) The department will follow laws related to the release of criminal history records (chapters 10.97 and 43.43 RCW) and public disclosure (chapter ~~((42.17))~~ 42.56 RCW) when releasing any information.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 110-04-0100 Will a criminal conviction permanently prohibit me from being licensed, contracted, certified, authorized to be employed at a group care facility, or authorized to have unsupervised access to children?
- WAC 110-04-0110 Are there other criminal convictions that will prohibit me from being licensed, contracted, certified, authorized to be employed at a group care facility, or authorized to have unsupervised access to children or from working with children?
- WAC 110-04-0130 Will I be disqualified if there are pending criminal charges on my background check?

Chapter 110-06 WAC
((DEL)) BACKGROUND CHECKS—EARLY LEARNING PROGRAMS

AMENDATORY SECTION (Amending WSR 19-01-111, filed 12/18/18, effective 1/18/19)

WAC 110-06-0010 Purpose and scope. (1) The purpose of this chapter is to establish rules for background checks conducted by the department of children, youth, and families (DCYF).

(2) The department conducts background checks on subject individuals who ~~((are authorized to))~~:

(a) Currently have a background clearance and are seeking to re-new the authorization; and

(b) Are seeking a background check authorization for the first time.

(3) A background clearance authorizes a subject individual to:

(a) Work at a child care agency;

(b) Care for ~~((or))~~ children receiving early learning services;

(c) Have unsupervised access to children receiving early learning services;

(d) Reside on the premises of a child care agency or certified facility; or

~~((b))~~ (e) Care for children in the child's or provider's home. These providers, also known as family, friends, and neighbors (FFN) or in-home/relative care providers are exempt from licensing and receive ~~((working connections child care))~~ WCCC ~~((+))~~ subsidies.

~~((3))~~ (4) The department conducts background checks to reduce the risk of harm to children from subject individuals who have been convicted of certain crimes or who pose a risk to children.

~~((4) The department's rules and)~~ (5) State law requires the evaluation of background information to determine the character, suitability, ~~((or))~~ and competence of persons who will work at an agency, or care for or have unsupervised access to children receiving early learning services or other agency authorized services.

~~((5))~~ (6) Subject to federal law, if any provision of this chapter conflicts with any substantive provision in any ~~((chapter containing a substantive))~~ rule relating to background checks and qualifications of persons who are authorized to care for or have unsupervised access to children receiving early learning services, the provisions in this chapter ~~((shall))~~ will govern.

~~((6) These rules)~~ (7) This chapter implements chapters 43.216 and 43.43 RCW ~~((7))~~ including, but not limited to, DCYF responsibilities in RCW 43.216.260, 43.216.270 through 43.216.273, and 43.43.830 through 43.43.832.

~~((7) These rules are amended)~~ (8) This chapter is intended to allow for the increased and continued portability of background check clearances for subject individuals who are authorized to care for or may have unsupervised access to children receiving early learning services.

WAC 110-06-0020 Definitions. The following definitions apply to this chapter:

~~((**"Agency"** has the same meaning as "agency" in RCW 43.216.010.~~

~~**"Appellant"** means only those with the right of appeal under this chapter.~~

~~**"Applicant"** means an individual who is seeking DCYF background check authorization as part of:~~

~~(a) An application for a child care agency license or DCYF certification or who seeks DCYF authorization to care for or have unsupervised access to children receiving early learning services; or~~

~~(b) A continuation of a nonexpiring license or renewal of a certificate, or renewal of DCYF's authorization to care for or have unsupervised access to children receiving early learning services, with respect to an individual who is a currently licensed or certified child care provider.)~~

"Authorized" or "authorization" means approval by DCYF to work at a child care agency, care for ((or have unsupervised access to)) children receiving early learning services from an agency, have unsupervised access to children receiving early learning services, or to ((work in or)) reside on the premises of a child care agency or certified facility.

"Certificate of parental improvement (CPI)" has the same meaning as "certificate of parental improvement" in RCW 43.216.010.

"Certificate of restoration of opportunity (CROP)" means a certificate issued by a court under chapter 9.97 RCW that may restore an individual's eligibility for a license, certification, or background check authorization issued under chapter 43.216 RCW.

"Certification" or "certified by DCYF" means an agency that is legally exempt from licensing that has been certified by DCYF as meeting minimum licensing requirements.

"Child care agency" or "agency" has the same meaning as "agency" in RCW 43.216.010.

"Conviction or other disposition adverse to the subject" has the same meaning as "conviction or other disposition adverse to the subject" in RCW 10.97.030.

"Conviction information" means criminal history record information relating to an incident which has led to a conviction or other disposition adverse to the subject individual.

~~((**"DCYF"**)) **"Department of children, youth, and families (DCYF)"** or **"department"** means the Washington state department of children, youth, and families.~~

"Department of social and health services (DSHS)" means the Washington state department of social and health services.

"Disqualified" or "disqualify" means a DCYF ((has determined that a person's)) determination or finding was issued to a subject individual that because of their background information ((prevents that person from being authorized by DCYF to care for or have)) history, they are prohibited from:

(a) Caring for or having unsupervised access to children receiving early learning services;

(b) Working at a child care agency; or

(c) Residing at the premises of a child care agency or certified facility.

"Early learning ((service(s))) services" ((for purposes of this chapter)) means programs and services for child care including, but not limited to, the early childhood education and assistance program (ECEAP), head start, licensed child care, and license-exempt child care services.

"In-home/relative provider" or **"family, friends, and neighbors provider"** or **"FFN provider"** means an individual who is exempt from child care licensing standards, meets the requirements of chapter 110-16 WAC, and is approved for working connections child care (WCCC) payments under WAC 110-15-0125.

"Licensee" means the individual, person, organization, or legal entity named on the child care license issued by DCYF and responsible for operating the child care facility or agency.

"Negative action" ((means)) has the same meaning as "negative action" in RCW 43.216.010. A negative action includes a court order((,)) or court judgment ((or an adverse action taken by an agency, in any state, federal, tribal or foreign jurisdiction, which results in a finding against the subject individual reasonably related to the subject individual's character, suitability and competence to care for or have unsupervised access to children receiving early learning services. This may include, but is not limited to:

(a) A decision issued by an administrative law judge.

(b) A final determination, decision or finding made by an agency following an investigation.

(c) An adverse agency action, including termination, revocation or denial of a license or certification, or if pending adverse agency action, the voluntary surrender of a license, certification or contract in lieu of the adverse action.

(d) A revocation, denial or restriction placed on any professional license.

(e) A final decision of a disciplinary board)) that finds the subject individual's child dependent and the basis for such finding is RCW 13.34.030(6) or other equivalent state or federal statute.

"Nonconviction information" ((means arrest, pending charges, founded allegations of child abuse, or neglect pursuant to chapter 26.44 RCW, or other negative action adverse to the subject individual)) has the same meaning as "nonconviction information" in RCW 43.216.010.

"Nonexpiring license" or **"nonexpiring full license"** means a license authorized under RCW 43.216.305 that is issued to a licensee following the initial licensing period((, as provided in chapter 110-300 WAC, as appropriate)).

"Premises" has the same meaning as "premises" in WAC 110-300-0005.

"Secretary's list" means ((a list of crimes, the commission of which disqualifies a subject individual from being authorized by DCYF to care for or have unsupervised access to children receiving early learning services,)) the conduct and crimes described in WAC 110-06-0120 and the federal disqualifying crimes and conduct described in 42 U.S.C. Sec. 9858f and C.F.R. Sec. 98.43.

