



**STATE OF WASHINGTON
DEPARTMENT OF CHILDREN, YOUTH, AND FAMILIES**

1500 Jefferson Street, SE • P.O. Box 40975 • Olympia WA 98504-0975

July 28, 2022

TO: Interested Persons

FROM: Jason Churchwell, Foster Care Program Administrator

SUBJECT: CONCISE EXPLANATORY STATEMENT (*RCW 34.05.325*)

For rules proposed under notice filed as WSR 22-09-087 on April 20, 2022:

New WAC 110-148-1326

REASON FOR ADOPTION: To affirm the department's authority to issue child-specific foster family home licenses granted by RCW 74.15.125(7), and establish the limitations of the license: namely, that licensing and child placement is at the discretion of the department and placement is limited to children identified prior to the issuance of the license. The rule also requires reassessment in cases where a child-specific license holder wants to receive placement of a child not identified prior to licensure or wants to receive a general foster family home license.

CHANGES MADE SINCE THE RULE WAS PROPOSED: None.

SUMMARY OF COMMENTS RECEIVED	THE DEPARTMENT CONSIDERED ALL THE COMMENTS. THE ACTIONS TAKEN IN RESPONSE TO THE COMMENTS, OR THE REASONS NO ACTIONS WERE TAKEN, FOLLOW.
It's pretty general – a lot of states have a child specific license- Its not clear then- if caregivers would be able to take less training hours- if its child specific license. could this be clarified in the final language? See admin language from FL which has proposed the same intent, but provides some clearer language which would make the WA policy more clear across administrations. See FL CFOP 170-11 (Chapter 12, foster home licensing, level 1 foster parent inquiry). Sad the WA website) won't let me give you the direct link). Need clarity in language here, if you had a foster child who was under age 5- you would get a FC payment and a child care payment for that same child? The kinship caregivers would still need to meet all of the child care requirements in the home as well? Is the intent to help	Clarification on further differences will be provided in policies, guidance docs, and orientation. No changes were made to the final rule.

<p>align those safety – house rule standards to be the same for FP and for child care providers?</p>	
<p>It would be nice to add in something about when that specific child exits the home, that the child specific license will be closed automatically.</p>	<p>This action is prohibited by law. RCW 74.15.100 states "Licenses provided for in this chapter and RCW 74.13.031 shall be issued for a period of three years" and thus cannot be closed earlier, automatically or manually. No changes were made to the final rule.</p>
<p>This does a good job detailing the legality of a child specific license but the spirit of 5151 was to also reduce the requirements for kinship caregivers to get licensed. How does this address additional non-safety waivers for kinship families that would make the process easier while staying compliant with IV-funds. Also, the WAC doesn't mention how to assess for a child specific license vs. a general license. I assume the assessment is less since we aren't approving for all potential children, but some guidance on how to assess for this type of license would be nice.</p>	<p>Clarification on further differences will be provided in policies, guidance docs, and orientation. No changes were made to the final rule.</p>
<p>Similar to the comments of others, while this does a good job detailing the legality of a child specific license it seems that the spirit of 5151 might be missing (however it is unclear). If the spirit is to reduce the barriers and requirements for licensing kinship caregivers, how is that being implemented (if at all) through this WAC change? How does this WAC change address the use of additional non-safety waivers for kinship families that would make the process easier while staying compliant with IV-E funding requirements? Although the WAC doesn't mention how to assess for a child specific license vs. a general license, it does note that "Licensees under this section must meet the licensing requirements detailed in RCW 74.15.030(2) and this chapter." The use of "and this chapter" is concerning as it seems to refer to 110-148 as a whole - does this mean that a child-specific licensee will need to meet all of the same licensing requirements as a general licensee? If so, this does not align with the intention of 5151. We recommend more thorough language that outlines what specific licensing requirements are need to provide a child-specific license and we recommend that it be significantly less than a general foster-care license. We assume the assessment will be different than a regular license and ultimately require less since we aren't</p>	<p>Clarification on further differences will be provided in policies, guidance docs, and orientation. No changes were made to the final rule.</p>