"Subject individual" means:

(a) ((Means)) An individual who is sixteen years of age or older and is seeking:

(i) ((Is seeking)) A background check authorization ((or upon whom the department may conduct a background check authorization;

(ii) Is sixteen years of age or older;

~~(iii) Is an in-home/relative provider or is employed, contracted with, or volunteers to provide early learning services; and~~
~~(iv) Will care for or)) to have unsupervised access to children receiving early learning services; ((and~~
~~(b) Includes, but is not limited to, the following:~~
~~(i) Personnel, including employees and staff;~~
~~(ii) Contractors, including contracted providers;~~
~~(iii) Temporary workers;~~
~~(iv) Assistants;~~
~~(v) Volunteers;~~
~~(vi) Interns;~~
~~(vii) Each person who is sixteen years of age or older residing on, or moving into, the premises where early learning services are provided;~~
~~(viii) All other individuals who are sixteen years of age or older who will care for or have unsupervised access to children receiving early learning services;~~
~~(ix) All owners, operators, lessees, or directors of the agency or facility, or their designees;~~
~~(x) Applicants;~~
~~(xi) Licensees; or~~
~~(xii) In-home/relative providers and their household members who are sixteen years of age or older.))~~
(ii) A background check authorization to care for children receiving early learning services;
(iii) A background check authorization to work at a child care agency;
(iv) A background check authorization to reside at the premises of a child care agency or certified facility;
(v) A reauthorization of a background check authorization previously issued by DCYF; or
(vi) A new background check authorization, having been previously issued a background check authorization.
(b) A person who is thirteen through fifteen years of age who is seeking or has obtained a background check authorization under WAC 110-06-0045.
(c) Examples of "subject individual" include, but are not limited to:
(i) A person who is seeking an application for a child care agency license or a DCYF certification;
(ii) An individual who is currently a licensed or certified child care provider who is seeking:
(A) A continuation of a nonexpiring license or renewal of a certificate; or
(B) A renewal of DCYF's authorization to care for or have unsupervised access to children receiving early learning services;
(iii) A person who is a relative provider, in-home provider, or is employed by an early learning provider, including assistants and other persons who are temporarily employed by an early learning provider;
(iv) A person who is a volunteer or intern that provides early learning services;
(v) A person who contracts with an early learning provider;
(vi) A person who is sixteen years of age or older who:
(A) Resides at, or will be moving onto, the premises where early learning services will or are provided; or

(B) Will care for or have unsupervised access to children receiving early learning services;

(vii) All owners, operators, lessees, or directors of the agency or facility, or their designees; and

(viii) Licensees.

"Unsupervised access" means (~~(-~~

~~(a) A subject individual will or may have the opportunity to be alone with a child receiving early learning services at any time and for any length of time; and~~

~~(b))~~ not in the presence of a subject individual who is an employee of a child care agency and is authorized by DCYF to be alone with children receiving early learning services from the same agency. For purposes of this definition, unsupervised access includes, but is not limited to, access to ((a child)) children receiving early learning services ((that is)) who are not within constant visual or auditory range of the individual authorized by DCYF to be alone with children receiving early learning services.

"WCCC" means the working connections child care program.

AMENDATORY SECTION (Amending WSR 19-21-064, filed 10/11/19, effective 11/11/19)

WAC 110-06-0040 Background clearance requirements. This section applies to all subject individuals (~~(other than)~~), except for in-home/relative providers.

(1) Subject individuals (~~(associated with early learning services applying for a first-time background check)~~) must complete the DCYF background check application process ((including)) on or before the dates described in WAC 110-06-0041, 110-06-0045, and at least once every three years thereafter. The background check process includes, but is not limited to:

(a) (~~(Submitting))~~ Filing a completed background check application with the DCYF background check unit;

(b) Completing the required fingerprint process; ((and))

(c) Completing the required interstate background check process for each state the subject individual has lived outside of Washington state in the five years preceding the background check application; and

(d) Paying all required fees as provided in WAC 110-06-0044.

(2) All subject individuals (~~(qualified by the department to have unsupervised access to children in care)~~) who are (~~(renewing their applications))~~ seeking renewals of their DCYF authorizations must:

(a) Submit ((the)) a new background check application ((through)) to DCYF;

(b) Submit payment of all required fees ((as provided)) described in WAC 110-06-0044; ((and))

(c) Complete the required fingerprint process if the subject individual lives or has lived outside of Washington state since the previous background check was completed, or has not previously completed the fingerprint process required by this section; and

(d) Complete the required interstate background check process for each state the subject individual has lived outside of Washington state in the five years preceding the background check application.

(3) Each subject individual (~~(completing the DCYF)~~) who submits a background check ((process)) application and is seeking a background check authorization, or reauthorization, must disclose whether they have:

- (a) Been convicted of any crime;
- (b) Any pending criminal charges; and
- (c) Been or are the subject to any negative action(~~(, as defined by WAC 110-06-0020)~~).

(4) Subject individuals must not have unsupervised access to children in care unless they have obtained DCYF authorization under this chapter.

(5) ((A)) Subject individuals who ((has)) have been disqualified by DCYF must not be present on the premises when early learning services are provided to children.

AMENDATORY SECTION (Amending WSR 19-01-111, filed 12/18/18, effective 1/18/19)

WAC 110-06-0042 Departmental investigation and redetermination.

(1) The department will investigate and conduct a redetermination of the background clearance of a subject individual if the department receives a complaint or information that causes the department to conclude a background check clearance redetermination is necessary to verify that the subject individual has the appropriate character, suitability, and competence to have unsupervised access to children who receive early learning services. The complaint or information may be received from an individual((s)), a law enforcement agency, or other federal, state, or local government agency.

(2) In addition to the requirements described in subsection (1) of this section, the department will determine whether to disqualify a subject individual whose initial background check revealed a negative action or conviction information but who was granted authorization, and the subject individual subsequently:

(a) Used illegal drugs or misused or abused prescription drugs or alcohol that either affected the subject individual's ability to perform their job duties while on the premises when children were present, or presented a risk of harm to any child receiving early learning services; or

(b) Attempted, committed, permitted, or assisted in an illegal act on the premises. For purposes of this subsection, a subject individual attempted, committed, permitted, or assisted in an illegal act if they knew or reasonably should have known that the illegal act occurred or would occur.

(3) Subject to the requirements in RCW 43.216.270, and based on a determination that an individual lacks the appropriate character, suitability, or competence to be approved for a background check authorization, the department may ((immediately)):

- (a) Invalidate a background check authorization; or
- (b) Suspend ((or)), modify ((the subject individual's background clearance)), or revoke any child care license issued by DCYF.

~~((3)) Subject to the requirements in RCW 43.216.300 and 43.216.305, and based on a determination that a subject individual lacks the appropriate character, suitability, or competence to provide~~

~~early learning services to children, the department may disqualify the subject individual from having any unsupervised access to children.)~~

AMENDATORY SECTION (Amending WSR 19-01-111, filed 12/18/18, effective 1/18/19)

WAC 110-06-0043 Failure to report nonconviction and conviction information. (1) ~~The early learning services provider must report to the department within twenty-four hours if ((he or she))~~ the provider has knowledge ((of the following with respect to)) that a subject individual ((associated with their services,)) who has a background check ((clearance)) authorization ((with the department)) has a background that includes any of the following:

(a) ~~Any nonconviction and conviction information ((for a)) that is related to a crime ((listed in WAC 110-06-0120)), negative action, or conduct that is included on the secretary's list; or~~

(b) ~~Any other conduct, or nonconviction ((and)) or conviction information ((for a crime)), that could be reasonably related to the subject individual's suitability to provide care for or have unsupervised access to children in care((; or~~

~~(c) Any negative action as defined in WAC 110-06-0020)).~~

(2) ~~A subject individual who has been issued a background check ((clearance)) authorization ((pursuant to WAC 110-06-0040))~~ under this chapter must report to the department the following information about themselves within twenty-four hours after becoming aware of such information:

(a) ~~Any nonconviction ((and)) or conviction information ((to the department involving a disqualifying)) that is related to a crime ((under WAC 110-06-0120 against that subject individual within twenty-four hours after he or she becomes aware of the event constituting the nonconviction or conviction information))~~ negative action, or conduct that is included on the secretary's list; and

(b) ~~Any other conduct, or nonconviction or conviction, information that could be reasonably related to the individual's suitability to provide care for or have unsupervised access to children in care.~~

(3) ~~((A subject individual who))~~ An individual's background check authorization may be disqualified if the individual intentionally or knowingly fails to report to the department as ((provided in)) required under subsection (1) or (2) of this section ((may have his or her background check clearance suspended)). This ((penalty)) disqualification will be in addition to any other ((penalty)) agency action that may be imposed as a result of a violation of this chapter ((or of the)), applicable provisions ((of any chapter of)) within Title 110 WAC ((that implement the authority and requirements of)), or chapter 43.216 RCW.

AMENDATORY SECTION (Amending WSR 19-01-111, filed 12/18/18, effective 1/18/19)

WAC 110-06-0044 Background check fees. This section applies to all subject individuals other than in-home/relative providers.

(1) Subject individuals (~~(associated with early learning services)~~) must pay for the cost of the background check process. The fees include:

(a) Fingerprint process fees as defined by the Washington state patrol, Federal Bureau of Investigation, DSHS, and the DCYF fingerprint contractor; and

(b) The DCYF administrative fee of:

(i) Twelve dollars for an electronic submission; or

(ii) Twenty-four dollars for a paper submission.