<p>approving for all potential children. Clear guidance on how to assess for this type of license will be helpful for consistent implementation and a reduction of barriers for families.</p>	
<p>Agreement in principal, not in its execution. The idea behind 5151 was to clarify and give DCYF permission to establish a process for making it easier for relatives to be get a foster care license so that they could receive federal (not state) foster care payments when caring for their own kin. That is not in dispute: DCYF already has this authority. One of the biggest reasons relative caregivers of dependent children give for not getting licensed is the time commitment required to attend the mandatory training classes to become a foster parent and complete the necessary paperwork. To counter this, this state is spending millions of dollars in public and private funding to hire staff to help relatives navigate the licensing process, locate and provide child care will the relative takes the classes, etc. Rather than examining the root cause of "why aren't relatives getting licensed" (an excessively bureaucratic process and training that is designed for parents who have never parented some one else's children), the net result of 5151 was to give the department the ability to further justify it's own already existing process for foster parent licensing. There are alternatives which could be explored, such as using the experience of the relative in providing safe care to the specific child being used as an alternative way to meeting the training requirements. This WAC needs to be rewritten to include what the anticipated outcome of the proposed rule changes will be. This is much more inline with the original bill intent - which included co-development with external stakeholders. If the goal is to get more relative caregivers (which are already disproportionately BIPOC) access to additional federal resources to provide care to a relative dependent child, we probably don't need more rules...we need fewer.</p>	<p>Commentary. Clarification on further differences will be provided in policies, guidance docs, and orientation. Training requirements for kinship caregivers who get a child specific license will be different than the training requirements for a general foster care license. No changes were made to the final rule.</p>
<p>Re: RCW 74.15.125(7) If this rule change is not inclusive of all kinship placements (including those made thru court with help of an attorney, or placements made without any agency involvement), it will not be a wide enough net to capture most kinship families.</p>	<p>Commentary. RCW and WAC limits eligibility to: (1) kids adjudicated to be in the placement care and authority of DCYF; (2) the relationship to the licensee; and (3) the pre-identified children, that child's siblings, or other related children. No changes were made to the final rule.</p>

A number of organizations submitted a more detailed written comment to the email address (see attached). Below is a portion of the whole comment: Rather than using the authority granted by the legislature for this purpose, proposed WAC 110-148-1326 fails to waive any administratively created requirements for those pursuing a child specific license. The proposed WAC requires both that a licensee “meet the licensing requirements detailed in RCW 74.15.030(2)” (as required by SB 5151) and meet all existing licensing requirements contained in WAC 110-148, without exception. Proposed WAC 110-148-1326(4). In conversations with the Department, it now appears that the Department does not believe it can create child specific license criteria different from non child-specific license criteria. Of course, one then wonders why the Department requested a statutory change authorizing the creation of child specific license criteria. Advocates urge the Department to use the authority granted by the legislature to make meaningful changes to the licensing process to ease the process for those seeking a child specific license. The current intention, it appears, is to change the policy (rather than the WAC) to allow workers to have discretion to waive certain non-safety criteria on a case-by-case basis. Advocates are concerned that leaving exemptions to the discretion of individual licensing workers, without any additional guidance, will compound the inequities in this system. Indeed, much of this discretion existed before the change in the law. Further, even if DCYF believes that every departure from the existing WAC licensing requirements must be made on a case-by-case basis, per IV-E guidance, despite the statutory authority sought in SB 5151 to create specific criteria, DCYF could still make meaningful changes to reduce discretion, and therefore bias, against kinship caregivers pursuing a child specific license. Licensing rules could – for example – create a presumption that all exemptions apply to those pursuing a child-specific license, unless a court orders (or an Area Administrator requires) specific additional licensing standards are met. In the alternative, DCYF could build its minimum licensing requirements around the needs of kinship caregivers and require exemptions only for those pursuing a non child specific license (in that situation the exemptions would require additional steps rather than waiving steps). Advocates are open to having a conversation about how to structure the determination to make the planned exemptions the expectation, rather than the exception, for kinship caregivers – while still treating each case individually.

Commentary. The child-specific license is intended and will be used to allow greater flexibility in licensing requirements for caregivers who seek licensure to care for specifically identifiable children. Key elements of this license that differentiate it from a general foster care license include the following: (1) non-health and safety waivers to the requirements in chapter 110-148 WAC will only be available under a child-specific license (i.e. these waivers will not be available under a general foster care license); (2) child-specific licenses will only be available to relatives or suitable persons of an identifiable, dependent child or children; (3) As part of the child-specific license application, the department will presume that all non-health and safety waivers apply to a child-specific applicant. But prior to issuing a license, DCYF will individually assess the needs of the identified child or children to determine if some waivers should not apply—therefor requiring the licensee to adhere to additional licensing standards. Notably, this list of waivers and each applicants individual determination will be outlined and guided by DCYF policies rather than WAC; and (4) The department is currently assessing the list of non-health and safety waivers and will explore the idea of expanding this list in the coming months. DCYF is committed to engaging stakeholders as part of this process when the time comes to better address the health and safety needs of dependent children and the individual circumstances of child-specific license applicants.

Clarification on further differences will be provided in policies, guidance docs, and orientation.