(2) DCYF administrative fee payments may be paid by:

(a) ~~((By))~~ Debit or credit card;

(b) ~~((In the form of))~~ Mailing a personal check, cashier's check, or money order (~~(, which shall be sent by mail))~~ to:

Department of Children, Youth, and Families (DCYF)

Attn: PBC

P.O. Box 40971

Olympia, WA 98504-0971; or

(c) ~~((By))~~ Electronic funds transfer that does not involve a debit or credit card. (~~(As used in))~~ For purposes of this section, "electronic funds transfer" means ((any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account)) an on-line system that allows for the secure transfer of money from one bank account to an account designated by DCYF.

(3) The department will not issue a background check (~~(clearance))~~ authorization to a subject individual (~~(÷~~

~~(a))~~ who fails to pay the required fees in subsection (1) of this section (~~(÷ or~~

~~(b) Whose payment is reported as having nonsufficient funds (NSF) or is otherwise dishonored by nonacceptance or nonpayment.~~

~~An additional)).~~

(4) A processing fee of twenty-five dollars will be charged by (~~(the department))~~ DCYF for any check, money order, or electronic funds transfer that is reported as not having sufficient funds.

AMENDATORY SECTION (Amending WSR 19-01-111, filed 12/18/18, effective 1/18/19)

WAC 110-06-0045 Background checks for minor individuals under sixteen years of age.

(1) (~~(When applicable within chapter 110-300 WAC, an agency, licensee, or certified facility must have subject individuals complete the required DCYF minor individual background check application process for subject individuals))~~ All agencies, licensees, and certified facilities must be in possession of a copy of a background check authorization for minor subject individuals who work or reside at the licensed or certified agency. The requirements described in this subsection apply to minor subject individuals who are:

(a) Fourteen (~~(to sixteen))~~ through fifteen years of age, (~~(prior to))~~ before the date (~~(of hire by))~~ the subject individual begins working for a licensed or certified child care (~~(-)); or~~

(b) Thirteen (~~(to sixteen))~~ through fifteen years of age (~~(residing))~~ on or before the date the subject individual begins or continues

to reside in a licensed or certified family home child care. ~~((e))~~ For a subject individual who is thirteen ~~((to sixteen))~~ through fifteen years of age ~~((r))~~ and who begins to reside in a licensed or certified facility after the individual's thirteenth birthday, the subject individual must complete the required DCYF minor individual background check application process within seven days after moving into the licensed family home child care.

(2) A subject individual identified in subsection (1) (a) ~~((r))~~ or (b) ~~((or (e)))~~ of this section must not have unsupervised access to children ~~((in child care))~~ receiving early learning services.

(3) ~~((When conducting))~~ The background check application for a minor subject individual ~~((background check, the department:~~

~~(a) Requires the minor's))~~ must be signed by the minor and their parent or guardian ~~((to sign the noncriminal background check application;~~

~~(b) Does not review convictions or pending charges for immediate disqualification for crimes under WAC 110-06-0050(1), unless the conviction was the result of prosecution of the juvenile as an adult; and~~

~~(c) Does not immediately disqualify an individual for a conviction under WAC 110-06-0070 (1) and (2), unless the conviction was the result of prosecution of the juvenile as an adult)).~~

(4) The minor subject individual's character, suitability, and competence determination will be made pursuant to the requirements described in this chapter.

AMENDATORY SECTION (Amending WSR 19-01-111, filed 12/18/18, effective 1/18/19)

WAC 110-06-0046 Requirements for license-exempt in-home/relative providers. (1) This section applies to license-exempt in-home/relative providers. The background check process must be completed for:

(a) All license-exempt in-home/relative providers who apply to care for a ~~((WCCC))~~ consumer's child who is eligible to receive WCCC benefits; ~~((and))~~

(b) Any individual sixteen years of age or older who is residing with a license-exempt in-home/relative provider ~~((when))~~ if the provider cares for the child eligible to receive WCCC benefits in the provider's ~~((own))~~ home, and the home is not where the child ~~((does not reside.~~

~~(2) Additional background checks must be completed for individuals listed in subsection (1) (a) and (b) of this section when an individual sixteen years of age or older is newly residing))~~ resides; and

(c) Any individual sixteen years of age or older who begins to reside with a license-exempt in-home/relative provider ~~((when the provider))~~ after the date the provider begins to care ~~((s))~~ for the child eligible to receive WCCC benefits in the provider's ~~((own))~~ home, and the home is not where the child ~~((does not))~~ resides.

~~((3) The background check process for license-exempt in-home/relative providers requires:))~~ (2) A subject individual who is seeking a background check authorization must complete the background check application process by:

- (a) Submitting a completed background check application; ~~((and))~~
- (b) Completing the required fingerprint process; and

(c) Completing the required interstate background check process for each state the subject individual has lived outside of Washington state in the five years preceding the background check application.

~~((4))~~ (3) Each subject individual completing the DCYF background check process must disclose whether they have:

(a) ~~((Whether he or she has))~~ Been convicted of any crime;

(b) ~~((Whether he or she has))~~ Any pending criminal charges; and

(c) ~~((Whether he or she has))~~ Been or are the subject ~~((to))~~ of any negative actions ~~((, as defined by WAC 110-06-0020)).~~

~~((5))~~ (4) A subject individual must not have unsupervised access to children in care ~~((unless he or she has obtained))~~ before obtaining a DCYF background check ~~((clearance))~~ authorization under this chapter.

~~((6))~~ (5) A subject individual who has been disqualified by DCYF must not be present on the premises when early learning services are provided to children.

~~((7))~~ (6) DCYF ~~((pays for))~~ will pay the cost of the background check process. The fees include:

(a) Fingerprint process fees as defined by the Washington state patrol, Federal Bureau of Investigation, DSHS, and the DCYF fingerprint contractor; and

(b) The DCYF administrative fee.

AMENDATORY SECTION (Amending WSR 19-01-111, filed 12/18/18, effective 1/18/19)

WAC 110-06-0050 Department action following completion of background inquiry. (1) As part of the background check process the department will conduct ~~((a character, suitability or competence assessment as follows:~~

~~(1) Compare the background information with the DCYF secretary's list, WAC 110-06-0120, to determine whether the subject individual must be disqualified under WAC 110-06-0070 (1) and (2). In doing this comparison, the department will use the following rules))~~ the background check investigation and evaluation described in this section to determine whether the subject individual should be disqualified or not.

(2) A subject individual must be disqualified when their background information includes conviction information described in WAC 110-06-0070(2) or conduct described in WAC 110-06-0070 (7) or (8).

(3) Subject to the requirements of WAC 110-06-0070(5) and after comparing the subject individual's background information with the secretary's list to determine whether to disqualify under WAC 110-06-0070 (3) or (4), DCYF may conduct a character, suitability, and competence assessment of the subject individual.

(4) Subject to the requirements of this chapter and after comparing the subject individual's background information with the secretary's list to determine whether to disqualify under WAC 110-06-0070(6), the department must conduct a character, suitability, and competence assessment of the subject individual.

(5) For purposes of DCYF's investigation, evaluation, and determination, the following standards apply:

(a) A pending charge for a crime ((or) that has been filed in the appropriate court, a deferred prosecution ((is)), or a deferred sentence must be given the same weight as a conviction.

(b) If the conviction has been renamed it is given the same weight as the previous named conviction.

(c) Convictions whose titles ((are preceded with)) include the word "attempted," "conspiracy," or "solicitation" are given the same weight as those titles without the word "attempted," "conspiracy," or "solicitation."

(d) The term "conviction" ((has the same meaning as the term "conviction record" as defined in RCW 10.97.030 and)) may include convictions or dispositions for crimes committed as either an adult or juvenile. ((It may also include convictions or dispositions for offenses for which the person received a deferred or suspended sentence, unless the record has been expunged according to law.))

(e) Convictions and pending charges from other states or jurisdictions will be treated the same as a crime or pending charge in Washington state. If the elements of the crime from the foreign jurisdiction are not identical or not substantially similar to its Washington equivalent or if the foreign statute is broader than the Washington definition of the particular crime, the ((defendant's)) subject individual's conduct, as evidenced by the indictment or information, will be analyzed to determine whether the conduct would have violated the comparable Washington statute.