No changes were made to the final rule.

<p>Thank you for the opportunity to provide input on the proposed WAC. While I am in strong support of changing the WAC to comply with SB5151, I don't think that the proposal goes far enough or takes full advantage of the authority given to DCYF in the legislation. I have signed on to a letter submitted to the Rules Coordinator that fully expresses my concerns. I strongly recommend that the current proposed WACs be withdrawn and that you continue working with stakeholders to come up with recommendations that will truly allow more kinship caregivers a path to licensure. Thank you.</p>	<p>Clarification on further differences will be provided in policies, guidance docs, and orientation. No changes were made to the final rule.</p>
<p>WACF members appreciate the work on this WAC and DCYF's desire to make it easier for relatives to become licensed. We in no way doubt that you are committed to placing and licensing more kinship families. We however, do not believe this WAC will lead to policies that meet the goal of SB 5151. After receiving more information from DCYF staff, we understand the federal limitations, however we have concerns that the policies that will be created as a result of this will create subjectivity in approving waivers on a case by case basis. We know that inconsistencies occur now, so it is easy to assume that this will be the same. This will not be effective in making it easier for kinship families to be licensed and could further the inequities in the system. If we are truly committed to licensing relatives and placing with kin first, we need to have policies that put kinship families first. <u>For example, it could mean that we assume all waivers apply unless there is specific criteria that allows them to not be waived.</u> DCYF is engaged in many different initiatives that involve placing with relatives, we believe this is the opportunity to make substantial change.</p>	<p>Commentary. The child-specific license is intended and will be used to allow greater flexibility in licensing requirements for caregivers who seek licensure to care for specifically identifiable children. Key elements of this license that differentiate it from a general foster care license include the following: (1) non-health and safety waivers to the requirements in chapter 110-148 WAC will only be available under a child-specific license (i.e. these waivers will not be available under a general foster care license); (2) child-specific licenses will only be available to relatives or suitable persons of an identifiable, dependent child or children; (3) As part of the child-specific license application, the department will presume that all non-health and safety waivers apply to a child-specific applicant. But prior to issuing a license, DCYF will individually assess the needs of the identified child or children to determine if some waivers should not apply—therefor requiring the licensee to adhere to additional licensing standards. Notably, this list of waivers and each applicants individual determination will be outlined and guided by DCYF policies rather than WAC; and (4) The department is currently assessing the list of non-health and safety waivers and will explore the idea of expanding this list in the coming months. DCYF is committed to engaging stakeholders as part of this process when the time comes to better address the health and safety needs of dependent children and the individual circumstances of child-specific license applicants.</p>

	Clarification on further differences will be provided in policies, guidance docs, and orientation. No changes were made to the final rule.
As a licensor, I can clearly see the need for this type of license Many families will squeeze so they can take on the care of relatives kids, and they view TANF as "welfare." A limited relative license for specific kids seems like a nice way to address this for many of them.	Commentary supporting the rule.

This document also serves as the summary of public hearing comments to the agency head required under RCW 34.05.325(4).

cc: DCYF Rules Coordinator

Background on Kinship Care:

DCYF has recognized that outcomes for children placed in kinship homes are better than when children are placed in homes with unrelated people.¹ DCYF's internal findings are consistent with other research which shows that when children are removed from parents, they generally have better outcomes when placed with kinship caregivers than their peers who are placed in non-kinship placements.²

Research demonstrates that kinship care is most effective when caregivers are provided proper services and support. Their caregiving role often comes unexpectedly, leaving many kinship caregivers unprepared for the financial demands of caring for a child.³ Research shows kinship caregivers need more flexible licensing standards in order to remove barriers to kinship care.⁴ And kinship caregivers need resources directed to their individualized needs.⁵

The dependency statute authorizes dependency courts to place children with extended family members regardless of whether those relatives are licensed. Indeed, dependent children are regularly placed with unlicensed relatives, sometimes at the request of DCYF and sometimes over the Department's objection. That means, regardless of whether the home is licensed, dependent children will continue to live with kinship caregivers. *See e.g.* RCW 13.34.130 (authorizing dependency courts to place children with relatives, even over the objection of DCYF).

However, the only way for a kinship caregiver to obtain a financial subsidy equivalent to a foster care subsidy is for the caregiver to become licensed. Therefore, the primary consequence that flows from denying a relative a license and/or creating barriers to licensure is that children are placed in a home with fewer resources and supports.

The current licensing process is structured to allow for enormous amounts of discretion. Prior to the change in the statute, DCYF licensing social workers already had the authority to waive non-safety licensing criteria. Yet, even with that authority, a significant number of

¹ Ybarra, V., Klinman, D., and Luna, H. (2022). Child Outcomes in Kinship Care in Washington State – A Research Brief. Washington State Department of Children, Youth, and Families – Office of Innovation, Alignment, and Accountability.

² Heidi Redlich Epstein, *Kinship Care is Better for Children and Families*, 36 ABA CHILD L. PRAC. TODAY 77 (2017).

³ Sandra Bailey, et al., "How can you retire when you still got a kid in school?": *Economics of raising children in rural areas*, 49(8) MARRIAGE & FAM. REV. 671-69 (Dec. 2013); Ching-Hsuan Lin, *Evaluating Services for Kinship Care Families: A Systematic Review*, 36 CHILD. & YOUTH SERVS. REV. 32 (2014).

⁴ Mary Bissell, *Recruiting and Supporting Kinship Foster Families*, 36 ABA CHILD LAW PRACTICE 4 (July 1, 2017); Jennifer Miller, *Creating a Kin-First Culture in Child Welfare*, 36 ABA CHILD L. PRAC. 4 (July 1, 2017).

⁵ Gloria F. Carr, et al., *Needs for Information about Supportive Resources: A Predictor of Needs for Service and Service use in African American Grandmother Caregivers*, 10(1) J. OF INTERGENERATIONAL RELATIONSHIPS 48-63 (March 7, 2012); Bert Hayslip, Jr., et al., *Thematic Dimensions of Grandparent Caregiving: A Focus Group Approach*, 6(1) GRANDFAMILIES: THE CONTEMPORARY J. OF RES., PRAC. & POL. 1 (2020).

May 24, 2022

Comment on Proposed WAC 110-148-1326

relatives were not licensed. And, it is clear, where there is discretion in a process it invites bias including implicit and explicit racial bias to play a role.⁶

Finally, licensing is currently an area of the dependency process with effectively no oversight. When a child is placed with a relative and that relative is denied a license DCYF takes the position that the dependency court has no ability to exercise judicial review over that denial. Even where an independent homestudy supports licensure, the assigned CFWS social worker believes the child is safe with a relative, and the dependency court agrees that the child should remain placed with the relative, a relative can be denied a license and there is no outside review of that determination. That determination, denying a relative a license, can have a significant impact on the future of the case, for example, by excluding the relative from RGAP eligibility.

Background on SB 5151:

On May 13, 2021, agency request legislation sought by DCYF, SB 5151, was signed by the Governor, and became effective on July 25, 2021. The legislation authorizes the department to “issue a child-specific license to a relative, as defined in RCW 13.36.020, or a suitable person, as defined in RCW 13.36.020, who opts to become licensed for placement of a specific child and that child's siblings or relatives in the department's care, custody, and control.” The bill requires: “Such individuals must meet all minimum licensing requirements for foster family homes established pursuant to RCW 74.15.030 and are subject to child-specific license criteria, *which the department is authorized to establish by rule.*” (emphasis added).

In other words, DCYF was specifically authorized to define “child specific license criteria” that is consistent with the requirements of RCW 74.15.030(2) but tailored to recognize the unique needs of kinship caregivers. Those testifying in support of the legislation noted, “Child-specific licenses for a relative or suitable persons would provide an abbreviated and improved process to obtain a license and allow them to receive state support.”⁷

This legislation, which was requested by DCYF, explicitly acknowledges that the Department can create “child specific license criteria” – meaning, presumably, criteria different from non-child specific licenses.

Comment on Proposed WAC 110-148-1326:

Rather than using the authority granted by the legislature for this purpose, proposed WAC 110-148-1326, fails to waive any administratively created requirements for those pursuing a child specific license. The proposed WAC requires both that a licensee “meet the licensing

⁶ Vivek Sankaran, *With Child Welfare, Racism is Hiding in the Discretion*, The Chronical of Social Change (June 21, 2020).

⁷ <https://lawfilesexternal.wa.gov/biennium/2021-22/Pdf/Bill%20Reports/Senate/5151-S%20SBR%20HA%2021.pdf?q=20220520112211>

requirements detailed in RCW 74.15.030(2)” (as required by SB 5151) *and* meet all existing licensing requirements contained in WAC 110-148, *without exception*. Proposed WAC 110-148-1326(4).

In conversations with the Department, it now appears that the Department does not believe it can create child specific license criteria different from non child-specific license criteria. Of course, one then wonders why the Department requested a statutory change authorizing the creation of child specific license criteria. Advocates urge the Department to use the authority granted by the legislature to make meaningful changes to the licensing process to ease the process for those seeking a child specific license.