(f) ((The)) A crime will not be considered a conviction ((for the purposes of the department when)) if the conviction has been the subject of an expungement, pardon, annulment, certification of rehabilitation, vacated, or other equivalent procedure based on a finding of the rehabilitation of the person convicted, or the conviction has been vacated, the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

~~((2) Evaluate any negative action information to determine whether the subject individual has any negative actions requiring disqualification under WAC 110-06-0070(3).~~

~~(3) Evaluate any negative action information and any other pertinent background information, including nondisqualifying criminal convictions, to determine whether disqualification is warranted under WAC 110-06-0070 (5), (6), or (7))~~ (g) If the subject individual's background information contains a CPI or CROP, DCYF must not disqualify the subject individual solely based on the information that pertains to the CPI, or solely based on the information that pertains to the CROP. For a subject individual who has obtained a CPI or CROP, the department should:

(i) Assess the subject individual's character, suitability, and competence to determine whether the subject individual should be disqualified if his or her background information contains a pending charge or conviction, unrelated to the CROP, that is listed in WAC 110-06-0120(2); or

(ii) If the subject individual's background does not include a pending charge or conviction listed in WAC 110-06-0120(2), assess the subject individual's character, suitability, and competence to determine whether to disqualify the subject individual under WAC 110-06-0070.

(h) A CROP does not apply to founded findings of child abuse or neglect. A child abuse or neglect finding must be considered by the department.

(i) A CROP and CPI must be included as part of the criminal history record reports, qualifying letters, assessments, or other reports.

(j) A subject individual's background check authorization may be suspended if the subject individual is the subject of a child protective services investigation. The length of the suspension may not exceed the following time period:

(i) As defined in RCW 26.44.020, the department makes an unfounded determination; or

(ii) The date a negative action determination is issued or the date a negative action becomes final, whichever is longer.

(k) If the department suspends a subject individual's background check authorization for the time period described in (j)(ii) of this subsection, the department may disqualify the subject individual pursuant to the requirements described in this chapter.

(l) A subject individual who makes a request for a hearing or appeals a department decision to disqualify will not be authorized to care for or have unsupervised access to children receiving early learning services during the time period the hearing request or appeal is pending.

~~((4))~~ (6) If DCYF has reason to believe that additional information ~~(is)~~ or reports are needed to determine whether the subject individual has the character, suitability ~~((or))~~, and competence ~~((of the subject individual))~~ to care for or have unsupervised access to children receiving early learning services, DCYF may request that the subject individual provide such reports or additional information ~~((will be requested. The))~~. A subject individual ~~((must))~~ who does not provide ~~((to the department any additional reports or))~~ the requested information ~~((that it requests))~~ may be disqualified.

AMENDATORY SECTION (Amending WSR 19-01-111, filed 12/18/18, effective 1/18/19)

WAC 110-06-0070 ~~((Disqualification.))~~ Background check decision. Background information that ~~((will))~~ may or must disqualify a subject individual.

~~(1) A subject individual ((who has a background containing any of the permanent convictions on the secretary's list, WAC 110-06-0120(1), will be permanently disqualified from caring for children or having unsupervised access to children receiving early learning services.~~

~~(2) A) must be permanently disqualified if the subject individual has a background that includes conviction information of a crime listed in WAC 110-06-0120(2).~~

(2) Subject to the requirements described in subsection (3) of this section, if a subject individual who is thirteen years of age or older has a background that includes conviction information of a crime listed in WAC 110-06-0120(2), the subject individual may be permanently disqualified from having unsupervised access to children receiving early learning services at a child care facility.

(3) For the purposes of subsections (1) and (2) of this section, if there is not an unusually high risk of an erroneous disqualification without an individualized assessment, the determination that an individual is permanently disqualified may be solely based on a permanently disqualifying crime listed in WAC 110-06-0120(2). To determine

whether there is an unusually high risk of an erroneous disqualification, the department must consider the factors described in subsection (7) of this section.

(4) If a subject individual has a background that includes a negative action, or conviction information, that involves any of the conduct described in the secretary's list under WAC 110-06-0120 (3) or (4), DCYF may disqualify the subject individual if it makes a determination the subject individual does not have the appropriate character, suitability, or competence to be authorized or reauthorized.

(5) A subject individual who knowingly makes a materially false statement in connection with the criminal background check application must be disqualified.

(6) A subject individual who is registered, or is required to be registered, on a state sex offender registry or repository, or the national sex offender registry, must be disqualified.

(7) DCYF must consider the following factors related to a subject individual's background when assessing character, suitability, and competence:

(a) Whether the subject individual ((who)) has a background containing any of the ((nonpermanent)) permanent convictions on the secretary's list((,)) that are described in WAC 110-06-0120(2) ((, will be disqualified from providing licensed child care, caring for children or having unsupervised access to children receiving early learning services for five years after the conviction date.

~~(3) A subject individual will be disqualified when his or her background contains a negative action, as defined in WAC 110-06-0020 that relates to:~~

~~(a) An act, finding, determination, decision, or the commission of abuse or neglect of a child as defined in chapters 26.44 RCW and 110-30 WAC.~~

~~(b) An act, finding, determination, decision, or commission of abuse or neglect or financial exploitation of a vulnerable adult as defined in chapter 74.34 RCW.~~

~~(4) A subject individual who has a "founded" finding for child abuse or neglect will not be authorized to care for or have unsupervised access to children during the administrative hearing and appeals process.~~

~~(5) Background information that may disqualify a subject individual. A subject individual may be disqualified for other negative action(s), as defined in WAC 110-06-0020 which reasonably relate to his or her character, suitability, or competence to care for or have unsupervised access to children receiving early learning services.~~

~~(6) A subject individual may be disqualified from caring for or having unsupervised access to children if the individual is the subject of a pending child protective services (CPS) investigation.~~

~~(7) The department may also disqualify a subject individual if that person has other nonconviction background information that renders him or her unsuitable to care for or have unsupervised access to children receiving early learning services. Among the factors the department may consider are:~~

~~(a) The subject individual attempts to obtain a license, certification, or authorization by deceitful means, such as making false statements or omitting material information on an application.~~

~~(b) The subject individual used illegal drugs or misused or abused prescription drugs or alcohol that either affected their ability to perform their job duties while on the premises when children~~

were present or presented a risk of harm to any child receiving early learning services.

~~(c) The subject individual attempted, committed, permitted, or assisted in an illegal act on the premises. For purposes of this subsection, a subject individual attempted, committed, permitted, or assisted in an illegal act if he or she knew or reasonably should have known that the illegal act occurred or would occur.~~

~~(d) Subject to federal and state law, the subject individual lacks sufficient physical or mental health to meet the needs of children receiving early learning services.~~

~~(e) The subject individual had a license or certification for the care of children or vulnerable adults terminated, revoked, suspended or denied.)) ;~~

(b) Whether the subject individual has a background containing any of the convictions on the secretary's list that are described in WAC 110-06-0120(3) or negative actions described in WAC 110-06-0120(4);

(c) Whether the subject individual has obtained a CROP or CPI for any of the subject individual's background that is described in WAC 110-06-0120 (3) or (4);

(d) The amount of time that has passed since the conviction information or negative action;

(e) The seriousness of the crime or subject individual's actions that led to the conviction or negative action;

(f) The number, types, and age of other convictions or negative actions in the subject individual's background;

(g) The subject individual's age at the time of conviction or the issuance of the negative action determination;

(h) The length and consistency of employment history before and after the conviction or negative action;

(i) The employment or character references and any other information regarding the subject individual's fitness to be authorized;

(j) The completion of services or other evidence of rehabilitation since the conviction or negative action;

(k) The subject individual's role or purpose in delivering early learning services; and

(l) How the subject individual's conduct that is the basis for the subject individual's conviction or negative action, is conduct that shows the subject individual does not have the appropriate character, suitability, and competence to receive a background check authorization.

AMENDATORY SECTION (Amending WSR 19-01-111, filed 12/18/18, effective 1/18/19)

WAC 110-06-0080 Notification of disqualification. (1) ~~((The department)) DCYF will ((notify the)) send written notice to a subject individual ((in writing if he or she)) who is disqualified by the background check.~~

(2) If ~~((the department)) DCYF~~ sends a notice of disqualification, the subject individual will not be authorized to care for or have unsupervised access to children receiving early learning services, or to be present on the early learning service's premises during the hours for which child care is provided.

(3) Any decision by ~~((the department))~~ DCYF to disqualify a subject individual under this chapter is effective immediately upon receipt of written notice from the department to the subject individual.

AMENDATORY SECTION (Amending WSR 19-01-111, filed 12/18/18, effective 1/18/19)

WAC 110-06-0100 Request for administrative hearing. (1) ~~((Any))~~ A subject individual has a right to contest ~~((the department's))~~ a disqualification decision under WAC 110-06-0070 ~~((and))~~. The subject individual must request a hearing within twenty-eight days of receipt of the written disqualification decision ~~((, regardless of whether the subject individual requests a department reconsideration of the disqualification under WAC 110-06-0115))~~.

(2) A request for a hearing must meet the requirements of chapter 110-03 WAC.