The current intention, it appears, is to change the policy (rather than the WAC) to allow workers to have discretion to waive certain non-safety criteria on a case-by-case basis. Advocates are concerned that leaving exemptions to the discretion of individual licensing workers, without any additional guidance, will compound the inequities in this system. Indeed, much of this discretion existed before the change in the law.

Further, even if DCYF believes that every departure from the existing WAC licensing requirements must be made on a case-by-case basis, per IV-E guidance,⁸ despite the statutory authority sought in SB 5151 to create specific criteria, DCYF could still make meaningful changes to reduce discretion, and therefore bias, against kinship caregivers pursuing a child specific license. Licensing rules could – for example – create a presumption that all exemptions apply to those pursuing a child-specific license, unless a court orders (or an Area Administrator requires) specific additional licensing standards are met. In the alternative, DCYF could build its minimum licensing requirements around the needs of kinship caregivers and require exemptions only for those pursuing a non child specific license (in that situation the exemptions would require additional steps rather than waiving steps). Advocates are open to having a conversation about how to structure the determination to make the planned exemptions the expectation, rather than the exception, for kinship caregivers – while still treating each case individually.

Finally, the Department’s current intention is to change the policy (rather than the WAC) to allow workers to have discretion to waive the following non-safety criteria on a case-by-case basis.

- WAC 110-148-1320 (2), WAC 110-148-1455 (5), & WAC 110-148-1375 (2-5) First aid, CPR, and bloodborne pathogens training (this exemption is not available if taking children under 2 or medically fragile children)
- WAC 110-148-1320 (5) Current immunizations for any children living in the household
- WAC 110-148-1320 (6) Influenza or pertussis vaccination

⁸ <https://www.acf.hhs.gov/sites/default/files/documents/cb/im2008.pdf>

May 24, 2022

Comment on Proposed WAC 110-148-1326

- WAC 110-148-1330 (2b) Dual license capacity (specify below the child care and foster care capacities, hours of operation, which children will be present at different times of the day, staffing ratios, licensed space, and ages of children)
- WAC 110-148-1365 (1): Applicant(s) must be at least 21 years of age to apply for a license
- WAC 110-148-1365 (2b): Sufficient regular income
- WAC 110-148-1370 (3) Expense of evaluations recommended by the department
- WAC 110-148-1380 Ongoing training
- WAC 110-148-1445 (2) An alternate plan, such as usage of bottled water until their well is approved
- WAC 110-148-1470 (1-6) Bedroom requirements (if exempting WAC 110-148-1470 (5) a DCYF 10-419 Supervision Plan for Site Specific Conditions is required)
- WAC 110-148-1475 (2, 3) Bedroom sharing
- WAC 110-148-1480 (2) Pet rabies vaccination
- WAC 110-148-1510 (3) Proof of auto registration

It does not appear, at this time, as far as we are aware that there is an intention to even allow a discretionary waiver of, among other things:

- First aid, CPR, and bloodborne pathogens training for children under the age of 2.
- Demonstrated functional literacy (WAC 110-148-1365(2)(c))
- Extensive record-keeping requirements that include, for example a requirement to keep on hand, "Information on specific cultural needs of the child including a cultural plan for native children with input from the child's tribe, if appropriate." (WAC 110-148-1405(1)(d)).

Throughout history extended families have cared for their loved ones under the age of 2 without bloodborne pathogen certification. Indeed, children under the age of 2 are those most likely to be pursued by prospective adoptive families looking to use the foster care system to adopt an infant child – contrary to the goal of the system to reunite families. DCYF should not create additional barriers for kinship caregivers looking to care for their infant loved ones.

Ultimately, advocates are concerned that this proposed WAC reflects a significant missed opportunity to make meaningful change and truly support kinship caregivers looking to care for their loved ones. Accordingly, the undersigned advocates and organizations strongly encourage DCYF to withdraw the proposed WAC, to re-engage with stakeholders, and to write a rule that recognizes, protects, and supports the important bonds of kinship.

Sincerely,

May 24, 2022

Comment on Proposed WAC 110-148-1326

(Alphabetical order)

Laurie Lippold, *Director of Public Policy, Partners for Our Children (P4C)*

Jill May, *Executive Director, Washington Association for Children and Families*

Shrounda Selivanoff, *Director of Public Policy, Children's Home Society of Washington*

Tara Urs, *Special Counsel, King County Department of Public Defense*

Lynn Urvina, *Kinship Program Director – Family Education and Support Services, Kinship Navigator – Thurston, Lewis, and Mason Counties, 18-year Kinship Caregiver – Thurston County*

Amelia Watson, *Parents Representation Program Co-Supervising Attorney – Washington State Office of Public Defense*