(3) Any decision by the department to disqualify a subject individual under this chapter will remain in effect pending the outcome of the administrative hearing or review under chapter 110-03 WAC, notwithstanding any provision of chapter 110-03 WAC to the contrary.

AMENDATORY SECTION (Amending WSR 19-01-111, filed 12/18/18, effective 1/18/19)

WAC 110-06-0110 Limitations on challenges to disqualifications.

(1) If the disqualification is based on a criminal conviction, the subject individual cannot contest the conviction in the administrative hearing.

(2) If the disqualification is based on a finding of child abuse or neglect as defined in chapter 26.44 RCW, or a finding of abandonment, abuse, neglect, exploitation, or financial exploitation of a vulnerable adult as defined in chapter 74.34 RCW, the subject individual cannot contest the finding if:

(a) The subject individual ~~((was notified of))~~ failed to request a hearing to contest the finding after receiving notice of the finding ((by the department of social and health services (-)) from DSHS((-) and failed to request a hearing to contest the finding)); or

(b) The subject individual was notified of the finding ~~((by DSHS))~~ and requested a hearing to contest the finding, but the finding was upheld by final administrative order or superior court order.

(3) If the disqualification is based on a court order finding the subject individual's child to be dependent as defined in chapter 13.34 RCW, the subject individual cannot contest the finding of dependency in the administrative hearing.

(4) If the disqualification is based on a negative action ~~((as defined in WAC 110-06-0020))~~, the subject individual cannot contest the underlying negative action in the administrative hearing if the subject individual was previously given the right of review or hearing right and a final decision or finding has been issued.

WAC 110-06-0115 ((Reconsideration of)) Department decision to vacate disqualification decision. (1) Subject to the requirements contained in this chapter ((110-06-WAC)), the department may not reconsider whether an earlier decision to disqualify a subject individual will be vacated unless the department determines a change has occurred in the circumstances of the subject individual between the date of disqualification and the date the request to vacate the disqualification is made. Subject to the requirements contained in this chapter, to receive a background check authorization under this section, the department must review the subject individual's background and assess their character, suitability, and competence to determine whether the change in circumstances demonstrates the subject individual should receive an authorization.

(2) ~~((For a disqualification based on WAC 110-06-0070 (5) or (7)(a), (c), or (e), a disqualified subject individual's request for reconsideration will be granted only if the disqualified subject individual establishes by clear and convincing evidence there has been a change of circumstances since the date of the disqualification that demonstrates there is nothing about the subject individual's character, suitability, or competence that would prevent the subject individual from caring for or having unsupervised access to children receiving early learning services. For purposes of subsection (2) of this section a disqualification based on a "negative action," WAC 110-06-0070 (5) or (7)(c) or (e) does not include a decision, final determination, or finding made by an agency or administrative law judge that relates to:~~

~~(a) The commission of abuse or neglect of a child as defined in chapters 26.44 RCW and 388-15 WAC; or~~

~~(b) The commission of abuse or neglect of a vulnerable adult as defined in chapter 74.34 RCW.)~~ To determine whether there has been a change in circumstances, the department must consider the factors described in subsection (3) of this section. A change in circumstances includes, but is not limited to, the following:

(a) Two years have passed since the issuance of a disqualification.

(b) The issuance of a valid CROP that pertains to a crime that was the sole basis of the subject individual's disqualification.

(c) If the sole basis for the disqualification was for a conviction that has been dismissed, vacated, the subject of a pardon, annulment, or other equivalent procedure.

(d) The issuance of a valid CPI that pertains to a negative action that was the sole basis of the subject individual's disqualification. The CPI must pertain to conduct by the subject individual that resulted in a founded finding of negligent treatment or maltreatment, physical abuse, or a dependency finding that was the result of a finding that the subject individual abused or neglected the child under RCW 13.34.030 (6) (b).

(e) If the sole basis for the disqualification was a negative action that has been dismissed, vacated, annulled, or other equivalent procedure.

(3) ~~((For a disqualification based on any of the circumstances described in WAC 110-06-0070 (3) and (7)(b) or (d), a disqualified subject individual's request for reconsideration will be granted only~~

~~if the disqualified subject individual establishes by clear and convincing evidence there has been a change of circumstances since the date of the disqualification that demonstrates there is nothing about the subject individual's character, suitability, or competence that would constitute a danger to a child's welfare if the individual is allowed to care for or have unsupervised access to children in care.))~~ Before a subject individual is issued a background check authorization under this section, the department must review the subject individual's background and assess their character, suitability, and competence. In this assessment, the department considers the following factors related to the subject individual's background:

(a) Whether the subject individual has a background containing any of the permanent convictions on the secretary's list described in WAC 110-06-0120(2);

(b) Whether the subject individual has a background containing any of the information described in the secretary's list in WAC 110-06-0120 (3) or (4);

(c) The amount of time that has passed since the negative action or conviction information that is the sole basis, or partial basis, of the subject individual's prior disqualification;

(d) The seriousness of the crime or subject individual's actions that led to the conviction or negative action that was the sole basis, or partial basis, of the subject individual's prior disqualification;

(e) The number, types, and age of other conviction information or negative actions in the subject individual's background;

(f) The subject individual's age at the time of the negative action determination or conviction that is the sole basis, or partial basis, of the subject individual's prior disqualification;

(g) The completion of services or other evidence of rehabilitation since the conviction or negative action that is the sole basis, or partial basis of the subject individual's prior disqualification;

(h) The subject individual's role or purpose in delivering early learning services;

(i) The length and consistency of employment history between the date the disqualification was issued and the date the subject individual asks the department to vacate the disqualification decision;

(j) The employment or character references and any other information regarding the subject individual's fitness to be authorized.

~~(4) ((The department will not reconsider qualifying a subject individual that was disqualified under WAC 110-06-0120(1).))~~ If a CROP or CPI has been issued for a crime or negative action that was the sole basis for a disqualification, the department must vacate the disqualification. If a disqualification is vacated for any reason under this section, the department must conduct a new background check investigation and evaluation as described in this chapter.

~~(5) ((The department will not reconsider qualifying a subject individual that was disqualified under WAC 110-06-0120(2) for a period of five years from the date of the disqualifying conviction.))~~ As part of the background check process under this section, the department will conduct the background check investigation, evaluation, and assessment as described in this chapter.

WAC 110-06-0120 Secretary's list. ~~((1) A subject individual's conviction for any crimes listed in column (a) in the table below will permanently disqualify him or her from authorization to care for or have unsupervised access to children receiving early learning services.~~

~~(2) A subject individual's conviction for any crime listed in column (b) in the table below will disqualify him or her from authorization to care for or have unsupervised access to children receiving early learning services for a period of five years from the date of conviction.~~

(a) Crimes that permanently disqualify a subject individual	(b) Crimes that disqualify a subject individual for five years from date of conviction
Abandonment of a child	Abandonment of a dependent person not against child
Arson	Assault 3 not domestic violence
Assault 1	Assault 4/simple assault
Assault 2	Burglary
Assault 3 domestic violence	Coercion
Assault of a child	Custodial assault
Bail jumping	Custodial sexual misconduct
	Extortion 2
Child buying or selling	Forgery
Child molestation	Harassment
Commercial sexual abuse of a minor	
Communication with a minor for immoral purposes	Identity theft
Controlled substance homicide	Leading organized crime
Criminal mistreatment	Malicious explosion 3
Custodial interference	Malicious mischief
Dealing in depictions of minor engaged in sexually explicit conduct	Malicious placement of an explosive 2
Domestic violence (felonies only)	Malicious placement of an explosive 3
Drive-by shooting	Malicious placement of imitation device 1
Extortion 1	Patronizing a prostitute
Harassment domestic violence	Possess explosive device
Homicide by abuse	Promoting pornography
Homicide by watercraft	Promoting prostitution 1

(a) Crimes that permanently disqualify a subject individual	(b) Crimes that disqualify a subject individual for five years from date of conviction
Incendiary devices (possess, manufacture, dispose)	Promoting prostitution 2
Incest	Promoting suicide attempt
Indecent exposure/public indecency (felonies only)	Prostitution
Indecent liberties	Reckless endangerment
Kidnapping	Residential burglary
Luring	Stalking
Malicious explosion 1	Theft
Malicious explosion 2	Theft-welfare
Malicious harassment	Unlawful imprisonment
Malicious mischief domestic violence	Unlawful use of a building for drug purposes
Malicious placement of an explosive 1	Violation of the Imitation Controlled Substances Act (manufacture/deliver/intent)
Manslaughter	Violation of the Uniform Controlled Substances Act (manufacture/deliver/intent)
Murder/aggravated murder	Violation of the Uniform Legend Drug Act (manufacture/deliver/intent)
	Violation of the Uniform Precursor Drug Act (manufacture/deliver/intent)
Possess depictions minor engaged in sexual conduct	
Rape	
Rape of child	
Robbery	
Selling or distributing erotic material to a minor	
Sending or bringing into the state depictions of a minor	
Sexual exploitation of minors	
Sexual misconduct with a minor	
Sexually violating human remains	
Use of machine gun in felony	
Vehicular assault	
Vehicular homicide (negligent homicide)	
Violation of child abuse restraining order	

(a) Crimes that permanently disqualify a subject individual	(b) Crimes that disqualify a subject individual for five years from date of conviction
Violation of civil anti-harassment protection order	
Violation of protection/contact/restraining order	
Voyeurism))	

(1) The crimes and conduct described in this section constitute the secretary's list.

(2) Subject to the requirements described in this chapter, the department must permanently disqualify a subject individual who has a conviction for any of the crimes listed in this subsection.

<u>Citation</u>	<u>Description</u>
<u>RCW 9A.42.060</u>	<u>Abandonment of a dependent person in the first degree (if the victim is a child)</u>
<u>RCW 9A.42.070</u>	<u>Abandonment of a dependent person in the second degree (if the victim is a child)</u>
<u>RCW 10.95.020</u>	<u>Aggravated murder</u>
<u>RCW 9A.48.020</u>	<u>Arson in the first degree</u>
<u>RCW 9A.48.030</u>	<u>Arson in the second degree</u>
<u>RCW 9A.36.011</u>	<u>Assault in the first degree</u>
<u>RCW 9A.36.021</u>	<u>Assault in the second degree</u>
<u>RCW 9A.36.031</u>	<u>Assault in the third degree (if causes bodily harm)</u>
<u>RCW 9A.36.120</u>	<u>Assault of a child in the first degree</u>
<u>RCW 9A.36.130</u>	<u>Assault of a child in the second degree</u>
<u>RCW 9A.36.140</u>	<u>Assault of a child in the third degree</u>
<u>RCW 9A.52.020</u>	<u>Burglary in the first degree (if child or spouse is assaulted)</u>
<u>RCW 9A.44.083</u>	<u>Child molestation in the first degree</u>
<u>RCW 9A.44.086</u>	<u>Child molestation in the second degree</u>
<u>RCW 9A.44.089</u>	<u>Child molestation in the third degree</u>
<u>RCW 9A.64.030</u>	<u>Child buying or selling</u>
<u>RCW 9.68A.100</u>	<u>Commercial sexual abuse of a minor</u>
<u>RCW 9.68A.090</u>	<u>Communication with minor for immoral purposes (if a felony)</u>
<u>RCW 69.50.415</u>	<u>Controlled substances homicide (if the victim is a child)</u>
<u>RCW 9A.42.020</u>	<u>Criminal mistreatment in the first degree (if the victim is a child)</u>

Citation	Description
<u>RCW 9A.42.030</u>	<u>Criminal mistreatment in the second degree (if the victim is a child)</u>
<u>RCW 9A.36.100</u>	<u>Custodial assault (if causes bodily harm)</u>
<u>RCW 9A.40.060</u>	<u>Custodial interference in the first degree (if the victim is a child)</u>
<u>RCW 9A.40.070</u>	<u>Custodial interference in the second degree (if the victim is a child; and the conviction is the subject individual's second or subsequent conviction of custodial interference in the second degree)</u>
<u>RCW 9A.44.160</u>	<u>Custodial sexual misconduct in the first degree (if the victim is a child)</u>
<u>RCW 9.68A.050</u>	<u>Dealing in depictions of minor engaged in sexually explicit conduct in the first degree or second degree</u>
<u>RCW 9A.36.045</u>	<u>Drive-by shooting (if the victim is a child)</u>
<u>RCW 9A.42.100</u>	<u>Endangerment with a controlled substance (if the victim is a child)</u>
<u>RCW 9A.56.120</u>	<u>Extortion in the first degree (if the victim is a child)</u>
<u>RCW 9A.56.130</u>	<u>Extortion in the second degree (if the victim is a child)</u>
<u>RCW 9A.36.080</u>	<u>Hate crime offense (if the victim is a child)</u>
<u>RCW 9A.32.055</u>	<u>Homicide by abuse (if the victim is a child)</u>
<u>RCW 9A.64.020</u>	<u>Incest in the first degree or second degree (if the victim is a child)</u>
<u>RCW 9A.88.010</u>	<u>Indecent exposure (if a felony and the victim is a child)</u>
<u>RCW 9A.44.100</u>	<u>Indecent liberties</u>
<u>RCW 9A.40.020</u>	<u>Kidnapping in the first degree</u>
<u>RCW 9A.40.030</u>	<u>Kidnapping in the second degree</u>
<u>RCW 9A.40.090</u>	<u>Luring (if the victim is a child)</u>
<u>RCW 9A.32.060</u>	<u>Manslaughter in the first degree (if the victim is a child)</u>
<u>RCW 9A.32.070</u>	<u>Manslaughter in the second degree (if the victim is a child)</u>
<u>RCW 9A.32.030</u>	<u>Murder in the first degree</u>
<u>RCW 9A.32.050</u>	<u>Murder in the second degree</u>
<u>RCW 9.68A.070</u>	<u>Possession of depictions of minor engaged in sexually explicit conduct in the first degree or second degree</u>
<u>RCW 9.68A.101</u>	<u>Promoting commercial sexual abuse of a minor</u>
<u>RCW 9.68.140</u>	<u>Promoting pornography (if the victim is a child)</u>

Citation	Description
<u>RCW 9A.88.070</u>	<u>Promoting prostitution in the first degree (if the victim is a child)</u>
<u>RCW 9.68A.102</u>	<u>Promoting travel for commercial sexual abuse of a minor</u>
<u>RCW 9A.44.040</u>	<u>Rape in the first degree</u>
<u>RCW 9A.44.050</u>	<u>Rape in the second degree</u>
<u>RCW 9A.44.060</u>	<u>Rape in the third degree</u>
<u>RCW 9A.44.073</u>	<u>Rape of a child in the first degree</u>
<u>RCW 9A.44.076</u>	<u>Rape of a child in the second degree</u>
<u>RCW 9A.44.079</u>	<u>Rape of a child in the third degree</u>
<u>RCW 9A.56.200</u>	<u>Robbery in the first degree (if the victim is a child)</u>
<u>RCW 9A.56.210</u>	<u>Robbery in the second degree (if the victim is a child)</u>
<u>RCW 9.68A.060</u>	<u>Sending, bringing into state depictions of minor engaged in sexually explicit conduct in the first degree or second degree</u>
<u>RCW 9.68A.040</u>	<u>Sexual exploitation of a minor</u>
<u>RCW 9A.44.093</u>	<u>Sexual misconduct with a minor in the first degree</u>
<u>RCW 9A.40.040</u>	<u>Unlawful imprisonment (if the victim is a child)</u>
<u>RCW 46.61.520</u>	<u>Vehicular homicide (if the victim is a child)</u>

(3) Subject to the requirements described in this chapter, the department may disqualify a subject individual who has a conviction for a crime listed in this subsection.

Citation	Description
<u>RCW 9A.42.060</u>	<u>Abandonment of a dependent person in the first degree (if the victim is not a child)</u>
<u>RCW 9A.42.070</u>	<u>Abandonment of a dependent person in the second degree (if the victim is not a child)</u>
<u>RCW 9A.42.080</u>	<u>Abandonment of a dependent person in the third degree</u>
<u>RCW 16.52.205</u>	<u>Animal cruelty in the first degree</u>
<u>RCW 16.52.207</u>	<u>Animal cruelty in the second degree</u>
<u>RCW 9A.36.031</u>	<u>Assault in the third degree (if no bodily harm)</u>
<u>RCW 9A.36.041</u>	<u>Assault in the fourth degree</u>
<u>RCW 9A.52.020</u>	<u>Burglary in the first degree (if a child or spouse is not assaulted)</u>
<u>RCW 9A.52.030</u>	<u>Burglary in the second degree</u>
<u>RCW 9A.36.070</u>	<u>Coercion</u>
<u>RCW 9.68A.090</u>	<u>Communication with minor for immoral purposes (if a gross misdemeanor)</u>

<u>Citation</u>	<u>Description</u>
<u>RCW 69.50.415</u>	<u>Controlled substances homicide (if the victim is not a child)</u>
<u>RCW 9A.46.120</u>	<u>Criminal gang intimidation</u>
<u>RCW 9A.60.040</u>	<u>Criminal impersonation in the first degree</u>
<u>RCW 9A.42.020</u>	<u>Criminal mistreatment in the first degree (if the victim is not a child)</u>
<u>RCW 9A.42.030</u>	<u>Criminal mistreatment in the second degree (if the victim is not a child)</u>
<u>RCW 9A.42.035</u>	<u>Criminal mistreatment in the third degree</u>
<u>RCW 9A.42.037</u>	<u>Criminal mistreatment in the fourth degree</u>
<u>RCW 9.05.060</u>	<u>Criminal sabotage</u>
<u>RCW 9A.36.100</u>	<u>Custodial assault (if no bodily harm)</u>
<u>RCW 9A.40.060</u>	<u>Custodial interference in the first degree (if the victim is not a child)</u>
<u>RCW 9A.40.070</u>	<u>Custodial interference in the second degree (if the victim is not a child)</u>
<u>RCW 9A.44.160</u>	<u>Custodial sexual misconduct in the first degree (if the victim is not a child)</u>
<u>RCW 9A.44.170</u>	<u>Custodial sexual misconduct in the second degree</u>
<u>RCW 9.61.260</u>	<u>Cyberstalking</u>
<u>RCW 9A.36.045</u>	<u>Drive-by shooting (if the victim is not a child)</u>
<u>RCW 46.61.502</u>	<u>Driving under the influence of intoxicating liquor, marijuana, or any drug (if the conviction was for a felony or the conviction occurred within three years of the date of the subject individual's request for authorization)</u>
<u>RCW 46.52.020</u>	<u>Duty in case of personal injury or death or damage to attended vehicle or other property – Penalties (if a felony)</u>
<u>RCW 9A.42.100</u>	<u>Endangerment with a controlled substance (if the victim is not a child)</u>
<u>RCW 9A.56.120</u>	<u>Extortion in the first degree (if the victim is not a child)</u>
<u>RCW 9A.56.130</u>	<u>Extortion in the second degree (if the victim is not a child)</u>
<u>RCW 9A.44.132</u>	<u>Failure to register as sex offender or kidnapping offender</u>

Citation	Description
<u>RCW 66.44.270</u>	<u>Furnishing liquor to minors (only if the subject individual sells, gives, or otherwise supplies liquor to a person under the age of twenty-one years; or permits any person under that age to consume liquor on the subject individual's property or on any property under the subject individual's control)</u>
<u>RCW 9A.46.020</u>	<u>Harassment</u>
<u>RCW 9A.36.080</u>	<u>Hate crime offense (if the victim is not a child)</u>
<u>RCW 9A.32.055</u>	<u>Homicide by abuse (if the victim is not a child)</u>
<u>RCW 9A.60.050</u>	<u>Homicide by watercraft</u>
<u>RCW 9A.40.120</u>	<u>Incendiary devices</u>
<u>RCW 9A.64.020</u>	<u>Incest in the first degree or second degree (if the victim is not a child)</u>
<u>RCW 9A.88.010</u>	<u>Indecent exposure (if felony and victim is not a child, or if a misdemeanor)</u>
<u>RCW 9A.82.060</u>	<u>Leading organized crime</u>
<u>RCW 46.61.685</u>	<u>Leaving children unattended in standing vehicle with motor running</u>
<u>RCW 9.91.060</u>	<u>Leaving children unattended in parked automobile</u>
<u>RCW 9A.40.090</u>	<u>Luring (if the victim is not a child)</u>
<u>RCW 70.74.270</u>	<u>Malicious placement of an explosive in the first, second, or third degree</u>
<u>RCW 70.74.272</u>	<u>Malicious placement of an imitation device in the first degree or second degree</u>
<u>RCW 9A.32.060</u>	<u>Manslaughter in the first degree (if the victim is not a child)</u>
<u>RCW 9A.32.070</u>	<u>Manslaughter in the second degree (if the victim is not a child)</u>
<u>RCW 46.61.5249</u>	<u>Negligent driving in the first degree (if the conviction occurred within three years of the date of the subject individual's request for authorization)</u>
<u>RCW 46.61.504</u>	<u>Physical control of vehicle under the influence (if felony)</u>
<u>RCW 9.68.140</u>	<u>Promoting pornography (if the victim is not a child)</u>
<u>RCW 9A.88.070</u>	<u>Promoting prostitution in the first degree (if the victim is not a child)</u>
<u>RCW 9A.88.080</u>	<u>Promoting prostitution in the second degree</u>
<u>RCW 9A.36.060</u>	<u>Promoting a suicide attempt</u>
<u>RCW 9A.36.050</u>	<u>Reckless endangerment</u>
<u>RCW 9A.76.070</u>	<u>Rendering criminal assistance in the first degree</u>

Citation	Description
<u>RCW 9A.52.025</u>	<u>Residential burglary</u>
<u>RCW 9A.56.200</u>	<u>Robbery in the first degree (if the victim is not a child)</u>
<u>RCW 9A.56.210</u>	<u>Robbery in the second degree (if the victim is not a child)</u>
<u>RCW 9A.44.096</u>	<u>Sexual misconduct with a minor in the second degree</u>
<u>RCW 9A.44.105</u>	<u>Sexually violating human remains</u>
<u>RCW 9A.46.110</u>	<u>Stalking</u>
<u>RCW 9.61.230</u>	<u>Telephone harassment (if felony)</u>
<u>RCW 9A.40.100</u>	<u>Trafficking in the first degree or second degree</u>
<u>RCW 13.32A.080</u>	<u>Unlawful harboring of a minor</u>
<u>RCW 9A.40.040</u>	<u>Unlawful imprisonment (if the victim is not a child)</u>
<u>RCW 69.53.010</u>	<u>Unlawful use of a building for drug abuse purposes</u>
<u>RCW 9.41.225</u>	<u>Use of machine gun or bump-fire stock in felony</u>
<u>RCW 46.61.522</u>	<u>Vehicular assault</u>
<u>RCW 46.61.520</u>	<u>Vehicular homicide (if the victim is not a child)</u>
<u>RCW 9.68A.075</u>	<u>Viewing depictions of minor engaged in sexually explicit conduct in the first or second degree</u>
<u>RCW 26.50.110</u>	<u>Violation of sexual assault protection order under chapter 7.90 RCW if a felony under RCW 26.50.110.</u>
<u>RCW 26.50.110</u>	<u>Violation of stalking no-contact order or stalking protection order under chapter 7.92 RCW if a felony under RCW 26.50.110.</u>
<u>RCW 26.50.110</u>	<u>Violation of human trafficking no-contact order under chapter 9A.40 if a felony under RCW 26.50.110.</u>
<u>RCW 26.50.110</u>	<u>Violation of an order restricting contact under RCW 9A.46.080.</u>
<u>RCW 26.50.110</u>	<u>Violation of promoting prostitution no-contact order under chapter 9A.88 RCW if a felony under RCW 26.50.110.</u>
<u>RCW 26.50.110</u>	<u>Violation of domestic violence no-contact order under chapter 10.99 RCW if a felony under RCW 26.50.110.</u>
<u>RCW 26.50.110</u>	<u>Violation of dissolution proceeding restraining order under chapter 26.09 RCW if a felony under RCW 26.50.110.</u>
<u>RCW 26.50.110</u>	<u>Violation of paternity proceeding restraining order under chapter 26.26A or 26.26B RCW if a felony under RCW 26.50.110.</u>

<u>Citation</u>	<u>Description</u>
<u>RCW 26.50.110</u>	<u>Violation of a domestic violence order for protection under chapter 26.50 RCW if a felony under RCW 26.50.110.</u>
<u>RCW 26.50.110</u>	<u>Violation of an order for protection of a vulnerable adult under chapter 74.34 RCW if a felony under RCW 26.50.110.</u>
<u>RCW 10.14.170</u>	<u>Violation of civil antiharassment protection order</u>
<u>RCW 69.52.030</u>	<u>Violation of the Uniform Controlled Substances Act (manufacture, distribute, or possess with intent to distribute)</u>
<u>Chapter 69.50 RCW (Article IV Offenses and penalties)</u>	<u>Except for controlled substance homicide if the child is a victim (RCW 69.50.415), any violation of the Uniform Controlled Substances Act</u>
<u>RCW 69.41.020</u>	<u>The unlawful obtaining or attempting to obtain a legend drug, or procure or attempt to procure the administration of a legend drug</u>
<u>RCW 69.41.030</u>	<u>Sale or delivery of legend drug without prescription or order</u>
<u>RCW 69.43.070</u>	<u>Sale, transfer, or furnishing of any substance listed in RCW 69.43.010 with knowledge or intent the recipient will use the substance to unlawfully manufacture a controlled substance; or the receipt of any substance listed in RCW 69.43.010 with intent to use the substance unlawfully to manufacture a controlled substance.</u>
<u>RCW 9A.44.115</u>	<u>Voyeurism</u>
<u>RCW 69.41.030</u>	<u>Sale or delivery of legend drug without prescription or order</u>

(4) Subject to the requirements described in this chapter, the department may disqualify a subject individual who has a background that includes any negative action that is based on the conduct described in this subsection includes any negative action that is based on the conduct described in this subsection.

(a) The abuse, neglect, exploitation, or abandonment of a vulnerable adult, child, or juvenile.

(b) The suspension, termination, revocation, denial, or restriction of a license, professional license, or certification.

(c) The suspension, termination, or revocation of a state or federal contract.

(d) The relinquishment of a license, certification, or contract in lieu of an agency negative action.

(5) Under 42 U.S.C. § 9858f(c)(1)(B) a subject individual must be disqualified and not authorized for employment at a licensed or certified child care facility, if the subject individual knowingly makes a materially false statement in connection with their criminal background check.

(6) Under 42 U.S.C. § 9858f(c)(1)(C) a subject individual must be disqualified and not authorized for employment at a licensed or certified child care facility, if the subject individual is registered, or is required to be registered, on a state sex offender registry or repository or the National Sex Offender Registry established under the Adam Walsh Child Protection and Safety Act of 2006 (42 U.S.C. 16901 et seq.).



PROPOSED RULE MAKING

CR-102 (December 2017) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: August 31, 2021

TIME: 2:41 PM

WSR 21-18-107

Agency: Department of Children, Youth, and Families

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 19-20-096 ; or

Expedited Rule Making--Proposed notice was filed as WSR _____; or

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or

Proposal is exempt under RCW _____.

Title of rule and other identifying information: (describe subject) WAC 110-04-0020 What definitions apply to WAC 110-04-0030 through 110-04-0180 of this chapter?, 110-04-0040 Who must have background checks?, 110-04-0080 What does the background check cover?, 110-04-0090 Who pays for the background check?, 110-04-0100 Will a criminal conviction permanently prohibit me from being licensed, contracted, certified, authorized to be employed at a group care facility, or authorized to have unsupervised access to children?, 110-04-0110 Are there other criminal convictions that will prohibit me from being licensed, contracted, certified, authorized to be employed at a group care facility, or authorized to have unsupervised access to children or from working with children?, 110-04-0120 If I have a conviction, may I ever be authorized to be employed at a group care facility or have unsupervised access to children?, 110-04-0130 Will I be disqualified if there are pending criminal charges on my background check?, 110-04-0140 Will you license, contract, authorize my employment at a group care facility, or authorize me to have unsupervised access to children if my conviction has been expunged, vacated from my record, or I have been pardoned for a crime?, 110-04-0160, What may I do if I disagree with the department's decision to deny me a license, certification, contract, or authorization based on the results of the background check?, 110-04-0170 Is the background check information released to my employer or prospective employer? 110-06-0010 Purpose and scope; 110-06-0020 Definitions; 110-06-0040 Background clearance requirements; 110-06-0042 Departmental investigation and redetermination; 110-06-0043 Failure to report nonconviction and conviction information; 110-06-0044 Background check fees; 110-06-0045 Background checks for minor individuals under sixteen years of age; 110-06-0046 Requirements for license-exempt in-home/relative providers; 110-06-0050 Department action following completion of background inquiry; 110-06-0070 Disqualification. Background information that will disqualify a subject individual; 110-06-0080 Notification of disqualification; 110-06-0100 Request for administrative hearing; 110-06-0110 Limitations on challenges to disqualifications; 110-06-0115 Reconsideration of disqualification; and 110-06-0120 Secretary's list.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
October 5, 2021		telephonic	Oral comments may be made by calling (360) 902-8084 and leaving a voicemail that includes the comment and an email or physical mailing address where DCYF will send its response. Comments received through and including October 5, 2021 will be considered.

Date of intended adoption: October 8, 2021 (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: DCYF Rules Coordinator

Address: P. O. Box 40975

Email: dcyf.dcyfrulescoordinator@dcyf.wa.gov

Fax:

Other: submit comments online at <https://www.dcyf.wa.gov/practice/policy-laws-rules/rule-making/participate/online>

By (date) October 5, 2021

Assistance for persons with disabilities:

Contact DCYF Rules Coordinator

Phone: (360) 902-7956

Fax:
TTY:
Email: dcyf.dcyfrulescoordinator@dcyf.wa.gov
Other:
By (date) October 1, 2021

Purpose of the proposal and its anticipated effects, including any changes in existing rules: Proposed amendments to chapters 110-04 and 110-06 WAC explain when certificates of restoration of opportunity (CROP) and certificates of parental improvement (CPI) will be included in criminal history record reports, qualifying letters, or other assessments during a background check and when they will not.

Proposed amendments to chapter 110-06 WAC also:

- better clarify that the background check process includes requesting information from other states in which an applicant has lived during the five years before their background check;
- allow DCYF to disqualify a previously authorized provider who:
 - (1) used illegal drugs or misused or abused prescription drugs or alcohol that either affected their ability to perform their job duties while on the premises when children were present, or presented a risk of harm to any child receiving early learning services, or
 - (2) attempted, committed, permitted, or assisted in an illegal act on child care premises; and
- more clearly explain which criminal convictions must disqualify an individual from being licensed, contracted, certified, or authorized to have unsupervised access to children and which trigger further review to determine whether the background check results demonstrate that an applicant possesses the character, suitability, and competence to have unsupervised access to children.

Reasons supporting proposal: RCW 9.97.020(4) directs the department to adopt rules that implement CROP consideration during the background check process, and it is necessary to align chapters 110-04 and 110-06 WAC with Chapter 270, Laws of 2020 that authorized licensing of providers regulated by the department who have been issued CPIs.

The additional proposed amendments to chapter 110-06 WAC better explain for potential applicants when the background check will include history from other states in which they have lived, and, for providers authorized to have unsupervised access to children, the proposed rules clearly explain under what circumstances the department will redetermine authorization.

Finally, proposed revisions to the mandatory and potential disqualifying crimes lists in WAC 110-06-0120 align with the federal Child Care Development Fund disqualifying crimes lists and are necessary to preserve federal appropriations that fund Washington State's child care subsidy programs.

Statutory authority for adoption: RCW 43.43.832(2), 43.216.065 and 43.216.271

Statute being implemented: RCW 9.97.020, 43.216.170, 43.216.270, 43.43.837

Is rule necessary because of a:

Federal Law?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

If yes, CITATION: 42 U.S.C. § 9858

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

Name of proponent: (person or organization) Department of Children, Youth, and Families Private
 Public
 Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Chris Parvin	Olympia, WA	(360) 890-0464

Implementation: DCYF statewide

Enforcement: DCYF statewide

Is a school district fiscal impact statement required under RCW 28A.305.135? Yes No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

- Name:
- Address:
- Phone:
- Fax:
- TTY:
- Email:
- Other:

Is a cost-benefit analysis required under RCW 34.05.328?

Yes: A preliminary cost-benefit analysis may be obtained by contacting:

- Name:
- Address:
- Phone:
- Fax:
- TTY:
- Email:
- Other:

No: Please explain: A cost benefit analysis is not required under RCW 34.05.328. DCYF is not among the agencies listed as required to comply with RCW 34.05.328(5)(i). Further, DCYF does not voluntarily make that section applicable to the adoption of these rules.

Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description: For sections contained in chapter 110-06 WAC: 42 U.S.C. § 9858. Failure to comply jeopardizes receipt of federal funds that are used for child care subsidies.

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

- | | |
|---|---|
| <input type="checkbox"/> RCW 34.05.310 (4)(b)
(Internal government operations) | <input checked="" type="checkbox"/> RCW 34.05.310 (4)(e)
(Dictated by statute) |
| <input type="checkbox"/> RCW 34.05.310 (4)(c)
(Incorporation by reference) | <input type="checkbox"/> RCW 34.05.310 (4)(f)
(Set or adjust fees) |
| <input type="checkbox"/> RCW 34.05.310 (4)(d)
(Correct or clarify language) | <input checked="" type="checkbox"/> RCW 34.05.310 (4)(g)
((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit) |

This rule proposal, or portions of the proposal, is exempt under RCW .

Explanation of exemptions, if necessary:

COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

No Briefly summarize the agency's analysis showing how costs were calculated. _____

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name:

Address:

Phone:

Fax:

TTY:

Email:

Other:

Date: August 31, 2021

Name: Brenda Villarreal

Title: DCYF Rules Coordinator

Signature:

