

WSR 07-20-049
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Health and Recovery Services Administration)

[Filed September 26, 2007, 3:09 p.m., effective November 1, 2007]

Effective Date of Rule: November 1, 2007.

Purpose: The health and recovery services administration (HRSA) is amending chapter 388-530 WAC, Pharmacy services. A complete reorganization of the pharmacy chapter is necessary prior to the implementation of the new ProviderOne point-of-sale system. Changes include:

- Organizing the sections in a logical order,
- Removing redundant or outdated sections,
- Clarifying the existing language,
- Eliminating circular references,
- Clarifying department coverage and authorization rules,
- Updating WAC references.

Details of changes to chapter 388-530 WAC: These rules:

- **Reorganize the original WAC chapter** - This was one of the most important changes to this chapter and the most needed. As sections were added to the chapter over the years, the size of the chapter expended to mammoth proportions. It became clear that it was time for a major overhaul to remove confusion and get the sections in a logical order. Cross references were updated accordingly throughout.
- **Rewritten for clarity** - The new rule is substantially rewritten to promote clarity and transparency.
- **Eliminated old, outdated references** - Throughout chapter 388-530 WAC there were outdated references. References to "MAA" were changed to the department.
- **Consolidated general requirements** - For clarity and convenience, the general requirements for a pharmacy claim were moved from various rules into one rule at the beginning of WAC 388-530-1000 WAC.
- **Eliminated old, unneeded or outdated definitions** - WAC 388-530-1050 contains definitions. Some were outdated or unneeded. The following definitions were eliminated: Certified average wholesale price (CAWP), contract drugs, MAA preferred list, expedited prior authorization, experimental drug, expired drug, generic drug, generic number sequence number, prior authorization, and therapeutic consultation service (TCS).
- **Added new definitions to the WAC** - The department added definitions for actual acquisition cost, automated authorization, average manufacturer price (AMP), average sales price (ASP), effectiveness, efficacy, evidence-based and evidenced-based medicine (EBM), innovator multiple source drug, pharmacy and therapeutic P&T committee, preferred drug list (PDL), and wholesale acquisition cost.
- **Clarification of definitions** - The definitions of administer, drug file contractor, maximum allowable cost (MAC), and actual acquisition cost (AAC) were changed to clarify meaning.
- **Revised covered and noncovered sections** - The covered and noncovered sections were revised to be consistent with rules across the agency and to consolidate what is covered and noncovered into two rules instead of throughout the chapter.
- **Discontinue the therapeutic consultation service (TCS) program** - The TCS program discontinued on July 1, 2007. The department is repealing the section.
- **Address federal law regarding sexual or erectile dysfunction drugs** - Explicitly states the department does not cover drugs used to treat sexual or erectile dysfunction, in accordance with section 1927 (d)(2)(K) of the Social Security Act, unless such drugs are used to treat a condition other than sexual or erectile dysfunction, and these uses have been approved by the Food and Drug Administration.
- **Clarified role of DUR board** - Clarifies the role of the DUR board in terms of the review of scientific literature to establish evidence-based guidelines for the appropriate use of drugs, including appropriate indications and dosing.
- **Clarifies what occurs in the preferred drug list process when a drug is not studied and not reviewed** - Explicitly states the drugs that are in drug classes on the Washington PDL that have not been studied by the evidence-based practice center(s) and have not been reviewed by the P&T committee will be treated as nonpreferred drugs not subject to the dispense as written (DAW) or the therapeutic interchange program (TIP).
- **Distinguishes drug authorization processes** - The rules clarify the difference between the department's authorization process and the authorization process associated with the Washington preferred drug list.
- **Clarifies that requests for authorization are not the same as denial of services** - The rule explicitly states that authorization requests are not a denial.
- **Adds statutorily required exception to the therapeutic interchange process** - As required by a statutory change, the rule is changed so that a pharmacy will not substitute a preferred drug for a nonpreferred drug when an immunomodulator/antiviral treatment is prescribed for Hepatitis C for which there is established a fixed duration of therapy for at least twenty-four weeks but no more than forty-eight weeks.
- **Increased transparency regarding the department's authorization decision-making** - Explicitly sets out the process for how the department's clinical team determines that the drug, device, or supply requires authorization, requires authorization to exceed department established limitations, or does not require authorization. (WAC 388-530-3100).
- **New section added taking into account the effect of Medicare Part D.**

- **Medicare Part B and Part D are put in the same section** - For ease of use, Medicare Part B and D are put in their own section.
- **Separate section for managed care** - The information regarding managed care was moved from the third party payer rule to its own rule.
- **Clarifies when a person will receive a response if the department receives a request outside business hours** - States that the department will respond to a request within twenty-four hours of opening for business on the next business day if received outside of normal state business hours.
- **Clarifies that the date of the original order must be on the prescription** - Explicitly states that a prescription must include the date of the original order to be reimbursed by the department.
- **Limits on certain providers for prescribing drug** - States that the department may not pay for prescriptions written by healthcare practitioners whose application for a core provider agreement (CPA) has been denied, or whose CPA has been terminated. The department may also not pay for prescriptions written by non-CPA healthcare practitioners whose services have been evaluated and determined to endanger the health and safety of medical assistance clients.
- **Overall increase in transparency** - In summary, the language of the rule was clarified to enhance transparency and to describe the integration of evidence-based medicine decision making into the authorization and coverage decisions.

Citation of Existing Rules Affected by this Order: Repealing WAC 388-530-1100, 388-530-1125, 388-530-1150, 388-530-1200, 388-530-1250, 388-530-1260, 388-530-1270, 388-530-1280, 388-530-1290, 388-530-1300, 388-530-1350, 388-530-1360, 388-530-1400, 388-530-1405, 388-530-1410, 388-530-1425, 388-530-1450, 388-530-1500, 388-530-1550, 388-530-1600, 388-530-1625, 388-530-1650, 388-530-1700, 388-530-1750, 388-530-1800, 388-530-1850, 388-530-1900, 388-530-1950, and 388-530-2050; and amending WAC 388-530-1000 and 388-530-1050.

Statutory Authority for Adoption: RCW 74.04.050, 74.08.090, 74.09.530, and 74.09.700.

Adopted under notice filed as WSR 07-11-141, 07-11-142, 07-11-143, and 07-11-144 on May 22, 2007.

Changes Other than Editing from Proposed to Adopted Version: The following changes, other than editing changes, have been made to the rules as proposed (additions indicated by underlined text, deletions indicated by ~~strike through text~~):

1. **Chapter 388-530 WAC:** Replaced the phrase "prescription drugs, devices, and pharmaceutical supplies" throughout with "drugs, devices, and drug-related supplies."

2. Added the words "and emergency contraception for woman eighteen years of age and older."

WAC 388-530-1000 (2)(b): (b) (~~Within the scope of coverage of an eligible client's medical assistance program. Refer to WAC 388-501-0060 and 388-501-0065 for scope of coverage information~~) Prescribed by a provider with prescribing authority (see exceptions for family planning and

emergency contraception for woman eighteen years of age and older in WAC 388-530-2000 (1)(b);

3. **WAC 388-530-1050 Definitions:** Changed the definition for administer as follows:

"Administer" (~~(means)~~) - Includes the direct application of a prescription drug or device by injection, inhalation, ingestion, insertion, or any other means, to the body of a patient by a practitioner, or at the direction of the practitioner.

4. **WAC 388-530-1050 Definitions:** Added definition for "evidence-based" and "evidenced-based medicine (EBM)" as follows:

"Evidenced-based" and "evidenced-based medicine (EBM)" - The application of a set of principles and a method for the review of well-designed studies and objective clinical data to determine the level of evidence that proves to the greatest extent possible, that a healthcare service is safe, effective and beneficial when making population-based coverage policies or individual medical necessity decisions.

5. **WAC 388-530-1050 Definitions:** Added definition for innovator multiple source drugs as follows:

"Innovator Multiple Source Drug" - As set forth in Section 1927 (k)(7)(A)(ii) of the Social Security Act, includes all covered outpatient drugs approved under a New Drug Application (NDA), Product License Approval (PLA), Establishment License Approval (ELA), or Antibiotic Drug Approval (ADA). A covered outpatient drug marketed by a cross-licensed producer or distributor under the approved new drug application will be included as an innovator multiple source drug when the drug product meets this definition.

6. **WAC 388-530-1050 Definitions:** Removed the last sentence (which has been added).

"Medically accepted indication" (~~(means)~~) - Any use for a covered outpatient drug:

(1) Which is approved under the federal Food, Drug, and Cosmetic Act; or

(2) The use of which is supported by one or more citations included or approved for inclusion in any of the compendia of drug information, as defined in this chapter. ~~The department considers the compendia to support the use only when the use is evidenced based.~~

7. **WAC 388-530-1050 Definition:** Removed definition for "TCS" and "Therapeutic consultation service (TCS)." The program was discontinued July 1, 2007.

8. **WAC 388-530-1050 Definition:** Added a definition for "wholesale acquisition cost" as follows:

"Wholesale acquisition cost" - The price paid by a wholesaler for drugs purchased from a manufacturer.

9. **WAC 388-530-2000 (1)(b)(iii) Covered—Outpatient drugs, devices, and drug-related supplies:** (iii) Contraceptive patches, contraceptive rings, and oral contraceptives, only when dispensed in at least a three-month supply, unless otherwise directed by the prescriber (~~emergency contraceptive pills are not subject to the at least three month supply limitation~~). There is no required minimum for how many cycles of emergency contraception may be dispensed.

10. **WAC 388-530-2100 Noncovered—Outpatient drugs and pharmaceutical supplies:** Moved (iii) and (iv) under (ii) as follows:

(1) The department does not cover:

(a) A drug that is:

(i) Not approved by the Food and Drug Administration (FDA); or

(ii) Prescribed for non-medically accepted indication, including diagnosis, dose, or dosage schedule that is not evidenced-based.

~~(iii) Prescribed for indication or dosing unproven for efficacy or safety; or~~

~~(iv) Prescribed for a dose or dosage schedule that is not evidenced-based.~~

11. **WAC 388-530-2100 (1)(b)(v) Noncovered—Out-patient drugs and pharmaceutical supplies:** Fixed erroneous cross reference.

(v) To promote tobacco cessation, except as described in ~~WAC 388-533-0345 (3)(d)~~ WAC 388-533-0400(20) tobacco cessation for pregnant women.

12. **WAC 388-530-2100 (1)(b)(v) Noncovered—Out-patient drugs and pharmaceutical supplies:** Added (2) as follows:

(2) A client can request an Exception to Rule (ETR) as described in WAC 388-501-0160.

13. **WAC 388-530-3000 When the department requires authorization:** Pharmacies must obtain authorization for covered drugs, devices, or drug-related supplies in order to receive reimbursement ~~when~~ as described in this section.

14. **WAC 388-530-3000(3) When the department requires authorization:**

(3) For the purpose of promoting safety, efficacy, and effectiveness of drug therapy, the department designates identifies specific:

~~(a) Clients or groups of clients as requiring authorization. Or who would benefit from further clinical review.~~

(b) (4) The department designates the prescriber(s) as requiring authorization because the prescriber(s) is under department review or is sanctioned for substandard quality of care.

~~(4) (5) Utilization data indicates there is a client are health and safety concerns or the potential of for misuse or abuse. Examples of utilization concerns include:~~

(a) Multiple prescriptions filled of the same drug in the same calendar month;

(b) Prescriptions filled earlier than the necessary for optimal therapeutic response;

(c) Therapeutic duplication;

(d) Therapeutic contraindication;

(e) Excessive dosing, excessive duration of therapy, or sub-therapeutic dosing as determined by FDA labeling or the compendia of drug information;

(f) Number of brand prescriptions filled per calendar month; and

(g) Number of prescriptions filled per month in total or by therapeutic drug class.

~~(5) (6) The pharmacy requests reimbursement in excess of the maximum allowable cost and the drug has been prescribed with instructions to dispense as written.~~

15. **New section WAC 388-530-4200:** Removed this section. The TCS program was discontinued on July 1, 2007.

16. **WAC 388-530-7900 Drugs purchased under the Public Health Service (PHS) Act:** Added a (3) as follows:

(3) The department reimburses drugs under this section at actual acquisition cost plus a dispensing fee set by the department.

17. **WAC 388-530-8100 (2)(a) and (b) Reimbursement—Maximum allowable cost (MAC):** Added "specific regional and local" to both (a) and (b) below. Under (b), added "based on national pricing sources."

(2) The department determines the MAC for a multiple-source drug:

(a) When specific regional and local drug acquisition cost data is available, the department:

(i) Identifies what products are available from wholesalers for each drug being considered for MAC pricing;

(ii) Determines pharmacy providers' approximate acquisition costs for these products; and

(iii) Establishes the MAC at a level which gives pharmacists access to at least one product from a manufacturer with a qualified rebate agreement (see WAC 388-530-7500(4)).

(b) When specific regional and local drug acquisition cost data is not available, the department may estimate acquisition cost based on national pricing sources.

18. **WAC 388-530-8150(2) Reimbursement—Automated maximum allowable cost (AMAC):** Changed subsection as follows:

(2) The department establishes AMAC as a specified percentage of the published average wholesale price (AWP) or other nationally-accepted pricing source in order to estimate acquisition cost. ~~The department may use different percentage discounts from AWP for the estimated acquisition cost (EAC) and AMAC.~~

A final cost-benefit analysis is available by contacting Siri Childs, P.O. Box 45506, Olympia, WA 98504-5506, phone (360) 725-1564, fax (360) 586-9727, e-mail childsa@dshs.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 31, Amended 2, Repealed 29.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 31, Amended 2, Repealed 29.

Date Adopted: September 26, 2007.

Robin Arnold-Williams
Secretary

COVERAGE

NEW SECTION

WAC 388-530-2000 Covered—Outpatient drugs, devices, and drug-related supplies. (1) The department covers:

(a) Outpatient drugs, including over-the-counter drugs, as defined in WAC 388-530-1050, subject to the limitations and requirements in this chapter, when:

(i) The drug is approved by the Food and Drug Administration (FDA);

(ii) The drug is for a medically accepted indication as defined in WAC 388-530-1050;

(iii) The drug is not excluded from coverage under WAC 388-530-2100; and

(iv) The manufacturer has a signed drug rebate agreement with the federal department of health and human services (DHHS). Exceptions to the drug rebate requirement are described in WAC 388-530-7500 which describes the drug rebate program.

(b) Family planning drugs, devices, and drug-related supplies per chapter 388-532 WAC and as follows:

(i) Over-the-counter (OTC) family planning drugs, devices, and drug-related supplies without a prescription when the department determines it necessary for client access and safety.

(ii) Family planning drugs that do not meet the federal drug rebate requirement in WAC 388-530-7500 on a case-by-case basis; and

(iii) Contraceptive patches, contraceptive rings, and oral contraceptives, only when dispensed in at least a three-month supply, unless otherwise directed by the prescriber. There is no required minimum for how many cycles of emergency contraception may be dispensed.

(c) Prescription vitamins and mineral products, only as follows:

(i) When prescribed for clinically documented deficiencies;

(ii) Prenatal vitamins, when prescribed and dispensed to pregnant women; or

(iii) Fluoride varnish for children under the early and periodic screening, diagnosis, and treatment (EPSDT) program.

(d) Drug-related devices and drug-related supplies as an outpatient pharmacy benefit when:

(i) Prescribed by a provider with prescribing authority;

(ii) Essential for the administration of a covered drug;

(iii) Not excluded from coverage under WAC 388-530-2100; and

(iv) Determined by the department, that a product covered under chapter 388-543 WAC Durable medical equipment and supplies should be available at retail pharmacies.

(e) Preservatives, flavoring and/or coloring agents, only when used as a suspending agent in a compound.

(2) Coverage determinations for the department are decided by:

(a) The department in consultation with federal guidelines; or

(b) The drug use review (DUR) board; and

(c) The department's medical consultants and the department's pharmacist(s).

(3) The department does not reimburse for any drug, device, or drug-related supply not meeting the coverage requirements under this section.

NEW SECTION

WAC 388-530-2100 Noncovered—Outpatient drugs and pharmaceutical supplies. (1) The department does not cover:

(a) A drug that is:

(i) Not approved by the Food and Drug Administration (FDA); or

(ii) Prescribed for non-medically accepted indication, including diagnosis, dose, or dosage schedule that is not evidenced-based.

(b) A drug prescribed:

(i) For weight loss or gain;

(ii) For infertility, frigidity, impotency;

(iii) For sexual or erectile dysfunction;

(iv) For cosmetic purposes or hair growth; or

(v) To promote tobacco cessation, except as described in WAC 388-533-0400(20) tobacco cessation for pregnant women.

(c) Drugs used to treat sexual or erectile dysfunction, in accordance with section 1927 (d)(2)(K) of the Social Security Act, unless such drugs are used to treat a condition other than sexual or erectile dysfunction, and these uses have been approved by the Food and Drug Administration.

(d) Drugs listed in the federal register as "less-than-effective" ("DESI" drugs) or which are identical, similar, or related to such drugs.

(e) Outpatient drugs for which the manufacturer requires as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or manufacturer's designee.

(f) A product:

(i) With an obsolete national drug code (NDC) for more than two years;

(ii) With a terminated NDC;

(iii) Whose shelf life has expired; or

(iv) Which does not have an eleven-digit NDC.

(g) Any drug regularly supplied by other public agencies as an integral part of program activity (e.g., immunization vaccines for children).

(h) Free pharmaceutical samples.

(2) A client can request an exception to rule (ETR) as described in WAC 388-501-0160.

AUTHORIZATION

NEW SECTION

WAC 388-530-3000 When the department requires authorization. Pharmacies must obtain authorization for covered drugs, devices, or drug-related supplies in order to receive reimbursement as described in this section.

(1) The department's pharmacists and medical consultants:

(a) Have determined that authorization for the drug, device, or drug-related supply is required, as described in WAC 388-530-3100; or

(b) Have not yet reviewed the manufacturer's dossier of drug information submitted in the Academy of Managed Care Pharmacy (AMCP) format.

(2) The drug, device, or drug-related supply is in the therapeutic drug class on the Washington Preferred Drug List and the product is one of the following:

(a) Nonpreferred as described in WAC 388-530-4100; and

(i) The prescriber is a non-endorsing practitioner; or

(ii) The drug is designated as exempt from the therapeutic interchange program per WAC 388-530-4100(6) or 388-530-4150 (2)(c);

(b) Preferred for a special population or specific indication and has been prescribed by a non-endorsing practitioner under conditions for which the drug, device, or drug-related supply is not preferred; or

(c) Determined to require authorization for safety.

(3) For the purpose of promoting safety, efficacy, and effectiveness of drug therapy, the department identifies clients or groups of clients who would benefit from further clinical review.

(4) The department designates the prescriber(s) as requiring authorization because the prescriber(s) is under department review or is sanctioned for substandard quality of care.

(5) Utilization data indicate there are health and safety concerns or the potential for misuse and abuse. Examples of utilization concerns include:

(a) Multiple prescriptions filled of the same drug in the same calendar month;

(b) Prescriptions filled earlier than necessary for optimal therapeutic response;

(c) Therapeutic duplication;

(d) Therapeutic contraindication;

(e) Excessive dosing, excessive duration of therapy, or sub-therapeutic dosing as determined by FDA labeling or the compendia of drug information;

(f) Number of brand prescriptions filled per calendar month; and

(g) Number of prescriptions filled per month in total or by therapeutic drug class.

(6) The pharmacy requests reimbursement in excess of the maximum allowable cost and the drug has been prescribed with instructions to dispense as written.

NEW SECTION

WAC 388-530-3100 How the department determines when a drug requires authorization. (1) The department's pharmacists and medical consultants evaluate new covered drugs, new covered indications, or new dosages approved by the Food and Drug Administration (FDA) to determine the drug authorization requirement.

(a) The clinical team uses a drug evaluation matrix to evaluate and score the benefit/risk assessment and cost comparisons of drugs to similar existing drugs based on quality

evidence contained in compendia of drug information and peer-reviewed medical literature.

(b) In performing this evaluation the clinical team may consult with other department clinical staff, financial experts, and program managers. The department may also consult with an evidence-based practice center, the drug use review (DUR) board, and/or medical experts in this evaluation.

(c) Information reviewed in the drug evaluation matrix includes, but is not limited to, the following:

(i) The drug, device, or drug-related supply's benefit/risk ratio;

(ii) Potential for clinical misuse;

(iii) Potential for client misuse/abuse;

(iv) Narrow therapeutic indication;

(v) Safety concerns;

(vi) Availability of less costly therapeutic alternatives; and

(vii) Product cost and outcome data demonstrating the drug, device, or drug-related supply's cost effectiveness.

(d) Based on the clinical team's evaluation and the drug evaluation matrix score, the department may determine that the drug, device, or drug-related supply:

(i) Requires authorization;

(ii) Requires authorization to exceed department established limitations; or

(iii) Does not require authorization.

(2) Drugs in therapeutic classes on the Washington Preferred Drug list are not subject to determination of authorization requirements through the drug evaluation matrix. Authorization requirements are determined by their preferred status according to WAC 388-530-4100.

(3) The department periodically reviews existing drugs, devices, or drug-related supplies and reassigns authorization requirements as necessary according to the same provisions as outlined above for new drugs, devices, or pharmaceutical supplies.

(4) For any drug, device, or drug-related supply with limitations or requiring authorization, the department may elect to apply automated authorization criteria according to WAC 388-530-3200.

NEW SECTION

WAC 388-530-3200 The department's authorization process. (1) The department may establish automated ways for pharmacies to meet authorization requirements for specified drugs, devices, and drug-related supplies, or circumstances as listed in WAC 388-530-3000(4) including, but are not limited to:

(a) Use of expedited authorization codes as published in the department's prescription drug program billing instructions and numbered memoranda;

(b) Use of specified values in national council of prescription drug programs (NCPDP) claim fields;

(c) Use of diagnosis codes; and

(d) Evidence of previous therapy within the department's claim history.

(2) When the automated requirements in subsection (1) of this section do not apply or cannot be satisfied, the phar-

macy provider must request authorization from the department before dispensing. The pharmacy provider must:

(a) Ensure the request states the medical diagnosis and includes medical justification for the drug, device, drug-related supply, or circumstance as listed in WAC 388-530-3000(4); and

(b) Keep documentation on file of the prescriber's medical justification that is communicated to the pharmacy by the prescriber at the time the prescription is filled. The records must be retained for the period specified in WAC 388-502-0020 (1)(c).

(3) When the department receives the request for authorization:

(a) The department acknowledges receipt:

(i) Within twenty-four hours if the request is received during normal State business hours; or

(ii) Within twenty-four hours of opening for business on the next business day if received outside of normal State business hours.

(b) The department reviews all evidence submitted and takes one of the following actions within fifteen business days:

(i) Approves the request;

(ii) Denies the request if the requested service is not medically necessary; or

(iii) Requests the prescriber submit additional justifying information.

(A) The prescriber must submit the additional information within ten days of the department's request.

(B) The department approves or denies the request within five business days of the receipt of the additional information.

(C) If the prescriber fails to provide the additional information within ten days, the department will deny the requested service. The department sends a copy of the request to the client at the time of denial.

(4) The department's authorization may be based on, but not limited to:

(a) Requirements under this chapter and 388-501-0165;

(b) Client safety;

(c) Appropriateness of drug therapy;

(d) Quantity and duration of therapy;

(e) Client age, gender, pregnancy status, or other demographics; and

(f) The least costly alternative between two or more products of equal effectiveness.

(5) The department evaluates request for authorization of covered drugs, devices, and drug-related supplies that exceed limitations in this chapter on a case-by-case basis in conjunction with subsection (4) of this section and WAC 388-501-0169.

(6) If a provider needs authorization to dispense a covered drug outside of normal state business hours, the provider may dispense the drug without authorization only in an emergency. The department must receive justification from the provider within seventy-two hours of the fill date, excluding weekends and Washington state holidays, to be paid for the emergency fill.

(7) The department may remove authorization requirements under WAC 388-530-3000 for, but not limited to, the following:

(a) Prescriptions written by specific practitioners based on consistent high quality of care; or

(b) Prescriptions filled at specific pharmacies and billed to the department at the pharmacies' lower acquisition cost.

(8) Authorization requirements in WAC 388-530-3000 are not a denial of service.

(9) Rejection of a claim due to the authorization requirements listed in WAC 388-530-3000 is not a denial of service.

(10) When a claim requires authorization, the pharmacy provider must request authorization from the department. If the pharmacist fails to request authorization as required, the department does not consider this a denial of service.

(11) Denials that result as part of the authorization process will be issued by the department in writing.

(12) The department's authorization:

(a) Is a decision of medical appropriateness; and

(b) Does not guarantee payment.

QUALITY OF CARE

NEW SECTION

WAC 388-530-4000 Drug use review (DUR) board.

In accordance with 42 CFR 456.716, the department establishes a drug use review (DUR) board.

(1) The DUR board:

(a) Includes health professionals who are actively practicing and licensed in the state of Washington and who have recognized knowledge and expertise in one or more of the following:

(i) The clinically appropriate prescribing of outpatient drugs;

(ii) The clinically appropriate dispensing and monitoring of outpatient drugs;

(iii) Drug use review, evaluation, and intervention; and

(iv) Medical quality assurance.

(b) Is made up of at least one-third but not more than fifty-one percent physicians, and at least one-third pharmacists.

(2) The department may appoint members of the pharmacy and therapeutics committee established by the health care authority (HCA) under chapter 182-50 WAC or other qualified individuals to serve as members of the DUR board.

(3) The DUR board meets periodically to:

(a) Advise the department on drug use review activities;

(b) Review provider and patient profiles;

(c) Review scientific literature to establish evidence-based guidelines for the appropriate use of drugs, including the appropriate indications and dosing;

(d) Recommend adoption of standards and treatment guidelines for drug therapy;

(e) Recommend interventions targeted toward correcting drug therapy problems; and

(f) Produce an annual report.

(4) The department has the authority to accept or reject the recommendations of the DUR board in accordance with 42 CFR 456.716(c).

NEW SECTION**WAC 388-530-4050 Drug use and claims review.** (1)

The department's drug use review (DUR) consists of:

(a) A prospective drug use review (Pro-DUR) that requires all pharmacy providers to:

(i) Obtain patient histories of allergies, idiosyncrasies, or chronic condition(s) which may relate to drug utilization;

(ii) Screen for potential drug therapy problems; and

(iii) Counsel the patient in accordance with existing state pharmacy laws and federal regulations.

(b) A retrospective drug use review (Retro-DUR), in which the department provides for the ongoing periodic examination of claims data and other records in order to identify patterns of fraud, abuse, gross overuse, or inappropriate or medically unnecessary care among physicians, pharmacists, and individuals receiving benefits.

(2) The department reviews a periodic sampling of claims to determine if drugs are appropriately dispensed and billed. If a review of the sample finds that a provider is inappropriately dispensing or billing for drugs, the department may implement corrective action that includes, but is not limited to:

(a) Educating the provider regarding the problem practice(s);

(b) Requiring the provider to maintain specific documentation in addition to the normal documentation requirements regarding the provider's dispensing or billing actions;

(c) Recouping the payment for the drug(s); and/or

(d) Terminating the provider's core provider agreement (CPA).

NEW SECTION

WAC 388-530-4100 Washington preferred drug list (PDL). Under RCW 69.41.190 and 70.14.050, the department, and other state agencies cooperate in developing and maintaining the Washington preferred drug list.

(1) Washington state contracts with evidence-based practice center(s) for systematic reviews of drug(s).

(2) The pharmacy and therapeutics (P&T) committee reviews and evaluates the safety, efficacy, and outcomes of prescribed drugs, using evidence-based information provided by the evidence-based practice center(s).

(3) The P&T committee makes recommendations to state agencies as to which drug(s) to include on the Washington PDL, under chapter 182-50 WAC.

(4) The appointing authority makes the final selection of drugs included on the Washington PDL.

(5) Drugs in a drug class on the Washington PDL, that have been studied by the evidence-based practice center(s) and reviewed by the P&T committee, and which have not been selected as preferred are considered nonpreferred drugs and are subject to the therapeutic interchange program (TIP) and dispense as Written (DAW) rules under WAC 388-530-4150.

(6) Drugs in a drug class on the Washington PDL that have not been studied by the evidence-based practice center(s) and have not been reviewed by the P&T committee will be treated as nonpreferred drugs not subject to the dispense as written (DAW) or the therapeutic interchange program (TIP).

(7) A nonpreferred drug, which the department determines as covered, is considered for authorization after the client has:

(a) Tried and failed or is intolerant to at least one preferred drug; and

(b) Met department established criteria for the nonpreferred drug.

(8) Drugs in a drug class on the Washington PDL may be designated as preferred drugs for special populations or specific indications.

(9) Drugs in a drug class on the Washington PDL may require authorization for safety.

(10) Combination drugs are not on the Washington PDL and are considered for authorization according to WAC 388-530-3100.

NEW SECTION

WAC 388-530-4150 Therapeutic interchange program (TIP). This section contains the department's rules for the endorsing practitioner therapeutic interchange program (TIP). TIP is established under RCW 69.41.190 and 70.14.050. The statutes require state-operated prescription drug programs to allow physicians and other prescribers to endorse a Washington preferred drug list (PDL) and, in most cases, requires pharmacists to automatically substitute a preferred, equivalent drug from the list.

(1) The therapeutic interchange program (TIP) applies only to drugs:

(a) Within therapeutic classes on the Washington PDL;

(b) Studied by the evidence-based practice center(s);

(c) Reviewed by the P&T committee; and

(d) Prescribed by an endorsing practitioner.

(2) TIP does not apply:

(a) To drugs that require authorization;

(b) To drugs with specific limitations;

(c) When the pharmacy and therapeutics (P&T) committee determines that TIP does not apply to the therapeutic class on the PDL; or

(d) To a drug prescribed by a nonendorsing practitioner.

(3) A practitioner who wishes to become an endorsing practitioner must specifically enroll with the health care authority (HCA) as an endorsing practitioner, under the provisions of chapter 182-50 WAC.

(4) When an endorsing practitioner writes a prescription for a client for a nonpreferred drug, or for a preferred drug for a special population or indication other than the client's population or indication, and indicates that substitution is permitted, the pharmacist must:

(a) Dispense a preferred drug in that therapeutic class in place of the nonpreferred drug; and

(b) Notify the endorsing practitioner of the specific drug and dose dispensed.

(5) When an endorsing practitioner determines that a nonpreferred drug is medically necessary, all of the following apply:

(a) The practitioner must indicate that the prescription is to be dispensed as written (DAW);

(b) The pharmacist dispenses the nonpreferred drug as prescribed; and

(c) The department does not require prior authorization to dispense the nonpreferred drug in place of a preferred drug except when the drug requires authorization for safety.

(6) In the event the following therapeutic drug classes are on the Washington PDL, pharmacists will not substitute a preferred drug for a nonpreferred drug in these therapeutic drug classes when the endorsing practitioner prescribes a refill (including the renewal of a previous prescription or adjustments in dosage, and samples):

- (a) Antipsychotic;
- (b) Antidepressant;
- (c) Chemotherapy;
- (d) Antiretroviral;
- (e) Immunosuppressive; or

(f) Immunomodulator/antiviral treatment for hepatitis C for which an established, fixed duration of therapy is prescribed for at least twenty-four weeks but no more than forty-eight weeks.

AMENDATORY SECTION (Amending WSR 06-24-036, filed 11/30/06, effective 1/1/07)

WAC 388-530-1000 Outpatient drug program—General. (1) ~~The ((department reimburses)) purpose of the outpatient drug program is to pay providers for ((prescription)) outpatient drugs, devices, and ((pharmaceutical)) drug-related supplies according to department rules and subject to the ((exceptions)) limitations and ((restrictions listed)) requirements in this chapter.~~

(2) ~~The department reimburses ((only pharmacies that:~~

(a) ~~Are department-enrolled providers; and~~

(b) ~~Meet the general requirements for providers described under WAC 388-502-0020.~~

(3) ~~To be both covered and reimbursed under this chapter, prescription drugs must be)) for outpatient drugs, devices, and pharmaceutical supplies that are:~~

(a) ~~((Medically necessary as defined in WAC 388-500-0005)) Covered. Refer to WAC 388-530-2000 for covered drugs, devices, and drug-related supplies and to WAC 388-530-2100 for noncovered drugs and drug-related supplies;~~

(b) ~~((Within the scope of coverage of an eligible client's medical assistance program. Refer to WAC 388-501-0060 and 388-501-0065 for scope of coverage information)) Prescribed by a provider with prescribing authority (see exceptions for family planning and emergency contraception for woman eighteen years of age and older in WAC 388-530-2000 (1)(b);~~

(c) ~~((For a medically accepted indication appropriate to the client's condition)) Within the scope of an eligible client's medical assistance program;~~

(d) ~~((Billed according to the conditions under WAC 388-502-0150 and 388-502-0160)) Medically necessary as defined in WAC 388-500-0005 and determined according to the process found in WAC 388-501-0165; and~~

(e) ~~((Billed according to the conditions and requirements of this chapter)) Authorized, as required within this chapter;~~

(f) ~~Billed according to WAC 388-502-0150 and 388-502-0160; and~~

(g) ~~Billed according to the requirements of this chapter.~~

(3) The department may not pay for prescriptions written by healthcare practitioners whose application for a core provider agreement (CPA) has been denied, or whose CPA has been terminated.

(4) ((Acceptance and filling of a prescription for a client eligible for a medical care program constitutes acceptance of the department's rules and fees. See WAC 388-502-0100 for general conditions of payment)) The department may not pay for prescriptions written by non-CPA healthcare practitioners who do not have a current core provider agreement with the department when the department determines there is a potential danger to the client's health and/or safety.

Reviser's note: The typographical error in the above section occurred in the copy filed by the agency and appears in the Register pursuant to the requirements of RCW 34.08.040.

AMENDATORY SECTION (Amending WSR 05-02-044, filed 12/30/04, effective 1/30/05)

WAC 388-530-1050 Definitions. ~~((The following)) In addition to the definitions and abbreviations ((and those)) found in WAC 388-500-0005, Medical definitions, the following definitions apply to this chapter.~~

"Active ingredient" ~~((means)) - The chemical component of a drug responsible for a drug's prescribed/intended therapeutic effect. The ((medical assistance administration (MAA))) department limits coverage of active ingredients to those with an eleven-digit national drug code (NDC) and those specifically authorized by ((MAA)) the department.~~

"Actual acquisition cost (AAC)" ~~((means the actual price)) - The net cost a provider paid for a drug, device, or drug-related supply marketed in the package size ((of drug)) purchased ((; or sold by a particular manufacturer or labeler)). ((Actual acquisition cost is calculated based on factors including, but not limited to:~~

(1) ~~Invoice price, including other invoice-based considerations, such as prompt payment discounts;~~

(2) ~~Order quantity and periodic purchase volume discount policies of suppliers (wholesalers and/or manufacturers);~~

(3) ~~Membership/participation in purchasing cooperatives;~~

(4) ~~Advertising and other promotion/display allowances, free merchandise deals; and~~

(5) ~~Transportation or freight allowances)) The ACC includes discounts, rebates, charge backs and other adjustments to the price of the drug, device or drug-related supply, but excludes dispensing fees.~~

"Administer" ~~((means)) - Includes the direct application of a prescription drug or device by injection, insertion, inhalation, ingestion, or any other means, to the body of a patient by a practitioner, or at the direction of the practitioner.~~

"Appointing authority" ~~((means)) - For the evidence-based prescription drug program of the participating agencies in the state-operated health care programs, the following persons acting jointly: The administrator of the health care authority (HCA), the secretary of the department of social and health services (DSHS), and the director of the department of labor and industries (L&I).~~

"Automated authorization" - Adjudication of claims using submitted NCPDP data elements or claims history to

verify that the department's authorization requirements have been satisfied without the need for the department to request additional clinical information.

"Automated maximum allowable cost (AMAC)" ((means) - The rate established by the ((medical assistance administration (MAA))) department for a multiple-source drug that is not on the maximum allowable cost (MAC) list and that is designated by two or more products at least one of which must be under a federal drug rebate contract.

"Average Manufacturer Price (AMP)" - The average price paid to a manufacturer by wholesalers for drugs distributed to retail pharmacies.

"Average Sales Price (ASP)" - The weighted average of all non-federal sales to wholesalers net of charge backs, discounts, rebates, and other benefits tied to the purchase of the drug product, whether it is paid to the wholesaler or the retailer.

"Average wholesale price (AWP)" ((means) - The average price of a drug product that is calculated from wholesale list prices nationwide at a point in time and reported to the ((medical assistance administration (MAA) by MAA's) department by the department's drug ((pricing)) file contractor.

~~("Certified average wholesale price (CAWP)" means the price certified by the First Data Bank to be the actual average wholesale price of an infusion, injectable, or inhalation drug marketed by a manufacturer or labeler who is subject to a consent order with the United States Department of Justice regarding the reporting of average wholesale price(s).)~~

"Combination drug" ((means) - A commercially available drug including two or more active ingredients.

"Compendia of drug information" includes the following:

- (1) The American Hospital Formulary Service Drug Information;
- (2) The United States Pharmacopeia Drug Information; and
- (3) DRUGDEX Information System.

"Compounding" ((means) - The act of combining two or more active ingredients or adjusting therapeutic strengths in the preparation of a prescription.

~~("Contract drugs" means drugs manufactured or distributed by manufacturers/labelers who signed a drug rebate agreement with the federal Department of Health and Human Services (DHHS).)~~

"Deliver or delivery" ((means) - The transfer of a drug or device from one person to another.

"Dispense as written (DAW)" ((means) - An instruction to the pharmacist forbidding substitution of a generic drug or a therapeutically equivalent product for the specific drug product prescribed.

"Dispensing fee" ((means) - The fee the ((medical assistance administration (MAA))) department sets to ((reimburse)) pay pharmacy providers for dispensing ((MAA)) department-covered prescriptions. The fee is ((MAA's)) the department's maximum reimbursement for expenses involved in the practice of pharmacy and is in addition to ((MAA's payment)) the department's reimbursement for the costs of covered ingredients.

"Drug Evaluation Matrix" - The criteria-based scoring sheet used to objectively and consistently evaluate the food and drug administration (FDA) approved drugs to determine drug coverage status.

"Drug file" ((means) - A list of drug products, pricing and other information provided to the ((medical assistance administration's (MAA's) drug data base)) department and maintained by a drug file contractor.

"Drug file contractor" ((also referred to as "**drug pricing file contractor**," means the entity which has contracted to provide the medical assistance administration (MAA), at specified intervals, the latest information and/or data base on drugs and related supplies produced, prepared, processed, packaged, labeled, distributed, marketed, or sold in the marketplace. Contractor provided information includes, but is not limited to, identifying characteristics of the drug (national drug code, drug name, manufacturer/labeler, dosage form, and strength) for the purpose of identifying and facilitating payment for drugs billed to MAA) - An entity which has been contracted to provide regularly updated information on drugs, devices, and drug-related supplies at specified intervals, for the purpose of pharmaceutical claim adjudication. Information is provided specific to individual national drug codes, including product pricing.

"Drug rebates" ((means payments) - Reimbursements provided by pharmaceutical manufacturers to state Medicaid programs under the terms of the manufacturers' agreements with the department of health and human services (DHHS).

"Drug-related supplies" ((means) - Nondrug items necessary for the administration, delivery, or monitoring of a drug or drug regimen.

"Drug use review (DUR)" ((means) - A review of covered outpatient drug(s) use that assures prescriptions are appropriate, medically necessary, and not likely to result in adverse medical outcomes.

"Effectiveness" - The extent to which a given intervention is likely to produce beneficial results for which it is intended in ordinary circumstances.

"Efficacy" - The extent to which a given intervention is likely to produce beneficial effects in the context of the research study.

"Emergency kit" ((means) - A set of limited pharmaceuticals furnished to a nursing facility by the pharmacy that provides prescription dispensing services to that facility. Each kit is specifically set up to meet the emergency needs of each nursing facility's client population and is for use during those hours when pharmacy services are unavailable.

"Endorsing practitioner" ((means) - A practitioner who has reviewed the Washington preferred drug list (PDL) and has enrolled with the health care authority (HCA), agreeing to allow therapeutic interchange (substitution) of a preferred drug for any nonpreferred drug in a given therapeutic class on the Washington PDL.

"Estimated acquisition cost (EAC)" ((means the medical assistance administration's) - The department's estimate of the price providers generally and currently pay for a drug marketed or sold by a particular manufacturer or labeler.

"Evidence-based" and "evidenced-based medicine (EBM)" - The application of a set of principles and a method for the review of well-designed studies and objective clinical

data to determine the level of evidence that proves to the greatest extent possible, that a healthcare service is safe, effective and beneficial when making population-based coverage policies or individual medical necessity decisions.

"Evidence-based practice center" ((means)) - A research organization that has been designated by the Agency for Healthcare Research and Quality (AHRQ) of the U.S. government to conduct systematic reviews of all the evidence to produce evidence tables and technology assessments to guide health care decisions.

~~("Expedited prior authorization (EPA)" means the process for authorizing selected drugs in which providers use a set of numeric codes to indicate to the medical assistance administration (MAA) the acceptable indications, conditions, diagnoses, and criteria that are applicable to a particular request for drug authorization.~~

"Experimental drugs" means drugs the Food and Drug Administration (FDA) has not approved, or approved drugs when used for medical indications other than those listed by the FDA.

"Expired drug" means a drug for which the shelf life expiration date has been reached.)

"Federal upper limit (FUL)" ((means)) - The maximum allowable ((payment)) reimbursement set by the centers for medicare and medicaid services (CMS) ((formerly known as HCFA)) for a multiple-source drug.

"Four brand name prescriptions per calendar month limit" ((means)) - The maximum number of paid prescription claims for brand name drugs that ((MAA)) the department allows for each client in a calendar month without a complete review of the client's drug profile.

~~("Generic code number sequence number" means a number used by the medical assistance administration's drug file contractor to group together products that have the same ingredients, route of administration, drug strength, and dosage form. It is applied to all manufacturers and package sizes.)~~

"Generic drug" ((means)) - A nonproprietary drug that is required to meet the same bioequivalency tests as the original brand name drug.

"Inactive ingredient" ((means)) - A drug component that remains chemically unchanged during compounding but serves as the:

- (1) Necessary vehicle for the delivery of the therapeutic effect; or
- (2) Agent for the intended method or rate of absorption for the drug's active therapeutic agent.

"Ingredient cost" ((means)) - The portion of a prescription's cost attributable to the covered drug ingredients or chemical components.

"Innovator multiple source drug" - As set forth in Section 1927 (k)(7)(A)(ii) of the Social Security Act, includes all covered outpatient drugs approved under a new drug application (NDA), product license approval (PLA), establishment license approval (ELA), or antibiotic drug approval (ADA). A covered outpatient drug marketed by a cross-licensed producer or distributor under the approved new drug application will be included as an innovator multiple source drug when the drug product meets this definition.

"Less than effective drug" or "DESI" ((means)) - A drug for which:

(1) Effective approval of the drug application has been withdrawn by the Food and Drug Administration (FDA) for safety or efficacy reasons as a result of the drug efficacy study implementation (DESI) review; or

(2) The secretary of the department of health and human services (DHHS) has issued a notice of an opportunity for a hearing under section 505(e) of the federal Food, Drug, and Cosmetic Act on a proposed order of the secretary to withdraw approval of an application for such drug under such section because the secretary has determined the drug is less than effective for some or all conditions of use prescribed, recommended, or suggested in its labeling.

"Long-term therapy" ((means)) - A drug regimen a client receives or will receive continuously through and beyond ninety days.

~~("MAA preferred drug list (PDL)" means the medical assistance administration's (MAA's) list of drugs of choice within selected therapeutic drug classes.)~~

"Maximum allowable cost (MAC)" ((means)) - The maximum amount that the ((medical assistance administration pays)) department reimburses for a ((specific dosage form and strength of a multiple source)) drug ((product)), device, or drug-related supply.

"Medically accepted indication" ((means)) - Any use for a covered outpatient drug:

- (1) Which is approved under the federal Food, Drug, and Cosmetic Act; or
- (2) The use of which is supported by one or more citations included or approved for inclusion in any of the compendia of drug information, as defined in this chapter.

"Modified unit dose delivery system" (also known as blister packs or "bingo/punch cards") ((means)) - A method in which each patient's medication is delivered to a nursing facility:

- (1) In individually sealed, single dose packages or "blisters"; and
- (2) In quantities for one month's supply, unless the prescriber specifies a shorter period of therapy.

"Multiple-source drug" ((means)) - A drug marketed or sold by:

- (1) Two or more manufacturers or labelers; or
- (2) The same manufacturer or labeler:
 - (a) Under two or more different proprietary names; or
 - (b) Under a proprietary name and a generic name.

"National drug code (NDC)" ((means)) - The eleven-digit number the FDA and manufacturer or labeler assigns to a pharmaceutical product and attaches to the product container at the time of packaging. The NDC is composed of digits in 5-4-2 groupings. The first five digits comprise the labeler code assigned to the manufacturer by the Food and Drug Administration (FDA). The second grouping of four digits is assigned by the manufacturer to describe the ingredients, dose form, and strength. The last grouping of two digits describes the package size.

"Noncontract drugs" - Are drugs manufactured or distributed by manufacturers/labelers who have not signed a drug rebate agreement with the federal Department of Health and Human Services.

"Nonpreferred drug" ((means)) - A drug that has not been selected as a preferred drug within the therapeutic class(es) of drugs on the preferred drug list.

"Obsolete NDC" ((means)) - A national drug code replaced or discontinued by the manufacturer or labeler.

"Over-the-counter (OTC) drugs" ((means)) - Drugs that do not require a prescription before they can be sold or dispensed.

"Peer reviewed medical literature" ((means)) - A research study, report, or findings regarding the specific use of a drug that has been submitted to one or more professional journals, reviewed by experts with appropriate credentials, and subsequently published by a reputable professional journal. A clinical drug study used as the basis for the publication must be a double blind, randomized, placebo or active control study.

"Pharmacist" ((means)) - A person licensed in the practice of pharmacy by the state in which the prescription is filled.

"Pharmacy" ((means)) - Every location licensed by the state board of pharmacy in the state where the practice of pharmacy is conducted.

"Pharmacy and Therapeutic (P&T) Committee" - The independent Washington state committee created by RCW 41.05.021 (1)(a)(iii) and 70.14.050. At the election of the department, the committee may serve as the drug use review board provided for in WAC 388-530-4000.

"Point-of-sale (POS)" ((means)) - A pharmacy claims processing system capable of receiving and adjudicating claims on-line.

"Practice of pharmacy" ((means)) - The practice of and responsibility for:

- (1) Accurately interpreting prescription orders;
- (2) Compounding drugs;
- (3) Dispensing, labeling, administering, and distributing of drugs and devices;
- (4) Providing drug information to the client that includes, but is not limited to, the advising of therapeutic values, hazards, and the uses of drugs and devices;
- (5) Monitoring of drug therapy and use;
- (6) Proper and safe storage of drugs and devices;
- (7) Documenting and maintaining records;
- (8) Initiating or modifying drug therapy in accordance with written guidelines or protocols previously established and approved for a pharmacist's practice by a practitioner authorized to prescribe drugs; and
- (9) Participating in drug ((utilization)) use reviews and drug product selection.

"Practitioner" ((means)) - An individual who has met the professional and legal requirements necessary to provide a health care service, such as a physician, nurse, dentist, physical therapist, pharmacist or other person authorized by state law as a practitioner.

"Preferred drug" ((means)) - Drug(s) of choice within a selected therapeutic class that are selected based on clinical evidence of safety, efficacy, and effectiveness.

"Preferred drug list (PDL)" - The department's list of drugs of choice within selected therapeutic drug classes.

"Prescriber" ((means)) - A physician, osteopathic physician/surgeon, dentist, nurse, physician assistant, optom-

etrist, pharmacist, or other person authorized by law or rule to prescribe drugs. See WAC 246-863-100 for pharmacists' prescriptive authority.

"Prescription" ((means)) - An order for drugs or devices issued by a practitioner authorized by state law or rule to prescribe drugs or devices, in the course of the practitioner's professional practice, for a legitimate medical purpose.

"Prescription drugs" ((means)) - Drugs required by any applicable federal or state law or regulation to be dispensed by prescription only or that are restricted to use by practitioners only.

~~("Prior authorization program" means a medical assistance administration (MAA) program, subject to the requirements of 42 U.S.C. 1396r-8 (d)(5), that may require, as a condition of payment, that a drug on MAA's drug file be prior authorized. See WAC 388-530-1200.)~~

"Prospective drug use review (Pro-DUR)" ((means)) - A process in which a request for a drug product for a particular client is screened, before the product is dispensed, for potential drug therapy problems.

"Reconstitution" ((means)) - The process of returning a single active ingredient, previously altered for preservation and storage, to its approximate original state. Reconstitution is not compounding.

"Retrospective drug use review (Retro-DUR)" ((means)) - The process in which ((client's)) drug utilization is reviewed on an ongoing periodic basis to identify patterns of fraud, abuse, gross overuse, or inappropriate or ((unnecessary)) not medically necessary care.

"Risk/benefit ratio" ((means)) - The result of assessing the side effects of a drug or drug regimen compared to the positive therapeutic outcome of therapy.

"Single source drug" ((means)) - A drug produced or distributed under an original new drug application approved by the Food and Drug Administration (FDA).

"Substitute" ((means)) - To replace a prescribed drug, with the prescriber's authorization, with:

- (1) An equivalent generic drug product of the identical base or salt as the specific drug product prescribed; or
- (2) A therapeutically equivalent drug other than the identical base or salt.

"Systematic review" ((means)) - A specific and reproducible method to identify, select, and appraise all the studies that meet minimum quality standards and are relevant to a particular question. The results of the studies are then analyzed and summarized into evidence tables to be used to guide evidence-based decisions.

~~("TCS" See "therapeutic consultation service.")~~

"Terminated NDC" ((means)) - An eleven-digit national drug code (NDC) that is discontinued by the manufacturer for any reason. The NDC may be terminated immediately due to health or safety issues or it may be phased out based on the product's shelf life.

"Therapeutic alternative" ((means)) - A drug product that contains a different chemical structure than the drug prescribed, but is in the same pharmacologic or therapeutic class and can be expected to have a similar therapeutic effect and adverse reaction profile when administered to patients in a therapeutically equivalent dosage.

"Therapeutic class" ((means)) - A group of drugs used for the treatment, remediation, or cure of a specific disorder or disease.

~~("Therapeutic consultation service (TCS)" means the prescriber and a medical assistance administration (MAA) designated clinical pharmacist jointly review prescribing activity when drug claims for a medical assistance client exceed program limitations-)~~

"Therapeutic interchange" ((means)) - To dispense a therapeutic alternative to the prescribed drug when an endorsing practitioner who has indicated that substitution is permitted, prescribes the drug. See therapeutic interchange program (TIP).

"Therapeutic interchange program (TIP)" ((means)) - The process developed by participating state agencies under RCW 69.41.190 and 70.14.050, to allow prescribers to endorse a Washington preferred drug list, and in most cases, ((required)) requires pharmacists to automatically substitute a preferred, equivalent drug from the list.

"Therapeutically equivalent" ((means)) - Drug products that contain different chemical structures but have the same efficacy and safety when administered to an individual, as determined by:

- (1) Information from the Food and Drug Administration (FDA);
- (2) Published and peer-reviewed scientific data;
- (3) Randomized controlled clinical trials; or
- (4) Other scientific evidence.

"Tiered dispensing fee system" ((means)) - A system of paying pharmacies different dispensing fee rates, based on the individual pharmacy's total annual prescription volume and/or the drug delivery system used.

"True unit dose delivery" ((means)) - A method in which each patient's medication is delivered to the nursing facility in quantities sufficient only for the day's required dosage.

"Unit dose drug delivery" ((means)) - True unit dose or modified unit dose delivery systems.

"Usual and customary charge" ((means)) - The fee that the provider typically charges the general public for the product or service.

"Washington preferred drug list (Washington PDL)" ((means)) - The list of drugs selected by the appointing authority to be used by applicable state agencies as the basis for purchase of drugs in state-operated health care programs.

"Wholesale acquisition cost" - The price paid by a wholesaler for drugs purchased from a manufacturer.

Reviser's note: RCW 34.05.395 requires the use of underlining and deletion marks to indicate amendments to existing rules. The rule published above varies from its predecessor in certain respects not indicated by the use of these markings.

BILLING

NEW SECTION

WAC 388-530-5000 Billing requirements—Pharmacy claim payment. (1) When billing the department for pharmacy services, providers must:

(a) Use the appropriate department claim form or electronic billing specifications;

(b) Include the actual eleven-digit national drug code (NDC) number of the product dispensed from a rebate eligible manufacturer;

(c) Bill the department using metric decimal quantities which is the National Council for Prescription Drug Programs (NCPDP) billing unit standard;

(d) Meet the general provider documentation and record retention requirements in WAC 388-502-0020; and

(e) Maintain proof of delivery receipts.

(i) When a provider delivers an item directly to the client or the client's authorized representative, the provider must be able to furnish proof of delivery including signature, client's name and a detailed description of the item(s) delivered.

(ii) When a provider mails an item to the client, the provider must be able to furnish proof of delivery including a mail log.

(iii) When a provider uses a delivery/shipping service to deliver items, the provider must be able to furnish proof of delivery and it must:

(A) Include the delivery service tracking slip with the client's name or a reference to the client's package(s); the delivery service package identification number; and the delivery address.

(B) Include the supplier's shipping invoice, with the client's name; the shipping service package identification number; and a detailed description(s).

(iv) Make proof of delivery receipts available to the department, upon request.

(2) When billing drugs under the expedited authorization process, providers must insert the authorization number which includes the corresponding criteria code(s) in the appropriate data field on the drug claim.

(3) Pharmacy services for clients on restriction under WAC 388-501-0135 must be prescribed by the client's primary care provider and are paid only to the client's primary pharmacy, except in cases of:

(a) Emergency;

(b) Family planning services; or

(c) Services properly referred from the client's assigned pharmacy or physician/ARNP.

NEW SECTION

WAC 388-530-5050 Billing requirements—Point-of-sale (POS) system/prospective drug use review (Pro-DUR). (1) Pharmacy claims for drugs and other products listed in the department's drug file and billed to the department by national drug code (NDC) are adjudicated by the department's point-of-sale (POS) system. Claims must be submitted for payment using the billing unit standard identified in WAC 388-530-5000.

(2) All pharmacy drug claims processed through the POS system undergo a system-facilitated prospective drug use review (Pro-DUR) screening as a complement to the Pro-DUR screening required of pharmacists.

(3) If the POS system identifies a potential drug therapy problem during Pro-DUR screening, a message will alert the pharmacy provider indicating the type of potential problem.

The alerts regarding possible drug therapy problems include, but are not limited to:

- (a) Therapeutic duplication;
 - (b) Duration of therapy exceeds the recommended maximum period;
 - (c) Drug-to-drug interaction;
 - (d) Drug disease precaution;
 - (e) High dose;
 - (f) Ingredient duplication;
 - (g) Drug-to-client age conflict;
 - (h) Drug-to-client gender conflict; or
 - (i) Refill too soon.
- (4) The department provides pharmacy providers with a list of codes from which to choose in overriding POS system alert messages. These codes come from the national council for prescription drug programs (NCPDP).
- (5) The dispensing pharmacist evaluates the potential drug therapy conflict and enters applicable NCPDP codes representing their professional interaction.
- (a) If the resolution to the conflict satisfies department requirements, the claim will be processed accordingly.
- (b) If the resolution to the conflict does not satisfy department requirements, the department requires prior authorization. This includes all claims for which an alert message is triggered in the POS system and an NCPDP override code is not appropriate.
- (6) The department requires providers to retain documentation of the justification for the use of payment system override codes as described in subsections (4) and (5) of this section. The department requires the documentation be retained for the same period as that described in WAC 388-502-0020.
- (7) POS/Pro-DUR screening is not applicable to pharmacy claims included in the managed care capitated rate.

NEW SECTION

WAC 388-530-5100 Billing requirements—Unit dose. (1) To be eligible for a unit dose dispensing fee from the department, a pharmacy must:

- (a) Notify the department in writing of its intent to provide unit dose service;
- (b) Identify the nursing facility(ies) to be served;
- (c) Indicate the approximate date unit dose service to the facility(ies) will commence; and
- (d) Follow department requirements for unit dose payment.

(2) Under a unit dose delivery system, a pharmacy must bill only for the number of drug units actually used by the medical assistance client in the nursing facility, except as provided in subsections (3), (4), and (5) of this section. It is the unit dose pharmacy provider's responsibility to coordinate with nursing facilities to ensure that the unused drugs the pharmacy dispensed to clients are returned to the pharmacy for credit.

(3) The pharmacy must submit an adjustment form or claims reversal of the charge to the department for the cost of all unused drugs returned to the pharmacy from the nursing facility on or before the sixtieth day following the date the drug was dispensed, except as provided in subsection (5) of

this section. Such adjustment must conform to the nursing facility's monthly log as described in subsection (7) of this section.

(4) The department pays a unit dose provider a dispensing fee when a provider-packaged unit dose prescription is returned, in its entirety, to the pharmacy. A dispensing fee is not paid if the returned prescription is for a drug with a manufacturer-designated unit dose national drug code (NDC). In addition to the dispensing fee paid under this subsection, the provider may bill the department one unit of the tablet or capsule but must credit the department for the remainder of the ingredient costs for the returned prescription.

(5) Unit dose providers do not have to credit the department for federally designated schedule two drugs which are returned to the pharmacy. These returned drugs must be disposed of according to federal regulations.

(6) Pharmacies must not charge clients or the department a fee for repackaging a client's bulk medications in unit dose form. The costs of repackaging are the responsibility of the nursing facility when the repackaging is done:

- (a) To conform with a nursing facility's drug delivery system; or
 - (b) For the nursing facility's convenience.
- (7) The pharmacy must maintain detailed records of medications dispensed under unit dose delivery systems. The pharmacy must keep a monthly log for each nursing facility served, including but not limited to the following information:
- (a) Facility name and address;
 - (b) Client's name and patient identification code (PIC);
 - (c) Drug name/strength;
 - (d) National drug code (NDC);
 - (e) Quantity and date dispensed;
 - (f) Quantity and date returned;
 - (g) Value of returned drugs or amount credited;
 - (h) Explanation for no credit given or nonreusable returns; and
 - (i) Prescription number.

(8) Upon the department's request, the pharmacy must submit copies of the logs referred to in subsection (7) of this section.

(9) When the pharmacy submits the completed annual prescription volume survey to the department, it must include an updated list of all nursing facilities currently served under unit dose systems.

MAIL ORDER SERVICES

NEW SECTION

WAC 388-530-6000 Mail-order services. The department provides a contracted mail-order pharmacy service for client use. The mail-order contractor is selected as a result of a competitive procurement process.

(1) The contracted mail-order pharmacy service is available as an option to all medical assistance clients, subject to the:

- (a) Scope of the client's medical care program;
- (b) Availability of services from the contracted mail-order provider; and

(c) Special terms and conditions described in subsection (2) and (3) of this section.

(2) The mail-order prescription service may not dispense medication in a quantity greater than authorized by the prescriber. (See RCW 18.64.360(5), Nonresident pharmacies.)

(3) Prescribed medications may be filled by the mail-order pharmacy service within the following restrictions:

(a) Drugs available from mail-order in no more than a ninety day supply include:

(i) Preferred drugs (see WAC 388-530-4100);

(ii) Generic drugs; and

(iii) Drugs that do not have authorization requirements (see WAC 388-530-3000 through WAC 388-530-3200).

(b) Drugs available in no more than a thirty-four-day supply:

(i) Controlled substances (schedules II through V); and

(ii) Drugs having authorization requirements (see WAC 388-530-3000).

(c) Other pharmacy restrictions (chapter 388-530 WAC, Pharmacy services) continue to apply.

(4) The contracted mail-order pharmacy services are reimbursed at levels lower than those established for the regular outpatient pharmacy services.

REIMBURSEMENT

NEW SECTION

WAC 388-530-7000 Reimbursement. (1) The department's total reimbursement for a prescription drug must not exceed the lowest of:

(a) Estimated acquisition cost (EAC) plus a dispensing fee;

(b) Maximum allowable cost (MAC) plus a dispensing fee;

(c) Federal upper limit (FUL) plus a dispensing fee;

(d) Actual acquisition cost (AAC) plus a dispensing fee for drugs purchased under section 340B of the Public Health Service (PHS) Act;

(e) Automated maximum allowable cost (AMAC) plus a dispensing fee; or

(f) The provider's usual and customary charge to the non-medicaid population.

(2) The department selects the sources for pricing information used to set EAC and MAC.

(3) The department may solicit assistance from pharmacy providers, pharmacy benefit managers (PBM), other government agencies, actuaries, and/or other consultants when establishing EAC and/or MAC.

(4) The department reimburses a pharmacy for the least costly dosage form of a drug within the same route of administration, unless the prescriber has designated a medically necessary specific dosage form or the department has selected the more expensive dosage form as a preferred drug.

(5) If the pharmacy provider offers a discount, rebate, promotion or other incentive which directly relates to the reduction of the price of a prescription to the individual non-medicaid customer, the provider must similarly reduce its charge to the department for the prescription.

(6) If the pharmacy provider gives an otherwise covered product for free to the general public, the pharmacy must not submit a claim to the department.

(7) The department does not reimburse for:

(a) Prescriptions written on pre-signed prescription blanks filled out by nursing facility operators or pharmacists;

(b) Prescriptions without the date of the original order;

(c) Drugs used to replace those taken from a nursing facility emergency kit;

(d) Drugs used to replace a physician's stock supply;

(e) Outpatient drugs, biological products, insulin, supplies, appliances, and equipment included in other reimbursement methods including, but not limited to:

(i) Diagnosis-related group (DRG);

(ii) Ratio of costs-to-charges (RCC);

(iii) Nursing facility daily rates;

(iv) Managed care capitation rates;

(v) Block grants; or

(vi) Drugs prescribed for clients who are on the department's hospice program when the drugs are related to the client's terminal illness and related condition.

NEW SECTION

WAC 388-530-7050 Reimbursement—Dispensing fee determination. (1) Subject to the provisions of WAC 388-530-7000 and the exceptions permitted in WAC 388-530-2000, the department pays a dispensing fee for each covered, prescribed drug.

(2) The department does not pay a dispensing fee for non-drug items, devices, or drug-related supplies.

(3) The department adjusts the dispensing fee by considering factors including, but not limited to:

(a) Legislative appropriations for vendor rates;

(b) Input from provider and/or advocacy groups;

(c) Input from state-employed or contracted actuaries; and

(d) Dispensing fees paid by other third-party payers, including, but not limited to, health care plans and other states' medicaid agencies.

(4) The department uses a tiered dispensing fee system which pays higher volume pharmacies at a lower fee and lower volume pharmacies at a higher fee.

(5) The department uses total annual prescription volume (both medicaid and non-medicaid) reported to the department to determine each pharmacy's dispensing fee tier.

(a) A pharmacy which fills more than thirty-five thousand prescriptions annually is a high-volume pharmacy. The department considers hospital-based pharmacies that serve both inpatient and outpatient clients as high-volume pharmacies.

(b) A pharmacy which fills between fifteen thousand one and thirty-five thousand prescriptions annually is a mid-volume pharmacy.

(c) A pharmacy which fills fifteen thousand or fewer prescriptions annually is a low-volume pharmacy.

(6) The department determines a pharmacy's annual total prescription volume as follows:

(a) The department sends out a prescription volume survey form to pharmacy providers during the first quarter of the calendar year;

(b) Pharmacies return completed prescription volume surveys to the department each year. Pharmacy providers not responding to the survey by the specified date are assigned to the high volume category;

(c) Pharmacies must include all prescriptions dispensed from the same physical location in the pharmacy's total prescription count;

(d) The department considers prescriptions dispensed to nursing facility clients as outpatient prescriptions; and

(e) Assignment to a new dispensing fee tier is effective on the first of the month, following the date specified by the department.

(7) A pharmacy may request a change in dispensing fee tier during the interval between the annual prescription volume surveys. The pharmacy must substantiate such a request with documentation showing that the pharmacy's most recent six-month dispensing data, annualized, would qualify the pharmacy for the new tier. If the department receives the documentation by the twentieth of the month, assignment to a new dispensing fee tier is effective on the first of the following month.

(8) The department grants general dispensing fee rate increases only when authorized by the legislature. Amounts authorized for dispensing fee increases may be distributed non-uniformly (e.g., tiered dispensing fee based upon volume).

(9) The department may pay true unit dose pharmacies at a different rate for unit dose dispensing.

NEW SECTION

WAC 388-530-7100 Reimbursement—Pharmaceutical supplies. (1) The department reimburses for selected pharmaceutical supplies through the pharmacy point-of-sale (POS) system when it is necessary for client access and safety.

(2) The department bases reimbursement of pharmaceutical items or supplies that are not payable through the POS on department-published fee schedules.

(3) The department uses any or all of the following methodologies to set the maximum allowable reimbursement rate for drugs, devices, and drug-related supplies:

(a) A pharmacy provider's acquisition cost. Upon review of the claim, the department may require an invoice which must show the name of the item, the manufacturer, the product description, the quantity, and the current cost including any free goods associated with the invoice;

(b) Medicare's reimbursement rate for the item; or

(c) A specified discount off the item's list price or manufacturer's suggested retail price (MSRP).

(4) The department does not pay a dispensing fee for nondrug items, devices, or drug-related supplies. See WAC 388-530-7050.

NEW SECTION

WAC 388-530-7150 Reimbursement—Compounded prescriptions. (1) The department does not consider reconstitution to be compounding.

(2) The department covers a drug ingredient used for a compounded prescription only when the manufacturer has a signed rebate agreement with the federal department of health and human services (DHHS).

(3) The department considers bulk chemical supplies used in compounded prescriptions as nondrug items, which do not require a drug rebate agreement. The department covers such bulk chemical supplies only as specifically approved by the department.

(4) The department reimburses pharmacists for compounding drugs only if the client's drug therapy needs are unable to be met by commercially available dosage strengths and/or forms of the medically necessary drug.

(a) The pharmacist must ensure the need for the adjustment of the drug's therapeutic strength and/or form is well documented in the client's file.

(b) The pharmacist must ensure that the ingredients used in a compounded prescription are for an approved use as defined in "medically accepted indication" in WAC 388-530-1050.

(5) The department requires that each drug ingredient used for a compounded prescription be billed to the department using its eleven-digit national drug code (NDC) number.

(6) Compounded prescriptions are reimbursed as follows:

(a) The department allows only the lowest cost for each covered ingredient, whether that cost is determined by actual acquisition cost (AAC), estimated acquisition cost (EAC), federal upper limit (FUL), maximum allowable cost (MAC), automated maximum allowable cost (AMAC), or amount billed.

(b) The department applies current prior authorization requirements to drugs used as ingredients in compounded prescriptions, except as provided under subsection (6)(c) of this section. The department denies payment for a drug requiring authorization when authorization is not obtained.

(c) The department may designate selected drugs as not requiring authorization when used for compounded prescriptions. For the list of selected drugs, refer to the department's prescription drug program billing instructions.

(d) The department pays a dispensing fee as described under WAC 388-530-7050 for each drug ingredient used in compounding when the conditions of this section are met and each ingredient is billed separately by the eleven digit NDC.

(e) The department does not pay a separate fee for compounding time.

(7) The department requires pharmacists to document the need for each inactive ingredient added to the compounded prescription. The department limits reimbursement to the inactive ingredients that meet the following criteria. To be reimbursed by the department, each inactive ingredient must be:

(a) A necessary component of a compounded drug; and

(b) Billed by an eleven digit national drug code (NDC).

NEW SECTION

WAC 388-530-7200 Reimbursement—Out-of-state prescriptions. (1) The department reimburses out-of-state pharmacies for prescription drugs provided to an eligible client within the scope of the client's medical care program if the pharmacy:

- (a) Contracts with the department to be an enrolled provider; and
- (b) Meets the same criteria the department requires for in-state pharmacy providers.

(2) The department considers pharmacies located in bordering areas listed in WAC 388-501-0175 the same as in-state pharmacies.

NEW SECTION

WAC 388-530-7250 Reimbursement—Miscellaneous. The department reimburses for covered drugs, devices, and drug-related supplies provided or administered by nonpharmacy providers under specified conditions, as follows:

(1) The department reimburses for drugs administered or prepared and delivered for individual use by an authorized prescriber during an office visit according to specific program rules found in:

- (a) Chapter 388-531 WAC, Physician-related services;
- (b) Chapter 388-532 WAC, Reproductive Health/Family Planning Only/TAKE CHARGE; and
- (c) Chapter 388-540 WAC, Kidney services.

(2) Providers who are purchasers of Public Health Services (PHS) discounted drugs must comply with PHS 340b program requirements. (See WAC 388-530-7900).

(3) The department may request providers to submit a current invoice for the actual cost of the drug, device, or drug-related supply billed. If an invoice is requested, the invoice must show the:

- (a) Name of the drug, device, or drug-related supply;
- (b) Drug or product manufacturer;
- (c) NDC of the product(s);
- (d) Drug strength;
- (e) Product description;
- (f) Quantity; and
- (g) Cost, including any free goods associated with the invoice.

(4) The department does not reimburse providers for the cost of vaccines obtained through the state department of health (DOH). The department does pay physicians, advanced registered nurse practitioners (ARNP), and pharmacists a fee for administering the vaccine.

NEW SECTION

WAC 388-530-7300 Reimbursement—Requesting a change. Upon request from a pharmacy provider, the department may reimburse at actual acquisition cost (AAC) for a drug that would otherwise be reimbursed at maximum allowable cost (MAC) when:

(1) The availability of lower cost equivalents in the marketplace is severely curtailed and the price disparity between

AAC for the drug and the MAC reimbursement affects clients' access; and

(2) An invoice documenting actual acquisition cost relevant to the date the drug was dispensed is provided to the department.

NEW SECTION

WAC 388-530-7350 Reimbursement—Unit dose drug delivery systems. (1) The department pays for unit dose drug delivery systems only for clients residing in nursing facilities, except as provided in subsections (7) and (8) of this section.

(2) Unit dose delivery systems may be either true or modified unit dose.

(3) The department pays pharmacies that provide unit dose delivery services the department's highest allowable dispensing fee for each unit dose prescription dispensed to clients in nursing facilities. The department reimburses ingredient costs for drugs under unit dose systems as described in WAC 388-530-7000.

(4) The department pays a pharmacy that dispenses drugs in bulk containers or multidose forms to clients in nursing facilities the regular dispensing fee applicable to the pharmacy's total annual prescription volume tier. Drugs the department considers not deliverable in unit dose form include, but are not limited to, liquids, creams, ointments, ophthalmic and otic solutions. The department reimburses ingredient costs as described in WAC 388-530-7000.

(5) The department pays a pharmacy that dispenses drugs prepackaged by the manufacturer in unit dose form to clients in nursing facilities the regular dispensing fee applicable under WAC 388-530-7050. The department reimburses ingredient costs for drugs prepackaged by the manufacturer in unit dose form as described in WAC 388-530-7000.

(6) The department limits its coverage and payment for manufacturer-designated unit dose packaging to the following conditions:

(a) The drug is a single source drug and a multidose package for the drug is not available;

(b) The drug is a multiple source drug but there is no other multidose package available among the drug's generic equivalents; or

(c) The manufacturer-designated unit dose package is the most cost-effective package available or it is the least costly alternative form of the drug.

(7) The department reimburses a pharmacy provider for manufacturer-designated unit dose drugs dispensed to clients not residing in nursing facilities only when such drugs:

(a) Are available in the marketplace only in manufacturer-designated unit dose packaging; and

(b) Would otherwise be covered as an outpatient drug. The unit dose dispensing fee does not apply in such cases. The department pays the pharmacy the dispensing fee applicable to the pharmacy's total annual prescription volume tier.

(8) The department may pay for unit dose delivery systems for clients of the division of developmental disabilities (DDD) residing in approved community living arrangements.

NEW SECTION

WAC 388-530-7400 Reimbursement—Compliance packaging services. (1) The department reimburses pharmacies for compliance packaging services provided to clients considered at risk for adverse drug therapy outcomes. Clients who are eligible for compliance packaging services must not reside in a nursing home or other inpatient facility, and must meet (a) and either (b) or (c) of this subsection. The client must:

(a) Have one or more of the following representative disease conditions:

- (i) Alzheimer's disease;
- (ii) Blood clotting disorders;
- (iii) Cardiac arrhythmia;
- (iv) Congestive heart failure;
- (v) Depression;
- (vi) Diabetes;
- (vii) Epilepsy;
- (viii) HIV/AIDS;
- (ix) Hypertension;
- (x) Schizophrenia; or
- (xi) Tuberculosis.

(b) Concurrently consume two or more prescribed medications for chronic medical conditions, that are dosed at three or more intervals per day; or

(c) Have demonstrated a pattern of noncompliance that is potentially harmful to the client's health. The client's pattern of noncompliance with the prescribed drug regimen must be fully documented in the provider's file.

(2) Compliance packaging services include:

- (a) Reusable hard plastic containers of any type (e.g., medisets); and
- (b) Nonreusable compliance packaging devices (e.g., blister packs).

(3) The department pays a filling fee and reimburses pharmacies for the compliance packaging device and/or container. The frequency of fills and number of payable compliance packaging devices per client is subject to limits specified by the department. The department does not pay filling or preparation fees for blister packs.

(4) Pharmacies must use the CMS-1500 claim form to bill the department for compliance packaging services.

NEW SECTION

WAC 388-530-7500 Drug rebate requirement. (1) The department reimburses for outpatient prescription drugs only when they are supplied by manufacturers who have a signed drug rebate agreement with the federal department of health and human services (DHHS), according to 42 U.S.C.1396r-8. The manufacturer must be listed on the list of participating manufacturers as published by CMS.

(2) The fill date must be within the manufacturer's beginning and ending eligibility dates to be reimbursed by the department.

(3) The department may extend this rebate requirement to any outpatient drug reimbursements as allowed or required by federal law.

(4) The department may exempt drugs from the rebate requirement, on a case-by-case basis, when:

(a) It determines that the availability of a single source drug or innovator multiple source drug is essential to the health of beneficiaries; and

(b) All other rebate exemption requirements of SSA Sec 1927 (42 U.S.C.1396r-8) (3) are also satisfied.

NEW SECTION

WAC 388-530-7600 Reimbursement—Clients enrolled in managed care. Except as specified under the department's managed care contracts, the department does not reimburse providers for any drugs or pharmaceutical supplies provided to clients who have pharmacy benefits under department-contracted managed care plans. The managed care plan is responsible for payment.

NEW SECTION

WAC 388-530-7700 Reimbursement—Dual eligible clients/medicare. For clients who are dually-eligible for medical assistance and medicare benefits, the following applies:

(1) Medicare Part B, the department pays providers for:

(a) An amount up to the department's maximum allowable fee for drugs medicare does not cover, but the department covers; or

(b) Deductible and/or coinsurance amounts up to medicare's or the department's maximum allowable fee, whichever is less, for drugs medicare and the department cover; or

(c) Deductible and/or coinsurance amounts for clients under the qualified medicare beneficiary (QMB) program for drugs medicare covers but the department does not cover.

(2) Medicare Part D:

(a) For payment of medicare Part D drugs:

(i) Medicare is the primary payer for covered Part D drugs;

(ii) The department pays only the copayment up to a maximum amount set by the centers for medicare and medic-aid services (CMS); and

(iii) The client is responsible for copayments above the maximum amount.

(b) For drugs excluded from the basic medicare Part D benefits:

(i) The department offers the same drug benefit as a non-dual eligible client has within those same classes;

(ii) If the client has another third party insurer, that insurer is the primary payer; and

(iii) The department is the payer of last resort.

NEW SECTION

WAC 388-530-7800 Reimbursement—Clients with third-party liability. (1) The department requires providers to meet the third party requirements of WAC 388-501-0200.

(2) The following definitions apply to this section:

(a) "Closed pharmacy network" means an arrangement made by an insurer which restricts prescription coverage to an exclusive list of pharmacies. This arrangement prohibits the coverage and/or payment of prescriptions provided by a pharmacy that is not included on the exclusive list.

(b) "Private point-of-sale (POS) authorization system" means an insurer's system, other than the department's POS system, which requires that coverage be verified by or submitted to the insurer for authorization at the time of service and at the time the prescription is filled.

(3) This subsection applies to clients who have a third-party resource that is a managed care entity other than a department-contracted plan, or have other insurance that requires the use of "closed pharmacy networks" or "private point-of-sale authorization system." The department will not pay pharmacies for prescription drug claims until the pharmacy provider submits an explanation of benefits from the private insurance demonstrating that the pharmacy provider has complied with the terms of the third-party's coverage.

(a) If the private insurer pays a fee based on the incident of care, the pharmacy provider must file a claim with the department consistent with the department's billing requirements.

(b) If the private insurer pays the pharmacy provider a monthly capitation fee for all prescription costs related to the client, the pharmacy provider must submit a claim to the department for the amount of the client copayment, coinsurance, and/or deductible. The department pays the provider the lesser of:

- (i) The billed amount; or
- (ii) The department's maximum allowable fee for the prescription.

NEW SECTION

WAC 388-530-7900 Drugs purchased under the public health service (PHS) act. (1) Drugs purchased under section 340B of the public health service (PHS) act can be dispensed to medical assistance clients only by PHS-qualified health facilities and must be billed to the department at actual acquisition cost (AAC) as required by laws governing the PHS 340B program.

(2) Providers dispensing drugs under this section are required to submit their valid medical assistance provider number(s) to the PHS health resources and services administration, office of pharmacy affairs. This requirement is to ensure that claims for drugs dispensed under this section and paid by the department are excluded from the drug rebate claims that are submitted to the manufacturers of the drugs. See WAC 388-530-7500 for information on the drug rebate program.

(3) The department reimburses drugs under this section at actual acquisition cost plus a dispensing fee set by the department.

REIMBURSEMENT METHODOLOGY

NEW SECTION

WAC 388-530-8000 Reimbursement method—Estimated acquisition cost (EAC). (1) The department determines estimated acquisition cost (EAC) using:

- (a) Acquisition cost data made available to the department; or
- (b) Information provided by any of the following:
 - (i) Audit agencies, federal or state;

- (ii) Other state health care purchasing agencies;
- (iii) Pharmacy benefit managers;
- (iv) Individual pharmacy providers participating in the department's programs;
- (v) Centers for medicare and medicaid services (CMS);
- (vi) Other third party payers;
- (vii) Drug file databases; and/or
- (viii) Actuaries or other consultants.

(2) The department implements EAC by applying a percentage adjustment to available reference pricing from national sources such as wholesale acquisition cost (WAC), average wholesale price (AWP), average sale price (ASP), and average manufacturer price (AMP).

(3) The department may set EAC for specified drugs or drug categories at a percentage other than that determined in subsection (1)(a) of this section when the department considers it necessary. The factors the department considers in setting a rate for a class of drugs under this subsection include, but are not limited to:

- (a) Product acquisition cost;
 - (b) The department's documented clinical concerns; and
 - (c) The department's budget limits.
- (4) The department bases EAC drug reimbursement on the actual package size dispensed.

(5) The department uses the EAC as the department's reimbursement for a drug when the EAC is the lowest of the rates calculated under the methods listed in WAC 388-530-7000, or when the conditions of WAC 388-530-7300 are met.

NEW SECTION

WAC 388-530-8050 Reimbursement—Federal upper limit (FUL). (1) The department adopts the federal upper limit (FUL) set by the centers for medicare and medicaid services (CMS).

(2) The department's maximum payment for multiple-source drugs for which CMS has set FULs will not exceed, in the aggregate, the prescribed upper limits plus the dispensing fees set by the department.

(3) Except as provided in WAC 388-530-7300, the department uses the FUL as the department's reimbursement rate for the drug when the FUL price is the lowest of the rates calculated under the methods listed in WAC 388-530-7000.

NEW SECTION

WAC 388-530-8100 Reimbursement—Maximum allowable cost (MAC). (1) The department establishes a maximum allowable cost (MAC) for a multiple-source drug which is available from at least two manufacturers/labelers.

(2) The department determines the MAC for a multiple-source drug:

- (a) When specific regional and local drug acquisition cost data is available, the department:
 - (i) Identifies what products are available from wholesalers for each drug being considered for MAC pricing;
 - (ii) Determines pharmacy providers' approximate acquisition costs for these products; and
 - (iii) Establishes the MAC at a level which gives pharmacists access to at least one product from a manufacturer with a qualified rebate agreement (see WAC 388-530-7500(4)).

(b) When specific regional and local drug acquisition cost data is not available, the department may estimate acquisition cost based on national pricing sources.

(3) The MAC established for a multiple-source drug does not apply if the written prescription identifies that a specific brand is medically necessary for a particular client. In such cases, the estimated acquisition cost (EAC) for the particular brand applies, provided authorization is obtained from the department as specified under WAC 388-530-3000.

(4) Except as provided in subsection (3) of this section, the department reimburses providers for a multiple-source drug at the lowest of the rates calculated under the methods listed in WAC 388-530-7000.

(5) The MAC established for a multiple-source drug may vary by package size, including those identified as unit dose national drug codes (NDCs) by the manufacturer(s) of the drug.

NEW SECTION

WAC 388-530-8150 Reimbursement—Automated maximum allowable cost (AMAC). (1) The department uses the automated maximum allowable cost (AMAC) pricing methodology for multiple-source drugs that are:

(a) Not on the published maximum allowable cost (MAC); and

(b) Produced by two or more manufacturers/labelers, at least one of which must have a current, signed federal drug rebate agreement.

(2) The department establishes AMAC as a specified percentage of the published average wholesale price (AWP) or other nationally-accepted pricing source in order to estimate acquisition cost.

(3) The department sets the percentage discount from AWP for AMAC reimbursement using any of the information sources identified in WAC 388-530-8000.

(4) The department may set AMAC reimbursement at different percentage discounts from AWP for different multiple source drugs. The department considers the same factors as those in WAC 388-530-8000.

(5) AMAC reimbursement for all products with the same ingredient, form and strength is at the AMAC determined for the second lowest priced product, or the AMAC of the lowest priced drug from a manufacturer with a current, signed federal rebate agreement.

(6) The department recalculates AMAC each time the drug file contractor provides a pricing update.

(7) Except as provided in WAC 388-530-7300, the department reimburses at the lowest of the rates calculated under the methods listed in WAC 388-530-7000.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-530-1100 Covered drugs, devices, and pharmaceutical supplies.

WAC 388-530-1125 Drug rebate program.

WAC 388-530-1150	Noncovered drugs and pharmaceutical supplies and reimbursement limitations.
WAC 388-530-1200	Prior authorization program.
WAC 388-530-1250	Prior authorization process.
WAC 388-530-1260	Therapeutic consultation service.
WAC 388-530-1270	Mail-order services.
WAC 388-530-1280	Preferred drug list(s).
WAC 388-530-1290	Therapeutic interchange program (TIP).
WAC 388-530-1300	General reimbursement methodology.
WAC 388-530-1350	Estimated acquisition cost (EAC) methodology.
WAC 388-530-1360	Certified average wholesale price (CAWP).
WAC 388-530-1400	Maximum allowable cost (MAC) methodology.
WAC 388-530-1405	Automated maximum allowable cost (AMAC).
WAC 388-530-1410	Federal upper limit (FUL) methodology.
WAC 388-530-1425	Payment methodology for drugs purchased under the Public Health Service (PHS) Act.
WAC 388-530-1450	Dispensing fee determination.
WAC 388-530-1500	Reimbursement for compounded prescriptions.
WAC 388-530-1550	Unit dose drug delivery systems.
WAC 388-530-1600	Unit dose pharmacy billing requirements.
WAC 388-530-1625	Compliance packaging services.
WAC 388-530-1650	Reimbursement for pharmaceutical supplies.
WAC 388-530-1700	Drugs and drug-related supplies from nonpharmacy providers.
WAC 388-530-1750	Drugs and pharmaceutical supplies for clients with any third-party coverage.
WAC 388-530-1800	Requirements for pharmacy claim payment.

WAC 388-530-1850	Drug use review (DUR) board.
WAC 388-530-1900	Drug use and claims review.
WAC 388-530-1950	Point-of-sale (POS) system/prospective drug use review (Pro-DUR).
WAC 388-530-2050	Reimbursement for out-of-state prescriptions.

Purpose: The division of developmental disabilities (DDD) has had ongoing discussions with the federal Center for Medicare and Medicaid Services (CMS) and has received approval from CMS to amend its waivers under Section 1915 of the Social Security Act. These amendments also respond to the proposed order and settlement agreement under *Boyle v. Arnold-Williams* and incorporate the provisions of the letter of agreement between the state of Washington (office of financial management) and the Service Employees International Union (SEIU). Finally these rules are necessary to implement the recommendations in a June 2003 performance audit by the joint legislative audit and review committee. When effective, these rules replace the emergency rules filed as WSR 07-19-132.

**WSR 07-20-050
PERMANENT RULES
DEPARTMENT OF**

SOCIAL AND HEALTH SERVICES

(Aging and Disability Services Administration)

[Filed September 26, 2007, 3:09 p.m., effective October 27, 2007]

Effective Date of Rule: Thirty-one days after filing.

Citation of Existing Rules Affected by this Order:

Washington Administrative Code	Effect of Rule
388-845-0001 - Definitions "DDD assessment" (new) "Family" (new) "Home" (new) "Individual support plan (ISP)" (new) "Legal representative" (new) "Necessary supplemental accommodation representative" (new) "Plan of care (POC)" (amended) "Providers" (amended) "Respite assessment" (amended)	Defines DDD assessment. Defines family. Defines home. Defines ISP. Defines legal representative. Defines necessary supplemental accommodation representative. Specifies that the POC remains in effect until the DDD assessment is administered and the ISP is developed. Clarifies that providers must meet all provider qualifications and are contracted with ADSA. Defines the respite assessment as an algorithm.
388-845-0015 (amended)	Eliminates reference to CAP waiver and changes tense to reflect current situation.
388-845-0025 (deleted)	Deletes section as conversion from CAP waiver is complete.
388-845-0030 (amended)	Corrects cross references and adds the ISP as an alternative to the POC.
388-845-0031 (new)	Clarifies that one cannot be enrolled in more than one HCBS waiver at the same time.
388-845-0035 (amended)	Clarifies that enrollment in a new or different HCBS waiver is not guaranteed and clarifies DDD's responsibilities.
388-845-0040 (amended)	Clarifies that DDD may limit capacity.
388-845-0041 (amended)	Adds the ISP as an alternative to the POC.
388-845-0045 (amended)	Clarifies that individuals may be enrolled from the statewide data base when there is capacity and funding for new waiver participants and revises "health and safety" to "health and welfare."
388-845-0050 (amended)	Adds reference to requests for enrollment in a different waiver.
388-845-0052 (new)	Defines the process for requests to be enrolled in a different waiver and DDD's notice requirement in accordance with the <i>Boyle</i> lawsuit.
388-845-0055 (amended)	Clarifies language concerning ongoing eligibility once one is enrolled in a waiver and changes the reference from the CARE assessment to the DDD assessment.
388-845-0060 (amended)	Clarifies when enrollment in a waiver can be terminated, adds a monthly monitoring plan as an alternative to receiving a waiver service as an eligibility condition, and adds the ISP as an alternative to the POC.
388-845-0070 (amended)	Specifies that DDD uses the DDD assessment as specified in chapter 388-828 WAC to determine if the client needs ICF/MR level of care.
388-845-0075 through 388-845-0096 (deleted)	Deletes these sections as the information is contained in chapter 388-828 WAC.
388-845-0100 (amended)	Defines the criteria for assignment to the DDD waiver with the minimum service package available to meet the health and welfare needs of the individual and eliminates the criteria use for conversion from the expired CAP waiver.
388-845-0105 (amended)	Adds the ISP as an alternative to the POC.

Washington Administrative Code	Effect of Rule
388-845-0110 (amended)	Adds the ISP as an alternative to the POC and ensures that the health and safety needs of an individual are met.
388-845-0111 (new)	Defines the limitations regarding who can provide waiver services.
388-845-0200 (amended)	Revises the source of the definition of waiver services available from the service plan to the POC or ISP.
388-845-0205 (amended)	Defines the yearly limits as those determined by the DDD assessment and clarifies that emergency services are available only for aggregate services and/or employment/day program services.
388-845-0210 (amended)	Defines the yearly limits as those determined by the DDD assessment and clarifies that emergency services are available only for aggregate services and/or employment/day program services.
388-845-0215 (amended)	Adds the ISP as an alternative to the POC; defines the yearly limits as those determined by the DDD assessment; and removes respite from aggregate services, creating a separate category.
388-845-0220 (amended)	Adds the ISP as an alternative to the POC.
388-845-0510 (amended)	Clarifies that approval is required from the DDD regional administrator or designee.
388-845-0800 (amended)	Clarifies that emergency services are available only for aggregate services and/or employment/day program services.
388-845-0820 (amended)	Clarifies that approval is required from the DDD regional administrator or designee, adds the ISP as an alternative to the POC, and clarifies that emergency services are available only for aggregate services and/or employment/day program services.
388-845-0900 (amended)	Adds the ISP as an alternative to the POC.
388-845-0910 (amended)	Clarifies that approval is required from the DDD regional administrator or designee.
388-845-1300 (amended)	Revises the wording and clarifies the reference for personal care services.
388-845-1310 (amended)	Deletes reference to the obsolete children's comprehensive assessment and clarifies that the maximum number of hours of personal care is determined by the CARE assessment within the DDD service level assessment.
388-845-1505(5) (amended)	Clarifies the types of providers for children and corrects WAC cross reference.
388-845-1515 (amended)	Adds limitations to alternate living services within the CORE waiver and requires the initial authorization of residential habilitation services to have prior approval by the DDD regional administrator or designee.
388-845-1606 (deleted)	Deletes reference to exceptions to the requirements before July 2006.
388-845-1610 (amended)	Eliminates state operated living alternative (SOLA) and other certified supported living situations as settings where respite may be provided, and allows the respite provider to take the client into the community.
388-845-1615 (amended)	Corrects cross-references.
388-845-1620 (amended)	Clarifies that the DDD assessment determines how much respite may be received for the Basic, Basic Plus and CORE waivers, clarifies that prior approval is required from the DDD regional administrator or designee, requires prior approval to pay for more than eight hours in a twenty-four hour period in any setting other than the client's home or place of residence, allows the respite provider to take the client into the community, and specifies that DDD cannot pay for fees associated with the respite care.
388-845-1660 (amended)	Specifies that prior approval is required from the DDD regional administrator or designee.
388-845-1710 (amended)	Specifies that prior approval is required from the DDD regional administrator or designee for all skilled nursing services, and changes the agency responsible for determining the need for service and the right to require a second opinion from the department to DDD.
388-845-1800 (amended)	Defines specialized medical equipment and supplies, clarifies that these services cannot be available through Medicaid or the state plan, adds a cross reference to WAC 388-543-1000, and clarifies that these services are available in all four DDD HCBS waivers.
388-845-1810 (amended)	Specifies that prior approval is required from the DDD regional administrator or designee, and changes the agency responsible for determining the need for the right to require a second opinion from the department to DDD.
388-845-1910 (amended)	Specifies that prior approval is required from the DDD regional administrator or designee for all specialized psychiatric services.
388-845-2000 (amended)	Adds the ISP as an alternative to the POC.
388-845-2005 (amended)	Adds recreational therapists as a qualified provider of staff/family consultation and training.
388-845-2010 (amended)	Specifies that prior approval is required from the DDD regional administrator or designee.
388-845-2200 (amended)	Adds the ISP as an alternative to the POC, and clarifies that transportation services are available only if the cost and responsibility for transportation is not already included in the provider's contract and payment.
388-845-2210 (amended)	Specifies that prior approval is required from the DDD regional administrator or designee.
388-845-3000 (amended)	Specifies that service needs are determined through the DDD assessment, only identified health and welfare needs will be authorized for payment, the amount of respite care for the Basic, Basic Plus and CORE waivers is determined by the DDD assessment, and adds the ISP as an alternative to the POC.
388-845-3005 through 388-845-3050 (deleted)	Deletes these sections as they are contained in the DDD assessment and service planning process as defined in chapter 388-828 WAC.

Washington Administrative Code	Effect of Rule
388-845-3055 (amended)	Specifies that the ISP replaces the POC; clarifies that the POC remains in effect until the ISP is developed; specifies that the ISP must include identified health and welfare needs, and both paid and unpaid services approved to meet these identified health and welfare needs; and specifies that a signature or verbal consent by the client or legal representative is required on an initial, reassessment or review of the ISP.
388-845-3056 (new)	Specifies what actions DDD will take if an individual needs additional help in understanding the ISP.
388-845-3060 (amended)	Adds the ISP as an alternative to the POC, and specifies that a signature or verbal consent is required on an initial, reassessment or review of the ISP.
388-845-3061 (new)	Specifies that a change in the plan of care or ISP can be made immediately upon a verbal request prior to receiving a signature.
388-845-3062 (new)	Specifies who must sign or give verbal consent to the ISP and adds a reference to WAC 388-845-3056 if an individual needs assistance to understand the ISP.
388-845-3065 (amended)	Specifies that the plan of care remains in effect until it is replaced by the ISP and that the ISP is effective through the last day of the twelfth month following the effective date or until a new ISP is completed.
388-845-3070 (amended)	Changes plan of care to ISP; specifies that on an initial plan, DDD will be unable to provide waiver services if a signature or verbal consent is not obtained, will not assume consent, and will follow the steps described in WAC 388-845-3056; specifies that for a reassessment or review, if a client is able to understand the ISP, and if a signature or verbal consent is not obtained, DDD will continue existing services through the end of the advance notice period and at the end of the advance notice period, DDD will assume consent and implement the new ISP without a signature or verbal consent; specifies that for a reassessment or review, if a client is not able to understand the ISP, and if a signature or verbal consent is not obtained, DDD will continue existing services in accordance with WAC 388-845-3056; and includes an additional cross-reference for appeal rights.
388-845-3075 (amended)	Adds the ISP as an alternative to the POC.
388-845-3095 (amended)	Clarifies the client's responsibility in paying toward the cost of waiver services.
388-845-4000 (amended)	Clarifies additional appeal rights under the waiver.
388-845-4005 (amended)	Clarifies appeal rights to include the provisions contained in the <i>Boyle</i> lawsuit.

Statutory Authority for Adoption: RCW 71A.12.030, 71A.12.120.

Other Authority: Title 71A RCW.

Adopted under notice filed as WSR 07-11-130 on May 22, 2007.

Changes Other than Editing from Proposed to Adopted Version: WAC 388-845-0001 - Added a definition of "Home." Clarifies that "spouse" is included in the definition of "family."

WAC 388-845-0035(2) - Added references to WAC 388-845-0041, 388-845-3080, and 388-845-3085.

WAC 388-845-0055(2) - Removed "plan."

WAC 388-845-0055(3) - Reworded to indicate that the interview must be administered in person and in your home.

WAC 388-845-0100 - Reworded opening sentence for clarification.

WAC 388-845-0105 - Changed "crimes" to "offenses" and added reference to RCW 9.94A.030.

WAC 388-845-0110 - Reworded subsection (8).

WAC 388-845-0111 - Changed "households" to "homes."

WAC 388-845-0215 - Removed respite from aggregate services and added another row.

WAC 388-845-1605 - This section will not be adopted at this time but will be repropoed and adopted as a permanent rule at a later time.

WAC 388-845-1610 - Reworded subsection (2) for clarity.

WAC 388-845-1615 (7) and (8) - Corrected reference from chapter 175-295 WAC to chapter 170-295 WAC.

WAC 388-845-4000(1) - Reworded sentence to avoid confusion.

Additionally, WAC 388-845-1605 will not be adopted at this time but will be repropoed and adopted as a permanent rule at a later time.

A final cost-benefit analysis is available by contacting Steve Brink, P.O. Box 45310, Olympia, WA 98507-5310, phone (360) 725-3416, fax (360) 407-0955, e-mail brinksc@dshs.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 6, Amended 50, Repealed 16; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 6, Amended 50, Repealed 16.

Date Adopted: September 26, 2007.

Robin Arnold-Williams
Secretary

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-0001 Definitions. "ADSA" means the aging and disability services administration, an administration within the department of social and health services.

"Aggregate Services" means a combination of services subject to the dollar limitations in the Basic and Basic Plus waivers.

"CAP waiver" means the community alternatives program waiver.

"CARE" means the comprehensive assessment and reporting evaluation.

"DDD" means the division of developmental disabilities, a division within the aging and disability services administration of the department of social and health services.

"DDD Assessment" refers to the standardized assessment tool as defined in chapter 388-828 WAC, used by DDD to measure the support needs of persons with developmental disabilities.

"Department" means the department of social and health services.

"Employment/day program services" means community access, person-to-person, prevocational services or supported employment services subject to the dollar limitations in the Basic and Basic Plus waivers.

"Family" means relatives who live in the same home with the eligible client. Relatives include spouse, natural, adoptive or step parents; grandparents; brother; sister; step-brother; stepsister; uncle; aunt; first cousin; niece; or nephew.

"HCBS waivers" means home and community based services waivers.

"Home" means your present or intended place of residence.

"ICF/MR" means an intermediate care facility for the mentally retarded.

"Individual Support Plan (ISP)" is a document that authorizes and identifies the DDD paid services to meet a client's assessed needs.

"Legal Representative" means a parent of a person who is under eighteen years of age, a person's legal guardian, a person's limited guardian when the subject matter is within the scope of limited guardianship, a person's attorney at law, a person's attorney in fact, or any other person who is authorized by law to act for another person.

"Necessary Supplemental Accommodation Representative" means an individual who receives copies of DDD planned action notices (PANs) and other department correspondence in order to help a client understand the documents and exercise the client's rights. A necessary supplemental accommodation representative is identified by a client of DDD when the client does not have a legal guardian and the client is requesting or receiving DDD services.

"Plan of care (POC)" means the primary tool DDD uses to determine and document your needs and to identify services to meet those needs until the DDD assessment is administered and the individual support plan is developed.

"Providers" means an individual or agency who ~~((is licensed, certified and/or))~~ meets the provider qualifications and is contracted with ADSA to provide services to you.

"Respite assessment" means ((a series of questions about you and your caregiver used to determine the amount of respite care available to you)) an algorithm within the DDD assessment that determines the number of hours of respite care you may receive per year if you are enrolled in the Basic, Basic Plus, or Core waiver.

"SSI" means Supplemental Security Income, an assistance program administered by the federal Social Security Administration for blind, disabled and aged individuals.

"SSP" means state supplementary payment, a benefit administered by the department intended to augment an individual's SSI.

"State funded services" means services that are funded entirely with state dollars.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-0015 What HCBS waivers are provided by the division of developmental disabilities (DDD)? ~~DDD ((has replaced its community alternatives program (CAP) waiver with))~~ provides services through four HCBS waivers:

- (1) Basic waiver;
- (2) Basic Plus waiver;
- (3) CORE waiver; and
- (4) Community protection waiver.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-0030 Do I meet criteria for HCBS waiver-funded services? You meet criteria for DDD HCBS waiver-funded services if you meet all of the following:

- (1) You have been determined eligible for DDD services per RCW 71A.10.020(3).
- (2) You have been determined to meet ICF/MR level of care per WAC 388-845-0070 ~~((through 388-845-0090)), 388-828-3060 and 388-828-3080.~~
- (3) You meet disability criteria established in the Social Security Act.
- (4) You meet financial eligibility requirements as defined in WAC 388-515-1510.
- (5) You choose to receive services in the community rather than in an ICF/MR facility.
- (6) You have a need for waiver services as identified in your plan of care or individual support plan.
- (7) You are not residing in hospital, jail, prison, nursing facility, ICF/MR, or other institution.

NEW SECTION

WAC 388-845-0031 Can I be enrolled in more than one HCBS waiver? You cannot be enrolled in more than one HCBS waiver at the same time.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-0035 Am I guaranteed placement on a waiver if I meet waiver criteria? (1) If you are not currently enrolled in a waiver, meeting criteria for the waiver does not guarantee access to or receipt of waiver services.

(2) If you are currently on a waiver and you have been determined to have health and welfare needs that can be met only by services available on a different waiver, you are not guaranteed enrollment in that different waiver.

(3) WAC 388-845-0041, 388-845-3080 and 388-845-3085 describe DDD's responsibilities to provide services.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-0040 Is there a limit to the number of people who can be enrolled in each HCBS waiver? Each waiver has a capacity limit on the number of people who can be served in a waiver year. In addition, DDD has the authority to limit ~~((enrollment into the waivers))~~ capacity based on availability of funding for new waiver participants.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-0041 What is DDD's responsibility to provide my services under the waivers administered by DDD? If you are enrolled in an HCBS waiver administered by DDD, DDD must meet your assessed needs for health and welfare.

(1) DDD must address your assessed health and welfare needs in your plan of care or the individual support plan, as specified in WAC 388-845-3055.

(2) You have access to DDD paid services that are provided within the scope of your waiver, subject to the limitations in WAC 388-845-0110 and WAC 388-845-0115.

(3) DDD will provide waiver services you need and qualify for within your waiver.

(4) DDD will not deny or limit your waiver services based on a lack of funding.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-0045 When there is capacity to add people to a waiver, how does DDD determine who will be enrolled? When there is capacity on a waiver and available funding for new waiver participants, DDD may enroll people from the statewide database in a waiver based on the following priority considerations:

(1) First priority will be given to current waiver participants assessed to require a different waiver because their needs have increased and these needs cannot be met within the scope of their current waiver.

(2) DDD may also consider any of the following populations in any order:

(a) Priority populations as identified and funded by the legislature.

(b) Persons DDD has determined to be in immediate risk of ICF/MR admission due to unmet health and ~~((safety))~~ welfare needs.

(c) Persons identified as a risk to the safety of the community.

(d) Persons currently receiving services through state-only funds.

(e) Persons on an HCBS waiver that provides services in excess of what is needed to meet their identified health and welfare needs.

(f) Persons who were previously on an HCBS waiver since April 2004 and lost waiver eligibility per WAC 388-845-0060(9).

(3) For the Basic waiver only, DDD may consider persons who need the waiver services available in the Basic waiver to maintain them in their family's home.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-0050 How do I request to be enrolled in a waiver? (1) You can contact DDD and request to be enrolled in a waiver or to enroll in a different waiver at any time.

~~((+))~~ (2) If you are assessed as meeting ICF/MR level of care as defined in WAC 388-845-0070 and chapter 388-828 WAC, your request for waiver enrollment will be documented by DDD in a statewide data base.

~~((2) When there is capacity available to enroll additional people in a waiver, WAC 388-845-0045 describes how DDD will determine who will be enrolled.)~~

NEW SECTION

WAC 388-845-0052 What is the process if I am already on a waiver and request enrollment onto a different waiver? (1) If you are already enrolled in a DDD HCBS waiver and you request to be enrolled in a different waiver DDD will do the following:

(a) Assess your needs to determine whether your health and welfare needs can be met with services available on your current waiver or whether those needs can only be met through services offered on a different waiver.

(b) If DDD determines your health and welfare needs can be met by services available on your current waiver your enrollment request will be denied.

(c) If DDD determines your health and welfare needs can only be met by services available on a different waiver your service need will be reflected in your ISP.

(d) If DDD determines there is capacity on the waiver that is determined to meet your needs, DDD will place you on that waiver.

(2) You will be notified in writing of DDD's decision under subsection (1)(a) of this section and if your health and welfare needs cannot be met on your current waiver, DDD will notify you in writing whether there is capacity on the waiver that will meet your health and welfare needs and whether you will be enrolled on that waiver. If current capacity on that waiver does not exist, your eligibility for enrollment onto that different waiver will be tracked on a statewide database.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-0055 How do I remain eligible for the waiver? ~~((If you are already on a HCBS waiver.))~~ Once you are enrolled in a DDD HCBS waiver, you can remain eligible if you ((must)) continue to meet eligibility criteria in WAC 388-845-0030.

(1) DDD completes a reassessment at least every twelve months to determine if you continue to meet all of these eligibility requirements ~~((in WAC 388-845-0030.))~~; and

(2) You must either receive a waiver service at least once in every thirty consecutive days, as specified in WAC 388-513-1320 (3)(b)(-)) or your health and welfare needs require monthly monitoring, which will be documented in your client record; and

(3) Your ~~((plan of care, CARE))~~ DDD assessment/reassessment ((and respite assessment/reassessment)) interview must be ((done)) administered in person and in your home. See WAC 388-828-1520.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-0060 Can my waiver ((eligibility)) enrollment be terminated? DDD may terminate your waiver ~~((eligibility))~~ enrollment if DDD determines that:

(1) Your health and ((safety)) welfare needs cannot be met in your current waiver or for one of the following reasons:

~~((1))~~ (a) You no longer meet one or more of the requirements listed in WAC 388-845-0030;

~~((2))~~ (b) You ((no longer)) do not have an identified need for a waiver service((s)) at the time of your annual plan of care or individual support plan;

~~((3))~~ (c) You do not use a waiver service at least once in every thirty consecutive days and your health and welfare do not require monthly monitoring;

~~((4))~~ (d) You are on the community protection waiver and choose not to be served by a certified residential community protection provider-intensive supported living services (CP-ISLS);

~~((5))~~ (e) You choose to disenroll from the waiver;

~~((6))~~ (f) You reside out of state;

~~((7))~~ (g) You cannot be located or do not make yourself available for the annual waiver reassessment of eligibility;

~~((8))~~ (h) You refuse to participate with DDD in:

~~((a))~~ (i) Service planning;

~~((b))~~ (ii) Required quality assurance and program monitoring activities; or

~~((c))~~ (iii) Accepting services agreed to in your plan of care or individual support plan as necessary to meet your health and ((safety)) welfare needs.

~~((9))~~ (i) You are residing in a hospital, jail, prison, nursing facility, ICF/MR, or other institution and remain in residence at least one full calendar month, and are still in residence:

~~((a))~~ (i) At the end of the twelfth month following the effective date of your current plan of care or individual support plan, as described in WAC 388-845-3060; or

~~((b))~~ (ii) On March 31st, the end of the waiver fiscal year, whichever date occurs first.

~~((10))~~ (j) Your needs exceed the maximum funding level or scope of services under the Basic or Basic Plus waiver as specified in WAC 388-845-3080; or

~~((11))~~ (k) Your needs exceed what can be provided under the CORE or community protection waiver as specified in WAC 388-845-3085; or

(2) Services offered on a different waiver can meet your health and welfare needs and DDD enrolls you on a different waiver.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-0070 What determines if I need ICF/MR level of care? DDD determines if you need ICF/MR level of care based on your need for waiver services. To reach this decision, DDD uses ~~((its department approved))~~ the DDD assessment ((and/or other information)) as specified in ((WAC 388-845-0085)) chapter 388-828 WAC.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-0100 What determines which waiver I am assigned to? ~~((DDD will assign you to a waiver based on the following criteria:~~

~~((1) If you were on the CAP waiver as of March 2004, your initial assignment to the Basic, Basic Plus, CORE, or community protection waiver was based on:~~

~~((a) Services you received from DDD in October 2002 through September 2003; and~~

~~((b) Services you were authorized to receive in October, November and December 2003.~~

~~((2) If you are new to a waiver since April 1, 2004, assignment is based on your assessment and service plan.~~

~~((3) Additional criteria apply to the assignment to the community protection waiver)) If there is capacity, DDD will assign you to the waiver with the minimum service package necessary to meet your health and welfare needs, based on its evaluation of your DDD assessment as described in chapter 388-828 WAC and the following criteria:~~

~~((1) For the Basic waiver:~~

~~((a) You must live with your family or in your own home;~~

~~((b) Your family/caregiver's ability to continue caring for you can be maintained with the addition of services provided in the Basic waiver; and~~

~~((c) You do not need out-of-home residential services.~~

~~((2) For the Basic Plus waiver, your health and welfare needs exceed the amount allowed in the Basic waiver or require a service that is not contained in the Basic waiver; and~~

~~((a) You are at high risk of out-of-home placement or loss of your current living situation; or~~

~~((b) You require out-of-home placement and your health and welfare needs can be met in an adult family home or adult residential care facility.~~

~~((3) For the Core waiver:~~

~~((a) You are at immediate risk of out-of-home placement; and/or~~

~~((b) You have an identified health and welfare need for residential services that cannot be met by the Basic Plus waiver.~~

~~((4) For the Community Protection waiver, refer to WAC 388-845-0105.~~

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-0105 What criteria determine assignment to the community protection waiver? DDD may assign you to the community protection waiver only if you are at least eighteen years of age, not currently residing in a hospital, jail or other institution, and meet the following criteria:

(1) You have been identified by DDD as a person who meets one or more of the following:

(a) You have been convicted of or charged with a crime of sexual violence as defined in chapter 71.09 RCW;

(b) You have been convicted of or charged with acts directed towards strangers or individuals with whom a relationship has been established or promoted for the primary purpose of victimization, or persons of casual acquaintance with whom no substantial personal relationship exists;

(c) You have been convicted of or charged with a sexually violent offense and/or predatory act, and may constitute a future danger as determined by a qualified professional;

(d) You have not been convicted and/or charged, but you have a history of stalking, sexually violent, predatory and/or opportunistic behavior which demonstrates a likelihood to commit a sexually violent and/or predatory act based on current behaviors that may escalate to violence, as determined by a qualified professional; or

(e) You have committed one or more violent ~~(crimes)~~ offense, as defined in RCW 9.94A.030.

(2) You receive or agree to receive residential services from certified residential community protection provider-intensive supported living services (CP-ISLS); and

(3) You comply with the specialized supports and restrictions in your:

(a) Plan of care ~~((POC))~~ or individual support plan;

(b) Individual instruction and support plan (IISP); and/or

(c) Treatment plan provided by DDD approved certified individuals and agencies.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-0110 Are there limitations to the waiver services I can receive? There are limitations to waiver services. In addition to the limitations to your access to nonwaiver services cited for specific services in WAC 388-845-0115, the following limitations apply:

(1) A service must be offered in your waiver and authorized in your plan of care or individual support plan.

(2) Mental health stabilization services may be added to your plan of care or individual support plan after the services are provided.

(3) Waiver services are limited to services required to prevent ICF/MR placement.

(4) The cost of your waiver services cannot exceed the average daily cost of care in an ICF/MR.

(5) Waiver services cannot replace or duplicate other available paid or unpaid supports or services.

(6) Waiver funding cannot be authorized for treatments determined by DSHS to be experimental.

(7) The Basic and Basic Plus waivers have yearly limits on some services and combinations of services. The combination of services is referred to as aggregate services or employment/day program services.

(8) Your choice of qualified providers and services is limited to the most cost effective option that meets your ~~((assessed))~~ health and welfare needs.

(9) Services provided out-of-state, other than in recognized bordering cities, are limited to respite care and personal care during vacations.

(a) You may receive services in a recognized out-of-state bordering city on the same basis as in-state services.

(b) The only recognized bordering cities are:

(i) Coeur d'Alene, Moscow, Sandpoint, Priest River and Lewiston, Idaho; and

(ii) Portland, The Dalles, Hermiston, Hood River, Rainier, Milton-Freewater and Astoria, Oregon.

(10) Other out-of-state waiver services require an approved exception to rule before DDD can authorize payment.

NEW SECTION

WAC 388-845-0111 Are there limitations regarding who can provide services? The following limitations apply to providers for waiver services:

(1) Your spouse cannot be your paid provider for any waiver service.

(2) If you are under age eighteen, your natural, step, or adoptive parent cannot be your paid provider for any waiver service.

(3) If you are age eighteen or older, your natural, step, or adoptive parent cannot be your paid provider for any waiver service with the exception of:

(a) Personal care;

(b) Transportation to and from a waiver service;

(c) Residential habilitation services per WAC 388-845-1510 if your parent is certified as a residential agency per chapter 388-101 WAC; or

(d) Respite care if you and the parent who provides the respite care live in separate homes.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-0200 What waiver services are available to me? Each of the four HCBS waivers has a different scope of service and your ~~((service))~~ plan of care or individual support plan defines the waiver services available to you.

AMENDATORY SECTION (Amending WSR 07-05-014, filed 2/9/07, effective 3/12/07)

WAC 388-845-0205 Basic waiver services.

BASIC WAIVER	SERVICES	YEARLY LIMIT
	AGGREGATE SERVICES: Behavior management and consultation Community guide Environmental accessibility adaptations Occupational therapy Physical therapy Specialized medical equipment/supplies Specialized psychiatric services Speech, hearing and language services Staff/family consultation and training Transportation	May not exceed \$1454 per year on any combination of these services
	EMPLOYMENT/DAY PROGRAM SERVICES: Community access Person-to-person Prevocational services Supported employment	May not exceed \$6631 per year
	Sexual deviancy evaluation	Limits are determined by DDD
	Respite care	Limits are determined by ((respite)) <u>the DDD assessment</u>
	Personal care	Limits are determined by ((CARE)) <u>the CARE tool used as part of the DDD assessment</u>
	MENTAL HEALTH STABILIZATION SERVICES: Behavior management and consultation Mental health crisis diversion bed services Skilled nursing Specialized psychiatric services	Limits are determined by a mental health professional or DDD

BASIC WAIVER	SERVICES	YEARLY LIMIT
	Emergency assistance is only for <u>aggregate services and/or employment/day program services</u> contained in the Basic waiver	\$6000 per year; Preauthorization required

AMENDATORY SECTION (Amending WSR 07-05-014, filed 2/9/07, effective 3/12/07)

WAC 388-845-0210 Basic Plus waiver services.

BASIC PLUS WAIVER	SERVICES	YEARLY LIMIT
	AGGREGATE SERVICES: Behavior management and consultation Community guide Environmental accessibility adaptations Occupational therapy Physical therapy Skilled nursing Specialized medical equipment/supplies Specialized psychiatric services Speech, hearing and language services Staff/family consultation and training Transportation	May not exceed \$6192 per year on any combination of these services
	EMPLOYMENT/DAY PROGRAM SERVICES: Community access Person-to-person Prevocational services Supported employment	May not exceed \$9691 per year
	Adult foster care (adult family home) Adult residential care (boarding home)	Determined per department rate structure
	MENTAL HEALTH STABILIZATION SERVICES: Behavior management and consultation Mental health crisis diversion bed services Skilled nursing Specialized psychiatric services	Limits determined by a mental health professional or DDD

COMMUNITY PROTECTION WAIVER	SERVICES	YEARLY LIMIT
	Person-to-person Prevocational services Supported employment	
	MENTAL HEALTH STABILIZATION SERVICES: Behavioral management and consultation Mental health crisis diversion bed services Skilled nursing Specialized psychiatric services	Limits determined by a mental health professional or DDD

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-0510 Are there limits to the behavior management and consultation I can receive? The following limits apply to your receipt of behavior management and consultation:

- (1) DDD and the treating professional will determine the need and amount of service you will receive, subject to the limitations in subsection (2) below.
- (2) The dollar limitations for aggregate services in your Basic and Basic Plus waiver limit the amount of service unless provided as a mental health stabilization service.
- (3) DDD reserves the right to require a second opinion from a department-selected provider.
- (4) Behavior management and consultation not provided as a mental health stabilization service requires prior approval by the DDD regional administrator or designee.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-0800 What is emergency assistance? Emergency assistance is a temporary increase to the yearly aggregate services and/or employment/day program services dollar limit specified in the Basic and Basic Plus waiver when additional waiver services are required to prevent ICF/MR placement. These additional services are limited to the services provided in your waiver.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-0820 Are there limits to my use of emergency assistance? All of the following limitations apply to your use of emergency assistance:

- (1) Prior (~~authorization~~) approval by the DDD regional administrator or designee is required based on a reassessment of your plan of care or individual support plan to determine the need for emergency services;
- (2) Payment authorizations are reviewed every thirty days and cannot exceed six thousand dollars per twelve

months based on the effective date of your current plan of care (~~(POC))~~ or individual support plan;

- (3) Emergency assistance services are limited to the (~~scope of services in your~~) aggregate services and employment/day program services in the Basic and Basic Plus waivers;
- (4) Emergency assistance may be used for interim services until:
 - (a) The emergency situation has been resolved; or
 - (b) You are transferred to alternative supports that meet your assessed needs; or
 - (c) You are transferred to an alternate waiver that provides the service you need.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-0900 What are environmental accessibility adaptations? (1) Environmental accessibility adaptations are available in all of the HCBS waivers and provide the physical adaptations to the home required by the individual's plan of care or individual support plan needed to:

- (a) Ensure the health, welfare and safety of the individual; or
- (b) Enable the individual who would otherwise require institutionalization to function with greater independence in the home.
- (2) Environmental accessibility adaptations may include the installation of ramps and grab bars, widening of doorways, modification of bathroom facilities, or installing specialized electrical and/or plumbing systems necessary to accommodate the medical equipment and supplies that are necessary for the welfare of the individual.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-0910 What limitations apply to environmental accessibility adaptations? The following service limitations apply to environmental accessibility adaptations:

- (1) (~~Prior approval by DDD is required~~) Environmental accessibility adaptations require prior approval by the DDD regional administrator or designee.
- (2) Environmental accessibility adaptations or improvements to the home are excluded if they are of general utility without direct medical or remedial benefit to the individual, such as carpeting, roof repair, central air conditioning, etc.
- (3) Environmental accessibility adaptations cannot add to the total square footage of the home.
- (4) The dollar limitations for aggregate services in your Basic or Basic Plus waiver limit the amount of service you may receive.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-1300 What are personal care services? Personal care services as defined in WAC 388-106-0010 are the provision of assistance with personal care tasks (~~(as defined in WAC 388-106-0010, personal care services)~~).

These services are available in the Basic, Basic Plus, and CORE waivers.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-1310 Are there limits to the personal care services I can receive? (1) You must meet the programmatic eligibility for Medicaid personal care in chapters 388-106 and 388-71 WAC governing Medicaid personal care (MPC) using the current department approved assessment form: Comprehensive assessment reporting evaluation (CARE) (~~(or children's comprehensive assessment)~~).

(2) The maximum hours of personal care you may receive are determined by the (~~approved department assessment for Medicaid personal care services~~) CARE tool used as part of the DDD assessment.

(a) Provider rates are limited to the department established hourly rates for in-home Medicaid personal care.

(b) Homecare agencies must be licensed through the department of health and contracted with DDD.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-1505 Who are qualified providers of residential habilitation services for the CORE waiver? Providers of residential habilitation services for participants in the CORE waiver must be one of the following:

(1) Individuals contracted with DDD to provide residential support as a "companion home" provider;

(2) Individuals contracted with DDD to provide training as an "alternative living provider";

(3) Agencies contracted with DDD and certified per chapter 388-101 WAC;

(4) State-operated living alternatives (SOLA);

(5) Licensed and contracted group care homes, (~~group training homes,~~) foster homes, child placing agencies (~~(;) or~~ staffed residential homes (~~(or adult residential rehabilitation centers per WAC 246-325-0012)~~) per chapter 388-148 WAC.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-1515 Are there limits to the residential habilitation services I can receive? (1) You may only receive one type of residential habilitation service at a time.

(2) None of the following can be paid for under the CORE or community protection waiver:

(a) Room and board;

(b) The cost of building maintenance, upkeep, improvement, modifications or adaptations required to assure the health and safety of residents, or to meet the requirements of the applicable life safety code;

(c) Activities or supervision already being paid for by another source;

(d) Services provided in your parent's home unless you are receiving alternative living services for a maximum of six months to transition you from your parent's home into your own home.

(3) Alternative living services in the CORE waiver cannot:

(a) Exceed forty hours per month;

(b) Provide personal care or protective supervision.

(4) The following persons cannot be paid providers for your service:

(a) Your spouse;

(b) Your natural, step, or adoptive parents if you are a child age seventeen or younger;

(c) Your natural, step, or adoptive parent unless your parent is certified as a residential agency per chapter 388-101 WAC or is employed by a certified or licensed agency qualified to provide residential habilitation services.

(5) The initial authorization of residential habilitation services requires prior approval by the DDD regional administrator or designee.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-1610 Where can respite care be provided? (1) Respite care can be provided in the following location(s):

~~((1))~~ (a) Individual's home or place of residence;

~~((2))~~ (b) Relative's home;

~~((3))~~ (c) Licensed children's foster home;

~~((4))~~ (d) Licensed, contracted and DDD certified group home;

~~((5))~~ State-operated living alternative (SOLA) and other DDD certified supported living settings;

~~((6))~~ (e) Licensed boarding home contracted as an adult residential center;

~~((7))~~ (f) Adult residential rehabilitation center;

~~((8))~~ (g) Licensed and contracted adult family home;

~~((9))~~ (h) Children's licensed group home, licensed staffed residential home, or licensed childcare center;

~~((10))~~ (i) Other community settings such as camp, senior center, or adult day care center.

(2) Additionally, your respite care provider may take you into the community while providing respite services.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-1615 Who are qualified providers of respite care? Providers of respite care can be any of the following individuals or agencies contracted with DDD for respite care:

(1) Individuals meeting the provider qualifications under chapter 388-825 WAC;

(2) Homecare/home health agencies, licensed under chapter 246-335 WAC, Part 1;

(3) Licensed and contracted group homes, foster homes, child placing agencies, staffed residential homes and foster group care homes;

(4) Licensed and contracted adult family home;

(5) Licensed and contracted adult residential care facility;

(6) Licensed and contracted adult residential (~~rehabilitation center~~) treatment facility under (~~WAC 246-325-012~~) chapter 246-337 WAC;

(7) Licensed childcare center under chapter ~~((388-295))~~ 170-295 WAC;

(8) Licensed child daycare center under chapter ~~((388-295))~~ 170-295 WAC;

(9) Adult daycare centers contracted with DDD;

(10) Certified provider ~~((per))~~ under chapter 388-101 WAC when respite is provided within the DDD contract for certified residential services; or

(11) Other DDD contracted providers such as community center, senior center, parks and recreation, summer programs, adult day care.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-1620 Are there limits to the respite care I can receive? The following limitations apply to the respite care you can receive:

(1) ~~((If you are in the Basic or Basic Plus waiver, a respite care))~~ The DDD assessment will determine how much respite you can receive per ((WAC 388-845-3005 through 388-845-3050)) chapter 388-828 WAC.

(2) ~~((If you are in the CORE waiver, the plan of care (POC), not the respite assessment, will determine the amount of respite care you can receive.~~

~~((3))~~ Prior approval by the DDD regional administrator or designee is required:

(a) To exceed fourteen days of respite care per month; or

(b) To pay for more than eight hours in a twenty-four hour period of time for respite care in any setting other than your home or place of residence. This limitation does not prohibit your respite care provider from taking you into the community, per WAC 388-845-1610(2).

~~((4))~~ (3) Respite cannot replace:

(a) Daycare while a parent or guardian is at work; and/or

(b) Personal care hours available to you. When determining your unmet need, DDD will first consider the personal care hours available to you.

~~((5))~~ (4) Respite providers have the following limitations and requirements:

(a) If respite is provided in a private home, the home must be licensed unless it is the client's home or the home of a relative of specified degree per WAC 388-825-345;

(b) The respite provider cannot be the spouse of the caregiver receiving respite if the spouse and the caregiver reside in the same residence; and

(c) If you receive respite from a provider who requires licensure, the respite services are limited to those age-specific services contained in the provider's license.

~~((6))~~ (5) Your caregiver cannot provide paid respite services for you or other persons during your respite care hours.

~~((7))~~ (6) DDD cannot pay for any fees associated with the respite care; for example, membership fees at a recreational facility, or insurance fees.

(7) If you require respite from a licensed practical nurse (LPN) or a registered nurse (RN), services may be authorized as skilled nursing services per WAC 388-845-1700 using an LPN or RN. If you are in the Basic Plus waiver, skilled nursing services are limited to the dollar limits of your aggregate

services per WAC 388-845-0210. ((The dollar limit governing aggregate services does not apply to skilled nursing services provided as part of mental health stabilization services per WAC 388-845-1100(2).))

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-1660 Are there limitations to the sexual deviation evaluations I can receive? (1) The evaluations must meet the standards contained in WAC 246-930-320.

(2) Sexual deviation evaluations require prior approval by the DDD regional administrator or designee.

(3) The costs of sexual deviation evaluations do not count toward the dollar limits for aggregate services in the Basic or Basic Plus waivers.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-1710 Are there limitations to the skilled nursing services I can receive? The following limitations apply to your receipt of skilled nursing services:

(1) Skilled nursing services require prior approval by the DDD regional administrator or designee.

(2) ~~((The department))~~ DDD and the treating professional determine the need for and amount of service.

(3) ~~((The department))~~ DDD reserves the right to require a second opinion by a department-selected provider.

(4) ~~((Skilled nursing services provided as a mental health stabilization service require prior approval by DDD or its designee.~~

~~((5))~~ The dollar limitation for aggregate services in your Basic Plus waiver limit the amount of skilled nursing services unless provided as a mental health stabilization service.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-1800 What are specialized medical equipment and supplies? (1) Specialized medical equipment and supplies are ~~((services to help))~~ durable and nondurable medical equipment not available through medicaid or the state plan which enables individuals to:

(a) Increase their abilities to perform ((with)) their activities of daily living; or ((to better participate in their environment. These services are available in all four HCBS waivers))

(b) Perceive, control or communicate with the environment in which they live.

(2) Durable and nondurable medical equipment are defined in WAC 388-543-1000 and 388-543-2800 respectively.

(3) Also included are ((devices, controls, appliances, and)) items necessary for life support; and ancillary supplies and equipment necessary to the proper functioning of ((such items; and durable and nondurable medical equipment not available through Medicaid under the Medicaid state plan)) the equipment and supplies described in subsection (1) above.

(4) Specialized medical equipment and supplies are available in all four HCBS waivers.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-1810 Are there limitations to my receipt of specialized medical equipment and supplies? The following limitations apply to your receipt of specialized medical equipment and supplies:

(1) ~~((Prior approval by the department is required))~~ Specialized medical equipment and supplies require prior approval by the DDD regional administrator or designee for each authorization.

(2) ~~((The department))~~ DDD reserves the right to require a second opinion by a department-selected provider.

(3) Items reimbursed with waiver funds shall be in addition to any medical equipment and supplies furnished under the Medicaid state plan.

(4) Items must be of direct medical or remedial benefit to the individual and necessary as a result of the individual's disability.

(5) Medications, prescribed or nonprescribed, and vitamins are excluded.

(6) The dollar limitations for aggregate services in your Basic or Basic Plus waiver limit the amount of service you may receive.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-1910 Are there limitations to the specialized psychiatric services I can receive? (1) Specialized psychiatric services are excluded if they are available through other Medicaid programs.

(2) The dollar limitations for aggregate service in your Basic and Basic Plus waiver limit the amount of specialized psychiatric services unless provided as a mental health stabilization service.

(3) ~~Specialized psychiatric services ((provided as a mental health stabilization service require prior approval by DDD or its designee))~~ require prior approval by the DDD regional administrator or designee.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-2000 What is staff/family consultation and training? (1) Staff/family consultation and training is professional assistance to families or direct service providers to help them better meet the needs of the waiver person. This service is available in all four HCBS waivers.

(2) Consultation and training is provided to families, direct staff, or personal care providers to meet the specific needs of the waiver participant as outlined in the individual's plan of care or individual support plan, including:

- (a) Health and medication monitoring;
- (b) Positioning and transfer;
- (c) Basic and advanced instructional techniques;
- (d) Positive behavior support; and
- (e) Augmentative communication systems.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-2005 Who is a qualified provider of staff/family consultation and training? To provide staff/family consultation and training, a provider must be one of the following licensed, registered or certified professionals and be contracted with DDD:

- (1) Audiologist;
- (2) Licensed practical nurse;
- (3) Marriage and family therapist;
- (4) Mental health counselor;
- (5) Occupational therapist;
- (6) Physical therapist;
- (7) Registered nurse;
- (8) Sex offender treatment provider;
- (9) Speech/language pathologist;
- (10) Social worker;
- (11) Psychologist;
- (12) Certified American sign language instructor;
- (13) Nutritionist;
- (14) Registered counselor; ~~((or))~~
- (15) Certified dietician; or
- (16) Recreation therapist certified by the National Council for Therapeutic Recreation.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-2010 Are there limitations to the staff/family consultation and training I can receive? (1) Expenses to the family or provider for room and board or attendance, including registration, at conferences are excluded as a service under staff/family consultation and training.

(2) Staff/family consultation and training require prior approval by the DDD regional administrator or designee.

(3) The dollar limitations for aggregate services in your Basic or Basic Plus waiver limit the amount of service you may receive.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-2200 What are transportation services? Transportation services provide reimbursement to a provider when the transportation is required and specified in the waiver plan of care or individual support plan. This service is available in all four HCBS waivers if the cost and responsibility for transportation is not already included in your provider's contract and payment.

(1) Transportation provides ~~((the person))~~ you access to waiver services, specified by ~~((the))~~ your plan of care or individual support plan.

(2) Whenever possible, ~~((the person))~~ you must use family, neighbors, friends, or community agencies that can provide this service without charge.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-2210 Are there limitations to the transportation services I can receive? The following limitations apply to transportation services:

(1) Transportation to/from medical or medically related appointments is a Medicaid transportation service and is to be considered and used first.

(2) Transportation is offered in addition to medical transportation but cannot replace Medicaid transportation services.

(3) Transportation is limited to travel to and from a waiver service.

(4) Transportation does not include the purchase of a bus pass.

(5) Reimbursement for provider mileage requires prior approval by DDD and is paid according to contract.

(6) This service does not cover the purchase or lease of vehicles.

(7) Reimbursement for provider travel time is not included in this service.

(8) Reimbursement to the provider is limited to transportation that occurs when you are with the provider.

(9) You are not eligible for transportation services if the cost and responsibility for transportation is already included in your ~~((waiver))~~ provider's contract and payment.

(10) The dollar limitations for aggregate services in your Basic or Basic Plus waiver limit the amount of service you may receive.

(11) Transportation services require prior approval by the DDD regional administrator or designee.

ASSESSMENT AND ~~((PLAN OF CARE))~~ INDIVIDUAL SUPPORT PLAN

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-3000 What is the process for determining the services I need? Your service needs are determined through the ~~((ICF-MR level of care))~~ DDD assessment and the service planning process as defined in chapter 388-828 WAC. Only identified health and welfare needs will be authorized for payment in the ISP.

(1) You receive an initial and annual assessment of your needs using a department-approved form.

(a) ~~((The ICF-MR level of care assessment identifies your need for waiver services))~~ You meet the eligibility requirements for ICF/MR level of care.

(b) The "comprehensive assessment reporting evaluation (CARE)" tool will determine your eligibility and amount of personal care services.

(c) If you are in the Basic ~~((or))~~ Basic Plus or CORE waiver, ~~((the))~~ the DDD ~~((respite))~~ assessment will determine the amount of respite care available to you.

(2) From the assessment, DDD develops your waiver plan of care ~~((POC))~~ or individual support plan (ISP) with you and/or your legal representative and others who are involved in your life such as your parent or guardian, advocate and service providers.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-3055 What is a waiver ~~((plan of care (POC)))~~ individual support plan (ISP)? (1) ~~The ((plan of care)) individual support plan (ISP) replaces the plan of care~~ and is the primary tool DDD uses to determine and document your needs and to identify the services to meet those needs. Your plan of care remains in effect until a new ISP is developed.

(2) Your ~~((plan))~~ ISP must include:

(a) ~~((The services that you and DDD have agreed are necessary for you to receive in order to address your health and welfare needs as specified in WAC 388-845-3000))~~ Your identified health and welfare needs;

(b) Both paid and unpaid services ~~((you receive or need))~~ approved to meet your identified health and welfare needs as identified in WAC 388-828-8040 and 388-828-8060; and

(c) How often you will receive each waiver service; how long you will need it; and who will provide it ~~((; and~~

~~((d) Your signature on))~~.

(3) For an initial ISP, you or your legal representative must sign or give verbal consent to the plan indicating your agreement to the receipt of services.

~~((3))~~ (4) For a reassessment or review of your ISP, you or your legal representative must sign or give verbal consent to the plan indicating your agreement to the receipt of services.

(5) You may choose any qualified provider for the service, who meets all of the following:

(a) Is able to meet your needs within the scope of their contract, licensure and certification;

(b) Is reasonably available;

(c) Meets provider qualifications in chapters 388-845 and 388-825 WAC for contracting; and

(d) Agrees to provide the service at department rates.

NEW SECTION

WAC 388-845-3056 What if I need assistance to understand my plan of care or individual support plan? If you are unable to understand your plan of care or individual support plan and the individual who has agreed to provide assistance to you as your necessary supplemental accommodation representative is unable to assist you with understanding your individual support plan, DDD will take the following steps:

(1) Consult with the office of the attorney general to determine if you require a legal representative or guardian to assist you with your plan of care or individual support plan.

(2) Continue your current waiver services.

(3) If the office of the attorney general or a court determines that you do not need a legal representative, DDD will continue to try to provide necessary supplemental accommodations in order to help you understand your plan of care or individual support plan.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-3060 When is my plan of care or individual support plan effective? ~~((Your))~~ (1) For an initial plan of care or individual support plan, the plan is effective the date DDD signs and approves it after a signature or verbal consent is obtained.

(2) For a reassessment or review of a plan of care or individual support plan, the plan is effective the date DDD signs and approves it after a signature or verbal consent is obtained.

NEW SECTION

WAC 388-845-3061 Can a change in my plan of care or individual support plan be effective before I sign it? If you verbally request a change in service to occur immediately, DDD can sign the plan of care or individual support plan and approve it prior to receiving your signature.

(1) Your plan of care or individual support plan will be mailed to you for signature.

(2) You retain the same appeal rights as if you had signed the plan of care or individual support plan.

NEW SECTION

WAC 388-845-3062 Who is required to sign or give verbal consent to the plan of care or individual support plan? (1) If you do not have a legal representative, you must sign or give verbal consent to the plan of care or individual support plan.

(2) If you have a legal representative, your legal representative must sign or give verbal consent to the plan of care or individual support plan.

(3) If you need assistance to understand your plan of care or individual support plan, DDD will follow the steps outlined in WAC 388-845-3056 (1) and (3).

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-3065 How long is my plan effective? (1) Your plan of care is effective ~~((through the last day of the twelfth month following the effective date))~~ until it is replaced by your individual support plan.

(2) Your individual support plan is effective through the last day of the twelfth month following the effective date or until another ISP is completed, whichever occurs sooner.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-3070 What happens if I do not sign or verbally consent to my ~~((plan of care))~~ individual support plan (ISP)? If DDD is unable to obtain the necessary signature ~~((on the plan of care from you or your legal representative))~~ or verbal consent for an initial, reassessment or review of your individual support plan (ISP), DDD will take one or more of the following actions:

(1) ~~((DDD will continue providing services as identified in your most current POC for up to thirty days from the date~~

~~you were notified of the plan to implement your most current POC.~~

(2) ~~After thirty days, unless you file an appeal, DDD will assume consent and implement the new POC without your signature or the signature of your legal representative))~~ If this individual support plan is an initial plan, DDD will be unable to provide waiver services. DDD will not assume consent for an initial plan and will follow the steps described in WAC 388-845-3056 (1) and (3).

(2) If this individual support plan is a reassessment or review and you are able to understand your ISP:

(a) DDD will continue providing services as identified in your most current plan of care or ISP until the end of the ten-day advance notice period as stated in WAC 388-825-105.

(b) At the end of the ten-day advance notice period, unless you file an appeal, DDD will assume consent and implement the new ISP without the required signature or verbal consent as defined in WAC 388-845-3062 above.

(3) If this individual support plan is a reassessment or review and you are not able to understand your ISP, DDD will continue your existing services and take the steps described in WAC 388-845-3056.

(4) You will be provided written notification and appeal rights to this action to implement the new ~~((POC))~~ ISP.

~~((4))~~ (5) Your appeal rights are in WAC 388-845-4000 and WAC 388-825-120 through 388-825-165.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-3075 What if my needs change? You may request a review of your plan of care or individual support plan at any time by calling your case manager. If there is a significant change in your condition or circumstances, DDD must reassess your plan of care or individual support plan with you and amend the plan to reflect any significant changes. This reassessment does not affect the end date of your annual plan of care or individual support plan.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-3095 Will I have to pay toward the cost of waiver services? (1) ~~((Depending on your SSI status, Medicaid status, income and resources, you may be required to participate towards the cost of your care. DDD determines what amount, if any, you pay.~~

(2) ~~If you live in a licensed facility, you participate from your earned and unearned income per rules in WAC 388-515-1510:~~

(a) ~~If you have nonexempt income that exceeds the cost of your waiver services, you may keep the difference.~~

(b) ~~If you are eligible for SSI, you pay only for room and board.~~

(c) ~~If you are not eligible for SSI, you may be required to participate towards the cost of your waiver services in addition to your facility room and board rate))~~ You are required to pay toward board and room costs if you live in a licensed facility or in a companion home as room and board is not considered to be a waiver service.

(2) You will not be required to pay towards the cost of your waiver services if you receive SSI.

(3) You may be required to pay towards the cost of your waiver services if you do not receive SSI. DDD determines what amount, if any, you pay in accordance with WAC 388-515-1510.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-4000 What are my appeal rights under the waiver? ~~((You have))~~ In addition to your appeal rights under WAC 388-825-120, you have the right to appeal the following decisions:

~~(1) ((Any denial, reductions, or termination of a service.~~

~~(2) A denial or termination of your choice of a qualified provider.~~

~~(3) Your termination from waiver eligibility.~~

~~(4)) Disenrollment from a waiver under WAC 388-845-0060, including a disenrollment from a waiver and enrollment in a different waiver.~~

(2) A denial of your request to receive ICF/MR services instead of waiver services; or

(3) A denial of your request to be enrolled in a waiver subject to the limitations described in WAC 388-845-4005.

AMENDATORY SECTION (Amending WSR 06-01-024, filed 12/13/05, effective 1/13/06)

WAC 388-845-4005 Can I appeal a denial of my request to be enrolled in a waiver? ~~((You do not have an appeal right to a denial to be enrolled in a waiver))~~ (1) If you are not enrolled in a waiver and your request to be enrolled in a waiver is denied, your appeal rights are limited to the decision that you are not eligible to have your request documented in a statewide database because you do not need ICF/MR level of care per WAC 388-845-0070, 388-828-8040 and 388-828-8060.

(2) If you are enrolled in a waiver and your request to be enrolled in a different waiver is denied, your appeal rights are limited to DDD's decision that the services contained in a different waiver are not necessary to meet your health and welfare needs and that the services available on your current waiver can meet your health and welfare needs.

(3) If DDD determines that the services offered in a different waiver are necessary to meet your health and welfare needs, but there is not capacity on the different waiver, you do not have the right to appeal any denial of enrollment on a different waiver when DDD determines there is not capacity to enroll you on a different waiver.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 388-845-0025 Does this change in waivers affect the waiver services I am currently receiving?

WAC 388-845-0075	How is a child age twelve or younger assessed for ICF/MR level of care?
WAC 388-845-0080	What score indicates ICF/MR level of care if I am age twelve or younger?
WAC 388-845-0085	If I am age twelve or younger, what if my score on the current needs assessment does not indicate ICF/MR level of care?
WAC 388-845-0090	How is a person age thirteen or older assessed for ICF/MR level of care?
WAC 388-845-0095	What score indicates ICF/MR level of care if I am age thirteen or older?
WAC 388-845-0096	If I am age thirteen or older, what if my score on the current needs assessment does not indicate the need for ICF/MR level of care?
WAC 388-845-1606	Can DDD approve an exception to the requirements in WAC 388-845-1605?
WAC 388-845-3005	What is the waiver respite assessment?
WAC 388-845-3010	Who must have a waiver respite assessment?
WAC 388-845-3025	How often is this waiver respite assessment completed?
WAC 388-845-3030	What items are assessed to determine my respite allocation?
WAC 388-845-3035	How is the waiver respite assessment scored?
WAC 388-845-3040	When will the new respite assessment go into effect?
WAC 388-845-3045	How will I know the results of my respite assessment?
WAC 388-845-3050	What is the effective date of my respite allocation?

WSR 07-22-010

**PERMANENT RULES
DEPARTMENT OF**

FINANCIAL INSTITUTIONS

[Filed October 25, 2007, 12:22 p.m., effective November 25, 2007]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The existing rule on fees, quarterly reports, and the reporting of significant events that impact the escrow business must be amended for clarity and consistency in implementing chapter 18.44 RCW and to reflect current industry practices.

Citation of Existing Rules Affected by this Order: Amending WAC 208-680B-081 and 208-680E-025; and new section WAC 208-680C-060.

Statutory Authority for Adoption: RCW 43.320.040, 18.44.410.

Adopted under notice filed as WSR 07-17-118 on September 5 [August 17], 2007.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 1, Amended 2, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 1, Amended 2, Repealed 0.

Date Adopted: October 25, 2007.

Deborah Bortner, Director
Division of Consumer Services

AMENDATORY SECTION (Amending WSR 01-12-029, filed 5/29/01, effective 7/1/01)

WAC 208-680B-081 Fee increase. ~~((The division intends to increase its fee and assessment rates each year for several bienniums. The division intends to initiate a rule making for this purpose each biennium. This rule provides for an automatic annual increase in the rate of fees and assessments each fiscal year during the 2001-03 biennium.))~~

(1) On ~~((July))~~ January 1, ~~((2002))~~ 2008, the fee and assessment rates under WAC 208-680B-080~~((, as increased in the prior fiscal year.))~~ will increase by a percentage rate equal to the fiscal growth factor for the then current fiscal year. As used in this section, "fiscal growth factor" has the same meaning as the term is defined in RCW 43.135.025.

(2) The director may round off a rate increase under subsection (1) of this section. However, no rate increase may exceed the applicable fiscal growth factor.

~~((3) By June 1 of each year, the director will make available a chart of the new rates that will take effect on the immediately following July 1.))~~

NEW SECTION

WAC 208-680C-060 Reporting significant events. (1) **Ten days prior notification required.** An escrow agent must notify the director in writing ten days prior to a change of the escrow agent's:

(a) Location or mailing address of the escrow agent office or branch office. See RCW 18.44.061 and WAC 208-680C-040;

(b) Form of business organization or place of organization (for example, from sole proprietor to corporation);

(c) Name and mailing address of the out-of-state escrow agent's registered agent; or

(d) Legal or trade name.

(2) **Ten days post notification required.** An escrow agent must notify the director in writing within ten days after an occurrence of any of the following:

(a) The cancellation or expiration of its Washington state master business license;

(b) A change in its standing with the state of Washington secretary of state, including the resignation or change of the registered agent;

(c) The licensed escrow agent filing for bankruptcy;

(d) The personal bankruptcy of a principal officer or controlling person; or

(e) The licensed escrow officer or designated escrow officer filing for personal bankruptcy.

(3) **Other notification requirements.**

(a) In the event of an escrow office closure, see WAC 208-680C-045.

(b) For a transfer involving all or substantially all of its assets, the escrow agent must comply with WAC 208-680B-015(3).

(c) For a change in principal officer or controlling person of a licensed escrow agent, the escrow agent must comply with WAC 208-680B-015(4) and 208-680B-020(4).

(d) For changes in designated escrow officer or branch designated escrow officer, see WAC 208-680D-010.

(e) For termination of a licensed escrow officer, the escrow agent must notify the department within three business days that the escrow officer no longer represents the escrow agent. If the escrow officer was terminated for dishonesty or financial misconduct involving the business, the escrow agent must provide the department with that information. Within ten business days of the termination, the escrow agent must deliver the escrow officer's license to the department. See RCW 18.44.101.

(f) For the filing of quarterly reports, see WAC 208-680E-025.

(g) For suit or complaint notification, see WAC 208-680D-070.

(h) Any changes to the escrow agent's bonds, or the bonds of the escrow agent's licensed escrow officers, as required under RCW 18.44.201, must be reported to the department within five days.

(i) Within five business days of the escrow agent's license being revoked, surrendered, suspended, or the license expiring, the escrow agent shall notify the principals of pre-existing escrows of the action. The contents of the notification must comply with RCW 18.44.465.

AMENDATORY SECTION (Amending WSR 05-03-038, filed 1/10/05, effective 2/10/05)

WAC 208-680E-025 Quarterly reports. (1) For purposes of determining compliance with chapter 18.44 RCW

and chapter 208-680 WAC, each escrow agent shall file with the director, within thirty days following the end of each fiscal quarter, the following:

(a) ~~A report concerning its operations ((and));~~

(b) A report concerning the trust account administration; and ((reconciliation. The report shall be on a form provided by the director and shall include exhibits as specified therein))

(c) A one page summary of the three way reconciliation from the last month of the quarter.

All reports must be in a form prescribed by the director.

(2) As to trust account matters, the designated escrow officer of the escrow agent shall certify under penalty of perjury, in a manner consistent with RCW 9A.72.085, that he or she has reviewed the report and any exhibits filed with it and that the information contained in the report and in any exhibits is true and correct. The chief executive officer or chief financial officer of the escrow agent, or other knowledgeable person acceptable to the director, may certify the information on the report not related to trust account matters.

(3) Failure to file the report within the time period specified in this rule shall be considered a violation of RCW 18.44.430.

WSR 07-22-022
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES
 (Economic Services Administration)

[Filed October 26, 2007, 11:54 a.m., effective November 26, 2007]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department is amending this rule to increase the state supplemental payment by \$1.77 per month for state supplemental income (SSI) clients who reside in nursing facilities, residential habilitation centers, or state hospitals and who receive a personal needs allowance.

Citation of Existing Rules Affected by this Order: Amending WAC 388-478-0055.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.08.090.

Adopted under notice filed as WSR 07-18-067 on September 4, 2007.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 1, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Mak-

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: October 24, 2007.

Stephanie E. Schiller
 Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-16-071, filed 7/28/06, effective 8/28/06)

WAC 388-478-0055 How much do I get from my state supplemental payments (SSP)? (1) The SSP is a payment from the state for certain SSI eligible people (see WAC 388-474-0012).

If you converted to the federal SSI program from state assistance in January 1974, because you were aged, blind, or disabled, and have remained continuously eligible for SSI since January 1974, the department calls you a grandfathered client. Social Security calls you a mandatory income level (MIL) client.

A change in living situation, cost-of-living adjustment (COLA) or federal payment level (FPL) can affect a grandfathered (MIL) client. A grandfathered (MIL) client gets a federal SSI payment and a SSP payment, which totals the higher of one of the following:

(a) The state assistance standard set in December 1973, unless you lived in a medical institution at the time of conversion, plus the federal cost-of-living adjustments (COLA) since then; or

(b) The current payment standard.

(2) The monthly SSP rates for eligible persons under WAC 388-474-0012 and individuals residing in an institution are:

SSP eligible persons	Monthly SSP Rate
Individual (aged 65 and older) ((--Calendar Year 2005))	\$46.00
Individual (blind as determined by SSA) ((--Calendar Year 2005))	\$46.00
Individual with an ineligible spouse ((--Calendar Year 2005))	\$46.00
Grandfathered (MIL)	Varies by individual based on federal requirements. Payments range between \$0.54 and \$199.77.
Medical institution	Monthly SSP Rate
Individual	\$ ((23.68)) <u>25.45</u>

WSR 07-22-026
PERMANENT RULES
DEPARTMENT OF
RETIREMENT SYSTEMS

[Filed October 26, 2007, 4:32 p.m., effective November 26, 2007]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Section 845 of the Pension Protection Act (2006) allows eligible retired public safety officers to elect to exclude up to \$3,000 of their retirement benefit from taxable income each year for qualified health insurance premiums. The department proposed an amendment to existing rules that reflects these changes.

Citation of Existing Rules Affected by this Order: Amending WAC 415-02-100.

Statutory Authority for Adoption: RCW 41.50.050(5).

Adopted under notice filed as WSR 07-18-025 on August 27, 2007.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 1, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: October 26, 2007.

Sandra J. Matheson
Director

AMENDATORY SECTION (Amending WSR 06-21-001, filed 10/4/06, effective 11/4/06)

WAC 415-02-100 (~~Retiree insurance premium deductions—Enrollment requirements.~~) **Can I have my insurance premiums deducted from my retirement allowance?** (1) The department will ~~((not))~~ only accept requests by retirees ~~((of any of the systems that the department administers))~~ to deduct insurance premiums ~~((for any kind of insurance))~~ from retirement allowances ~~((unless))~~ if one of the following conditions is met:

(a) The retiree's insurance provider has at least twenty-five such retirees enrolled in a ((withholding)) deduction program and has an established agreement with the department:
or

(b) The retiree was an eligible public safety officer, as defined by Internal Revenue Code (IRC) 402(l), who has elected to participate in the federal tax savings program on health benefits for public safety officers under IRC 402(l). The retiree's insurance provider must have an established agreement with the department. ((Any qualified provider who drops below twenty-five participants will be suspended if they))

(2) For insurance providers under subsection (1)(a) of this section, the department may suspend deductions if the provider has fewer than twenty-five participants and remains under twenty-five participants for ninety days.

(3) This rule applies to all retirement systems administered by the department.

WSR 07-22-031

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed October 29, 2007, 2:25 p.m., effective November 29, 2007]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Establishes the requirements, fees, standards, and procedures for the application, issuance, and denial of enhanced driver's licenses and identicards that may be used for purposes of facilitating the crossing of the border between Washington state and British Columbia.

Citation of Existing Rules Affected by this Order: Amending WAC 308-104-018 and 308-104-019.

Statutory Authority for Adoption: RCW 46.01.110 and 46.20.202.

Adopted under notice filed as WSR 07-17-157 on August 21, 2007.

Changes Other than Editing from Proposed to Adopted Version: WAC 308-105-020(4) has been changed to provide that written information regarding the type of information the radio frequency identification (RFID) chip integrated into the license and identicard will contain and how it may be used, and that tampering with or deactivating the chip will invalidate the document for purposes of border crossing, will be given to the applicant.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 1, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 4, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 4, Amended 2, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: October 29, 2007.

Becky Loomis
Assistant Director

Chapter 308-105 WAC

ENHANCED DRIVER'S LICENSE AND IDENTICARD

NEW SECTION

WAC 308-105-010 Definitions. As used in this chapter, unless the context requires otherwise, the term:

(1) "Enhanced driver's license" means a driver's license that is issued under RCW 46.20.202.

(2) "Enhanced identicard" means an identicard that is issued under RCW 46.20.202.

NEW SECTION

WAC 308-105-020 Application for enhanced driver's license or identicard. (1) An applicant for an enhanced

driver's license must be eligible for a standard driver's license under chapter 46.20 RCW, provide the information required by RCW 46.20.091 and WAC 308-104-014, and establish his or her identity as provided by RCW 46.20.035 and WAC 308-104-040.

(2) An applicant for an enhanced identicard must be eligible for a standard identicard under chapter 46.20 RCW, provide the information required by RCW 46.20.117 and WAC 308-104-014, and establish his or her identity as provided by RCW 46.20.035 and WAC 308-104-040.

(3) An applicant for an enhanced driver's license or identicard must sign a declaration acknowledging that his or her photograph will be used as a facial recognition biometric identifier, and that he or she understands that the biometric identifier will be used in a one-to-many biometric matching system for purposes of verifying the identity of the applicant.

(4) An applicant for an enhanced driver's license or identicard must sign a declaration acknowledging that he or she has been notified that the enhanced driver's license or identicard contains a radio frequency identification chip, that he or she has been given written information on the type of information the chip contains and how it may be used, and that tampering with or deactivating the chip will invalidate the enhanced driver's license or identicard for purposes of border crossing.

(5) An applicant for an enhanced driver's license or identicard must provide the department with satisfactory proof of United States citizenship. United States citizenship may be established by providing at least one of the following pieces of documentation:

- (a) A United States passport that is valid or has been expired for no more than five years;
 - (b) Certified state birth certificate;
 - (c) Certificate of naturalization;
 - (d) Certificate of citizenship; or
 - (e) Department of state consular report of birth abroad.
- (6) An applicant for an enhanced driver's license or identicard must provide the department with satisfactory proof of residency in the state of Washington.

(7) An enhanced driver's license or identicard will not be issued to an applicant who is unable to provide the department with satisfactory proof required under this section.

NEW SECTION

WAC 308-105-030 Enhanced driver's license or identicard denial—Hearing. (1) Within twenty days of the date of notification by the department that an application for an enhanced driver's license or identicard has been denied under WAC 308-105-020(7), the aggrieved person may submit a written request for a formal hearing to contest the department's decision.

(2) Within twenty days of receipt of a request for a formal hearing, the department shall notify the requester in writing of the time and location of the hearing.

(3) The hearing shall be conducted by a hearing officer appointed by the director. The director may delegate the authority to render final decisions to the hearing officer.

(4) The scope of the hearing shall be limited to the following issues:

(a) Has the applicant provided the necessary documentation and information;

(b) Has the applicant established his or her identity;

(c) Has the applicant established that he or she is a United States citizen; and

(d) Has the applicant established that he or she maintains permanent residency in the state of Washington?

(5) The person shall have the burden of providing that he or she has established the requirements listed in subsection (4) of this section.

(6) Upon conclusion of the hearing, the hearing officer shall make written findings on the matter under consideration and shall sustain, modify, or reverse the department's denial of the application for an enhanced driver's license or identicard. The department shall notify the person of the hearing officer's decision and of the person's right to request an appeal in the superior court in the county of his or her residence in writing either by personal service or by first class mail set to the last address of record.

(7) A person denied an enhanced driver's license or identicard under subsection (6) of this section shall have the right within thirty days after receiving notice of the decision following a formal hearing to file a notice of appeal in the superior court in the county of his residence. The hearing on the appeal hereunder shall be de novo.

(8) If the person does not request a formal hearing within the time specified in subsection (1) of this section, or fails to appear for the hearing, said person shall have waived his or her right to any further administrative remedies, including the right to appeal, and the case shall be remanded to the department and the department's previous decision denying the enhanced driver's license or identicard shall be affirmed.

NEW SECTION

WAC 308-105-100 Fee. The fee for an enhanced driver's license or enhanced identicard is fifteen dollars. This fee is in addition to the regular drivers' license or identicard fees.

AMENDATORY SECTION (Amending WSR 96-20-089, filed 10/1/96, effective 11/1/96)

WAC 308-104-018 Changing the address of record.

(1) In addition to the form identified in RCW 46.20.205, the department may change a driver's or identicard holder's address of record upon:

(a) The verbal request of the driver or identicard holder, where the department has satisfied itself as to the identity of the person making the request; or

(b) Receipt of written documentation or electronic communication concerning the driver or identicard holder, where such documentation or communication includes an address that differs from the one maintained by department and is:

(i) Signed by the driver or identicard holder;

(ii) Filed at the request of the driver or identicard holder;

~~(iii)~~ (iii) Filed by a public official or governmental agency; or

(iv) Filed by a contractor who verifies or supplies correct addresses obtained from a public official or governmental agency.

(2) This section shall not be construed as relieving the driver or identicard holder of the responsibility to notify the department of a change of address as required by RCW 46.20.205. Failure by the department to change a driver's or identicard holder's address of record, where the driver or identicard holder has not notified the department of the change of address with the form identified in RCW 46.20.205, shall not limit the effectiveness of any notice mailed to the driver or identicard holder at the address of record as previously established by the department.

AMENDATORY SECTION (Amending WSR 04-20-012, filed 9/24/04, effective 10/25/04)

WAC 308-104-019 Renewal of driver's license or identicard by electronic commerce—Eligibility. An applicant for a driver's license renewal or identicard renewal may apply by electronic commerce if he or she has received an authorization notice from the department.

(1) The department may send an authorization notice to a person whose valid driver's license is about to expire if the person:

(a) Is eligible to renew his or her driver's license by electronic commerce under the provisions of RCW 46.20.120 (3)(b) or (4)(b);

(b) Has previously been issued a digital driver's license;

(c) Is at least twenty-four and not more than sixty-five years of age;

(d) Has a valid Social Security number on file with the department;

(e) Has a valid mailing address on his or her driving record as maintained by the department;

(f) Does not have a commercial driver's license, enhanced driver's license or identicard, instruction permit, or agricultural permit;

(g) Has not paid a fee owed to the department with a check that has been dishonored;

(h) Has not failed to appear, respond, or comply with the terms of or in response to a traffic citation or notice of traffic infraction; and

(i) Does not have any actions pending against his or her driver's license or driving privileges.

(2) A person applying for driver's license renewal by electronic commerce must:

(a) Certify that within the last six months he or she has not had a loss of consciousness or control that could impair his or her ability to operate a motor vehicle safely;

(b) Make the necessary certification under WAC 308-104-010(2); and

(c) Complete the required application and pay all applicable fees.

(3) The department may send an authorization notice to a person whose valid identicard is about to expire if the person:

(a) Is eligible to renew his or her identicard by electronic commerce under the provisions of RCW 46.20.117 (3)(b);

(b) Is at least twenty-four years of age; and

(c) Has previously been issued a digital identicard.

(4) A person applying for identicard renewal by electronic commerce must complete the required application and pay all applicable fees.

(5) The department may specify the means and establish procedures by which a person may make an application under this section.

WSR 07-22-035

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed October 30, 2007, 1:53 p.m., effective November 30, 2007]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The department is permanently adopting rule amendments in chapters 388-450 and 388-478 WAC to update income, benefit, and deduction standards for the Washington Basic Food program and Washington combined application program (WASHCAP). These changes were implemented via emergency adoption effective October 1, 2007, to comply with federal requirements for the food stamp program.

Citation of Existing Rules Affected by this Order: Amending WAC 388-450-0185, 388-450-0190, and 388-478-0060.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510.

Other Authority: 7 C.F.R. § 273.9 Income and deductions.

Adopted under notice filed as WSR 07-18-068 on September 4, 2007.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 3, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 3, Repealed 0.

Date Adopted: October 26, 2007.

Stephanie E. Schiller
Rules Coordinator

AMENDATORY SECTION (Amending WSR 06-21-012, filed 10/6/06, effective 11/6/06)

WAC 388-450-0185 Does the department count all of my income to determine my eligibility and benefits for Basic Food? We subtract the following amounts from your

assistance unit's (AU's) countable income before we determine your Basic Food benefit amount:

(1) A standard deduction based on the number of people in your AU under WAC 388-408-0035:

Eligible and ineligible AU members	Standard deduction
1	\$134
2	\$134
3	\$134
4	\$ (139) <u>143</u>
5	\$ (162) <u>167</u>
6 or more	\$ (186) <u>191</u>

(2) Twenty percent of your AU's gross earned income (earned income deduction);

(3) Your AU's expected monthly dependent care expense as described below:

(a) The dependent care must be needed for AU member to:

- (i) Keep work, look for work, or accept work;
- (ii) Attend training or education to prepare for employment; or
- (iii) Meet employment and training requirements under chapter 388-444 WAC.

(b) We subtract allowable dependent care expenses that are payable to someone outside of your AU:

- (i) Up to two hundred dollars for each dependent under age two; and
- (ii) Up to one hundred seventy-five dollars for each dependent age two or older.

(4) Medical expenses over thirty-five dollars a month owed or anticipated by an elderly or disabled person in your AU as allowed under WAC 388-450-0200.

(5) Legally obligated current or back child support paid to someone outside of your AU:

- (a) For a person who is not in your AU; or
- (b) For a person who is in your AU to cover a period of time when they were not living with you.

(6) A portion of your shelter costs as described in WAC 388-450-0190.

AMENDATORY SECTION (Amending WSR 06-21-012, filed 10/6/06, effective 11/6/06)

WAC 388-450-0190 How does the department figure my shelter cost income deduction for Basic Food? The department calculates your shelter cost income deduction as follows:

(1) First, we add up the amounts your assistance unit (AU) must pay each month for shelter. We do not count any overdue amounts, late fees, penalties or mortgage payments you make ahead of time as an allowable cost. We count the following expenses as an allowable shelter cost in the month the expense is due:

- (a) Monthly rent, lease, and mortgage payments;
- (b) Property taxes;
- (c) Homeowner's association or condo fees;
- (d) Homeowner's insurance for the building only;
- (e) Utility allowance your AU is eligible for under WAC 388-450-0195;
- (f) Out-of-pocket repairs for the home if it was substantially damaged or destroyed due to a natural disaster such as a fire or flood;
- (g) Expense of a temporarily unoccupied home because of employment, training away from the home, illness, or abandonment caused by a natural disaster or casualty loss if your:

- (i) AU intends to return to the home;
- (ii) AU has current occupants who are not claiming the shelter costs for Basic Food purposes; and
- (iii) AU's home is not being leased or rented during your AU's absence.

(2) Second, we subtract all deductions your AU is eligible for under WAC 388-450-0185 (1) through (5) from your AU's gross income. The result is your AU's net income.

(3) Finally, we subtract one-half of your AU's net income from your AU's total shelter costs. The result is your excess shelter costs. Your AU's shelter cost deduction is the excess shelter costs:

(a) Up to a maximum of four hundred (~~seventeen~~) thirty-one dollars if no one in your AU is elderly or disabled; or

(b) The entire amount if an eligible person in your AU is elderly or disabled, even if the amount is over four hundred (~~seventeen~~) thirty-one dollars.

AMENDATORY SECTION (Amending WSR 06-21-012, filed 10/6/06, effective 11/6/06)

WAC 388-478-0060 What are the income limits and maximum benefit amounts for Basic Food? If your assistance unit (AU) meets all other eligibility requirements for Basic Food, your AU must have income at or below the limits in column B and C to get Basic Food, unless you meet one of the exceptions listed below. The maximum monthly food assistance benefit your AU could receive is listed in column D.

EFFECTIVE (~~(10-1-2006)~~) 10-1-2007

Column A Number of Eligible AU Members	Column B Maximum Gross Monthly Income	Column C Maximum Net Monthly Income	Column D Maximum Allotment	Column E 165% of Poverty Level
1	\$ (1062) <u>1,107</u>	\$ (817) <u>851</u>	\$ (155) <u>162</u>	\$ (1348) <u>1,404</u>
2	(1430) <u>1,484</u>	(1100) <u>1,141</u>	(284) <u>298</u>	(1815) <u>1,883</u>

EFFECTIVE ~~((10-1-2006))~~ 10-1-2007

Column A Number of Eligible AU Members	Column B Maximum Gross Monthly Income	Column C Maximum Net Monthly Income	Column D Maximum Allotment	Column E 165% of Poverty Level
3	((1799)) <u>1,861</u>	((1384)) <u>1,431</u>	((408)) <u>426</u>	((2283)) <u>2,361</u>
4	((2167)) <u>2,238</u>	((1667)) <u>1,721</u>	((518)) <u>542</u>	((2750)) <u>2,840</u>
5	((2535)) <u>2,615</u>	((1950)) <u>2,011</u>	((615)) <u>643</u>	((3218)) <u>3,318</u>
6	((2904)) <u>2,992</u>	((2234)) <u>2,301</u>	((738)) <u>772</u>	((3685)) <u>3,797</u>
7	((3272)) <u>3,369</u>	((2517)) <u>2,591</u>	((816)) <u>853</u>	((4153)) <u>4,275</u>
8	((3640)) <u>3,746</u>	((2800)) <u>2,881</u>	((932)) <u>975</u>	((4620)) <u>4,754</u>
9	((4009)) <u>4,123</u>	((3084)) <u>3,171</u>	((1049)) <u>1,097</u>	((5088)) <u>5,233</u>
10	((4378)) <u>4,500</u>	((3368)) <u>3,461</u>	((1166)) <u>1,219</u>	((5556)) <u>5,712</u>
Each Additional Member	((+369)) <u>+377</u>	((+284)) <u>+290</u>	((+117)) <u>+122</u>	((+468)) <u>+479</u>

Exceptions:

(1) If your AU is categorically eligible as under WAC 388-414-0001, your AU does not have to meet the gross or net income standards in columns B and C. We do budget your AU's income to decide the amount of Basic Food your AU will receive.

(2) If your AU includes a member who is sixty years of age or older or has a disability, your income must be at or below the limit in column C only.

(3) If you are sixty years of age or older and cannot buy and cook your own meals because of a permanent disability, we will use column E to decide if you can be a separate AU.

(4) If your AU has zero income, your benefits are the maximum allotment in column D, based on the number of eligible members in your AU.

Citation of Existing Rules Affected by this Order: Amending WAC 388-450-0195 and 388-492-0070.

Statutory Authority for Adoption: RCW 74.04.050, 74.04.055, 74.04.057, 74.04.510.

Other Authority: 7 C.F.R. § 273.9 Income and deductions.

Adopted under notice filed as WSR 07-18-066 on September 4, 2007.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 2, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 2, Repealed 0.

Date Adopted: October 26, 2007.

Stephanie E. Schiller
Rules Coordinator

WSR 07-22-036

PERMANENT RULES

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

(Economic Services Administration)

[Filed October 30, 2007, 1:55 p.m., effective November 30, 2007]

Effective Date of Rule: Thirty-one days after filing.

Purpose: To permanently adopt rule amendments in chapters 388-450 and 388-492 WAC to update income deduction standards for the Washington Basic Food program and Washington combined application program (WASH-CAP). These changes were implemented via emergency adoption effective October 1, 2007, to comply with federal requirements for the food stamp program.

AMENDATORY SECTION (Amending WSR 06-21-011, filed 10/6/06, effective 11/6/06)

WAC 388-450-0195 Utility allowances for Basic Food programs. (1) For Basic Food, "utilities" include the following:

- (a) Heating or cooling fuel;
- (b) Electricity or gas;
- (c) Water or sewer;
- (d) Well or septic tank installation/maintenance;
- (e) Garbage/trash collection; and
- (f) Telephone service.

(2) The department uses the amounts below if you have utility costs separate from your rent or mortgage payment. We add your utility allowance to your rent or mortgage payment to determine your total shelter costs. We use total shelter costs to determine your Basic Food benefits.

(a) If you have heating or cooling costs, you get a standard utility allowance (SUA) that depends on your assistance unit's size.

Assistance Unit (AU) Size	Utility Allowance
1	\$((298)) <u>328</u>
2	\$((307)) <u>338</u>
3	\$((316)) <u>348</u>
4	\$((325)) <u>358</u>
5	\$((334)) <u>368</u>
6 or more	\$((343)) <u>378</u>

(b) If your AU does not qualify for the SUA and you have any two utility costs listed above, you get a limited utility allowance (LUA) of two hundred ((~~thirty-eight~~)) fifty-nine dollars.

(c) If your AU has only telephone costs and no other utility costs, you get a telephone utility allowance (TUA) of ((~~thirty-eight~~)) forty dollars.

AMENDATORY SECTION (Amending WSR 06-21-011, filed 10/6/06, effective 11/6/06)

WAC 388-492-0070 How are my WASHCAP food benefits calculated? We calculate your food benefits as follows:

- (1) We begin with your gross income.
- (2) We subtract one hundred thirty-four dollars from your gross income to get your countable income.
- (3) We figure your shelter cost based on information we receive from Social Security Administration (SSA), unless you report a change as described under WAC 388-492-0080. If you pay:
 - (a) ((~~Three hundred forty-two~~)) Two hundred seventy-five dollars or more a month for shelter, we use three hundred ((~~fifty-four~~)) sixty-six dollars as your shelter cost; or
 - (b) Less than ((~~three hundred forty-two~~)) two hundred seventy-five dollars for shelter, we use one hundred ((~~seventy-one~~)) seventy-six dollars as your shelter cost; and
 - (c) We add the current ((~~limited~~)) standard utility allowance under WAC 388-450-0195 to determine your total shelter cost.
- (4) We figure your shelter deduction by subtracting one half of your countable income from your shelter cost.
- (5) We figure your net income by subtracting your shelter deduction from your countable income and rounding the resulting figure up from fifty cents and down from forty-nine cents to the nearest whole dollar.

(6) We figure your WASHCAP food benefits (allotment) by:

- (a) Multiplying your net income by thirty percent and rounding up to the next whole dollar; and
- (b) Subtracting the result from the maximum allotment under WAC 388-478-0060.
- (c) If you are eligible for WASHCAP, you will get at least ten dollars in food benefits each month.

WSR 07-22-051
PERMANENT RULES
COLUMBIA RIVER
GORGE COMMISSION

[Filed November 1, 2007, 9:02 a.m., effective January 1, 2008]

Effective Date of Rule: January 1, 2008.

Other Findings Required by Other Provisions of Law as Precondition to Adoption or Effectiveness of Rule: The United States Secretary of Agriculture must concur by December 24, 2007, that the rules concerning special management areas are consistent with the management plan for the national scenic area.

Purpose: The purpose of this rule making is to put into effect recent amendments to the management plan for the Columbia River Gorge National Scenic Area. This rule making incorporates the recent amendments into the commission's land use ordinance for scenic area land within Klickitat County. The commission did not adopt any substantive changes to the provisions already adopted into the management plan.

Citation of Existing Rules Affected by this Order: Amending 350-81-0020, 350-81-0032, 350-81-0042, 350-81-0050, 350-81-0052, 350-81-0060, 350-81-0074, 350-81-0082, 350-81-0108, 350-81-0112, 350-81-0126, 350-81-0190, 350-81-0200, 350-81-0232, 350-81-0270, 350-81-0280, 350-81-0340, 350-81-0370, 350-81-0380, 350-81-0420, 350-81-0490, 350-81-0520, 350-81-0530, 350-81-0540, 350-81-0550, 350-81-0560, 388-81-0580, 388-81-0590, 350-81-0600, and 350-81-0630.

Statutory Authority for Adoption: RCW 43.97.015.

Other Authority: O.R.S. 196.150; 16 U.S.C. 544e(c), 544f(1).

Adopted under notice filed as WSR 07-14-101 on July 18 [2], 2007.

Number of Sections Adopted in Order to Comply with Federal Statute: New 1, Amended 28, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 1, Amended 28, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Mak-

ing: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: September 11, 2007.

Nancy A. Andring
Rules Coordinator

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 07-24 issue of the Register.

WSR 07-22-055

PERMANENT RULES

EMPLOYMENT SECURITY DEPARTMENT

[Filed November 1, 2007, 11:21 a.m., effective December 2, 2007]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This filing is part of the department's ongoing efforts to review and revise its rules when necessary as required by Executive Order 97-02. The rules are rewritten in clear language to improve their understandability and accessibility. Rules are also updated to correct statutory references, to reflect current procedures, and to eliminate references to statutes or programs that have been repealed.

Citation of Existing Rules Affected by this Order: Repealing WAC 192-110-210, 192-150-065, 192-240-0101 and 192-240-035; and amending WAC 192-110-005, 192-110-010, 192-110-020, 192-110-050, 192-130-080, 192-140-100, 192-150-110, 192-150-150, 192-150-200, 192-150-215, 192-150-220, 192-180-005, 192-180-010, 192-180-015, 192-180-025, 192-210-005, 192-240-020, 192-240-025, 192-240-030, 192-240-040, 192-310-020, 192-310-055, 192-310-060, and 192-310-070.

Statutory Authority for Adoption: RCW 50.12.010 and 50.12.040.

Adopted under notice filed as WSR 07-14-157 on July 5, 2007.

Changes Other than Editing from Proposed to Adopted Version: The proposed amendment of WAC 192-310-010 is withdrawn.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 24, Repealed 4.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 24, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: September 20, 2007.

Karen T. Lee
Commissioner

Reviser's note: The material contained in this filing exceeded the page-count limitations of WAC 1-21-040 for appearance in this issue of the Register. It will appear in the 07-23 issue of the Register.

WSR 07-22-087

PERMANENT RULES

DEPARTMENT OF

FISH AND WILDLIFE

[Order 07-272—Filed November 5, 2007, 2:50 p.m., effective December 6, 2007]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Amend personal use rules.

Citation of Existing Rules Affected by this Order: Repealing WAC 220-55-010.

Statutory Authority for Adoption: RCW 77.12.047.

Adopted under notice filed as WSR 07-18-082 on September 4, 2007.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 1.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 2, 2007.

Susan Yeager
for Jerry Gutzwiler, Chair
Fish and Wildlife Commission

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-55-010	Recreational shellfish and seaweed license.
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WSR 07-22-090

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed November 6, 2007, 8:56 a.m., effective December 7, 2007]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Rule making is required to update the rule with current owner retained destroyed vehicle practices. Washington state patrol no longer inspects wrecked vehicles if they are owner retained.

Citation of Existing Rules Affected by this Order:
Amending WAC 308-56A-140.

Statutory Authority for Adoption: RCW 46.01.110.

Adopted under notice filed as WSR 07-18-015 on
August 24, 2007.

Number of Sections Adopted in Order to Comply with
Federal Statute: New 0, Amended 0, Repealed 0; Federal
Rules or Standards: New 0, Amended 0, Repealed 0; or
Recently Enacted State Statutes: New 0, Amended 0,
Repealed 0.

Number of Sections Adopted at Request of a Nongov-
ernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Ini-
tiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify,
Streamline, or Reform Agency Procedures: New 0,
Amended 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule
Making: New 0, Amended 0, Repealed 0; Pilot Rule Mak-
ing: New 0, Amended 0, Repealed 0; or Other Alternative
Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: November 6, 2007.

Julie Knittle
Assistant Director
Vehicle Services

AMENDATORY SECTION (Amending WSR 04-08-080,
filed 4/6/04, effective 5/7/04)

WAC 308-56A-140 Department temporary permit.

(1) **What is a department temporary permit?** A depart-
ment temporary permit consists of a system-generated permit
and a cardboard temporary "plate" which may be issued in
lieu of a registration certificate and license plates when:

(a) The vehicle is not currently licensed in Washington;
and

For the purposes of this section, a vehicle may be consid-
ered unlicensed if the current license expires within sixty
days of application for the department temporary permit, or
the vehicle's license plates are missing or unreadable; and

(b) Appropriate vehicle documentation to title and
license the vehicle is not immediately available but is likely
to be available within sixty days; and

(c) The vehicle was purchased from someone other than
a licensed Washington dealer(;) or

~~((d) The vehicle:~~

~~(i) Has been declared a salvage vehicle under RCW
46-12-070; and~~

~~(ii) Has been retained by the registered owner(s) shown
on department of licensing records; and~~

~~(iii)) is scheduled for inspection by the Washington
state patrol.~~

~~((Note: Except as provided in (d) of this subsection, a
department temporary permit will not be issued to any vehi-
cle when the evidence of ownership is a salvage certifi-
cate/title, insurance company bill of sale, or wrecker bill of
sale from any jurisdiction, or when the evidence of ownership
indicates the vehicle may be a salvage vehicle not reported to
the department.))~~

(2) **How long is a department temporary permit
valid?** The department temporary permit is valid for no
longer than sixty days from the date of application.

(3) **Where do I apply for and obtain a department
temporary permit?** You may apply for a department tem-
porary permit at any Washington vehicle licensing office.

(4) **What fees are due when applying for a depart-
ment temporary permit?** All applicable taxes, title, license
fees and inspection fees are due when the department tempo-
rary permit is issued. Any fees for license plates are due when
the department temporary permit is cleared.

(5) **How do I display the cardboard temporary plate?**
You must display the cardboard temporary plate where it is
visible from outside of the vehicle or towed vehicle (such as
on the inside left side of the rear window), or you may weath-
erproof the plate and place it in the license plate holder. Carry
the cardboard temporary plate in the vehicle or the towing
vehicle.

(6) **If my vehicle is eligible for monthly gross weight,
how many months of gross weight must I purchase with a
department temporary permit ((if my vehicle is eligible
for monthly gross weight))?** If your vehicle is eligible for
monthly gross weight, you must purchase a minimum of two
months' gross weight license to correspond with the duration
of the department temporary permit. You may receive credit
as described in WAC 308-96A-220(7) for gross weight
license already purchased.

(7) **How do I clear the department temporary permit
and obtain a registration certificate and license plates for
my vehicle ((that has been issued a department tempo-
rary permit))?** You may obtain a registration certificate and
license plates for your vehicle at any vehicle licensing office
by submitting:

- (a) An application for certificate of ownership; and
- (b) An odometer disclosure statement, if applicable; and
- (c) License plate fees; and
- (d) Other applicable documentation, fees, and taxes.

(8) **What fees are due when clearing a department
temporary permit?** In addition to other fees as prescribed
by law, the title application fee and license plate fees are due
when the department temporary permit is cleared.

(9) **How do I obtain a replacement department tem-
porary permit?** You may obtain a photocopy of the depart-
ment temporary permit by contacting any vehicle licensing
office who will acquire the photocopy from the department.
You must provide the vehicle identification number or the
department temporary permit number. The replacement
department temporary permit will retain the same expiration
date as the original.

(10) **How do I obtain a replacement cardboard tem-
porary "plate"?** You may obtain a replacement cardboard
temporary "plate" at any Washington vehicle license office
where it was purchased. You must provide the vehicle identi-
fication number or the department temporary permit number.

(11) **May a department temporary permit be
extended?** Yes, a department temporary permit may be
extended on a case-by-case basis upon departmental
approval.

~~((a) An extension of a department temporary permit issued for a total loss vehicle described in subsection (1)(d) of this section will not be approved.~~

~~(b))~~ An extension of a department temporary permit cannot be granted for vehicles described in subsection (6) of this section when no more than two months' gross weight ~~((were))~~ was purchased. Additional gross weight cannot be issued until the department temporary permit is cleared.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.
Date Adopted: November 6, 2007.

Julie Knittle
Assistant Director
Vehicle Services

WSR 07-22-091

PERMANENT RULES

DEPARTMENT OF LICENSING

[Filed November 6, 2007, 8:58 a.m., effective December 7, 2007]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Rule making is required to streamline and make the rule more understandable.

Citation of Existing Rules Affected by this Order: Amending WAC 308-96A-099.

Statutory Authority for Adoption: RCW 46.01.110.

Adopted under notice filed as WSR 07-17-041 on August 9, 2007.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

AMENDATORY SECTION (Amending WSR 01-12-099, filed 6/6/01, effective 7/7/01)

WAC 308-96A-099 Use class descriptions. (1) Why does the department assign use classes to vehicles?

The department assigns use classes to:

- (a) ~~((Assess))~~ Charge the proper license fees and taxes for vehicles;
- (b) Assign special brands on subsequent owner's certificate of ownership;
- (c) Apply certain restrictions on the use of the vehicles, which prints on the vehicle registrations;
- (d) Assign the proper license plates.

(2) Under what authority does the department assign use classes to vehicles?

The department assigns use classes under the authority of RCW 46.16.040.

(3) What use classes does the department assign and when do they apply?

The use classes the department assigns are described below:

ABBREVIATION	TRANSLATION	DESCRIPTION
CAB	TAXI CAB	<u>Motor vehicle</u> ((is)) used for carrying passengers between two points for compensation for an on-demand trip rather than a scheduled route. A vehicle with this use class may not carry any luggage or commodities that do not belong to a passenger being carried at the same time. In other words, the vehicle cannot just carry cargo between two points.
C/G	CONVERTER GEAR	Vehicle is an axle that is used to convert a semi-trailer to a full trailer. ((A)) <u>Converter gear</u> ((may be)) <u>is</u> titled but ((may)) not ((be)) licensed.
CMB	COMBINATION	Vehicle is either (1) a power unit with a declared gross weight of 42,000 pounds or more and ((towing)) <u>tows</u> a trailer; or (2) a trailing unit with permanent plates. The trailer may be towed only by a power unit with a CMB ((use class)), or FCB ((depending on what is being hauled)) <u>use class</u> .
CMP	CAMPER	((Vehicle)) <u>Is</u> a slide-in pickup camper (not a canopy) as defined in RCW 46.04.085. Even if the owner has chosen to permanently attach the camper to the pickup, the units need to be titled and licensed separately.

ABBREVIATION	TRANSLATION	DESCRIPTION
COM	COMMERCIAL	<u>Motor vehicle</u> ((is)) either (1) a power unit that does not pull a trailer or that pulls a trailer but the <u>declared</u> gross weight for the truck and trailer does not exceed 40,000 pounds; or (2) a trailing unit that is titled in a business name (including the name of a farm). A commercial trailer may be towed by a vehicle with PAS, TRK, COM, CMB, FAR or FCB use classes. If the trailer is being towed by a vehicle with FAR or FCB use class, the use of the trailer (items carried, etc.,) must meet the farm use class requirements.
CYC	MOTORCYCLE	((Vehicle)) <u>Is</u> a motorcycle, motor driven cycle or scooter. A moped does not qualify to be licensed as a motorcycle as defined in RCW 46.04.330 and 46.04.332.
EX	EXEMPT	((Vehicle)) <u>Can</u> be any type of vehicle, which is owned by a city, county or state government agency or federally recognized Indian tribe located in the state of Washington. This includes school buses, which are owned or leased by school districts. If the school district contracts a company to provide total bus service, such as the bus, the driver and the maintenance, and the vehicle is registered in the name of the school district as registered owner, the vehicle qualifies for exempt license plates.
FAR	FARM	<u>Motor vehicle</u> is a truck (or tractor) used to transport the farmer's own farm, orchard or dairy products as defined in RCW 46.16.090, or aquatic products as defined in RCW 15.85.020, from point of production to market or warehouse. The vehicle may also be used to transport the farmer's own farm supplies.
FCB	FARM COMBINATION	<u>Motor vehicle</u> is (1) a power unit (not a trailer) with a declared gross weight of 42,000 pounds or more and towing a trailer; and (2) meets the criteria of FAR use class above.
FED	FEDERAL	Vehicle is owned by the federal government of the United States. Like exempt vehicles, this could be any type of vehicle. This does not include vehicles displaying license plates issued by the federal government.
FEX	FARM EXEMPT	<u>Any motor vehicle</u> ((is)) used exclusively in agricultural pursuits on farms as defined in RCW 46.16.010(3) and 46.04.181. ((The vehicle is usually a truck, but it could also be a bus, a motorcycle or off road cycle.))
FIX	FIXED LOAD	<u>Motor vehicle</u> as defined in RCW 46.16.070(1). These vehicles have a unique use class because they are exempt from the law ((, which requires)) <u>requiring</u> vehicles with a scale weight of more than six thousand pounds to have a declared gross weight of at least 150 percent of the scale weight. The basic license fee is based on the declared gross weight ((, or the next two thousand pound increment above the scale weight, or the next two thousand pound increment above the legal maximum gross weight as determined by the Washington state patrol or department of transportation)) <u>for these vehicles and should be equal to the scale weight, or the next higher gross weight increment. If the scale weight exceeds the maximum legal limit for that vehicle, the declared gross weight needs to be equal to or just lower than the legal limit.</u> Fixed load vehicles' ((are the only ones whose gross weight)) <u>maximum legal limit</u> may actually be less than their scale weight ((, depending on their legal maximum gross weight)) . An oversize permit is required in addition to the registration in these cases.
F/H	FOR HIRE	<u>Motor vehicle</u> is used to transport people and/or commodities for compensation as defined in RCW 46.72.010. A for hire permit from business and professions division (BPD) is required.

ABBREVIATION	TRANSLATION	DESCRIPTION
H/C	HORSELESS CARRIAGE	Motor vehicle ((is a motorized vehicle over)) 40 years old or older with limited used as defined in RCW 46.16.307. ((The vehicle may not be used for normal transportation to and from work, to go to the store and pick up groceries, and so on.))
H/D	HOUSE DOLLY	Vehicle constructed and used exclusively to move buildings or homes.
LOG	LOGGING	Vehicle is a truck or trailer used exclusively for hauling logs.
MH	MOTOR HOME	Motorized vehicle designed for human habitation and defined in RCW 46.04.305
MOB	MOBILE HOME	Vehicle is a manufactured home as defined in RCW 46.04.302. Mobile homes are titled but generally not registered because of their size. Manufactured homes are taxed by the county, either as personal property or real property. <u>Mobile home use class does not include park model trailers.</u>
ORV	OFF-ROAD VEHICLE	Vehicle is used off-road. A vehicle licensed only as an ORV may not be operated on public roadways ((or)), <u>including</u> ocean beaches.
PAS	PASSENGER	Motor vehicle ((is)) used to transport passengers as defined in RCW 46.04.382. Typically passenger cars, utility or multipurpose vehicles, passenger vans, and private ((busses)) <u>buses</u> are licensed as passenger vehicles.
PED	MOPED	<u>Motor vehicle</u> as defined in RCW 46.04.304 and subject to the restrictions in RCW 46.61.710.
((PER	PERSONAL	Vehicle is a personal use trailer as defined in RCW 46.16.065. Trailers owned by businesses or used for commercial purposes do not qualify for this use class.))
RES	RESTORED	Motor vehicles ((is a motorized collector vehicle)) over 30 years old with limited use as defined in RCW 46.16.307. ((The vehicle may display either a collector vehicle license plate provided by the department or a license plate, which must have been first issued, for use the year the vehicle was manufactured. The vehicle must be currently registered in order to be assigned this use class and receive a special collector license plate or authority to use a restored license plate.)) <u>Vehicles with this use class may display license plates described in WAC 308-96A-074.</u>
SCH	SCHOOL	<u>Motor vehicle ((is))</u> owned and operated by a private school meeting the accreditation requirements of RCW 28A.195.010. The vehicle is used to transport children to and from school or in connection with school activities.
SNO	SNOWMOBILE	Vehicle is a snowmobile as defined in RCW 46.10.020(2).
SNX	EXEMPT SNOWMOBILE	Vehicle is a snowmobile as defined in RCW 46.10.010(2) and owned by a city, county or state agency.
STA	STAGE	<u>Motor vehicle ((is))</u> used as an auto stage as defined in RCW 46.04.050.
TLR	TRAILER	Vehicle is a personal use trailer as defined in RCW 46.04.620 ((but does not meet the size criteria for a PER use class)) . Trailers used by businesses or others for commercial purposes do not qualify for this use class.
TOW	TOW	Motor vehicle ((is a tow truck)) as defined in RCW 46.16.079 and 46.55.010(8). If the vehicle carries other vehicles, it does not qualify for the TOW use class and must be licensed as COM.
TRK	TRUCK	<u>Motor vehicle</u> is a personal use ((, light duty)) truck, with a declared gross weight of twelve thousand pounds or less. Trucks used for business or commercial purposes do not qualify for the TRK use class.

ABBREVIATION	TRANSLATION	DESCRIPTION
TVL	TRAVEL TRAILER	Vehicle is a travel trailer as defined in RCW 46.04.623, which includes park models ((of four hundred square feet or less)) and camp/tent trailers. ((It is designed and manufactured for temporary habitation.))

(4) ~~((What use classes may the department assign to specific types of vehicles? Use classes are assigned as listed below:~~

VEHICLE TYPE	USE CLASS	SPECIAL REQUIREMENTS
PASSENGER CARS	CAB, COM, EX, FED, F/H, H/C, PAS, RES, ORV, FEX, STA	COM-Scale weight seating capacity required for F/H and STA-Scale weight, if more than six seats
LIGHT DUTY TRUCKS (INCLUDING SMALL VANS)	COM, EX, FAR, FED, FEX, H/C, RES, STA, TOW, TRK, FIX, F/H, ORV	F/H and STA-Number of seats All use classes-Scale weight
MEDIUM/HEAVY DUTY TRUCKS (INCLUDING BUSES)	CMB, COM, EX, FAR, FCB, FEX, FIX, LOG, SCH, TOW, TRK, FED, H/C, RES, F/H	F/H and STA-Number of seats All use classes-Scale weight
TRAILERS	C/G, CMB, COM, EX, FEX, LOG, PER, TLR, FED	PER-Number of wheels All use classes-Scale weight
CYCLES		
MOTORCYCLES	CYC, EX, FED, FEX, H/C, ORV, RES	
MOPEDS	EX, FED, FEX, ORV, PED	
SNOWMOBILES	SNO, SNX	
UTILITY/MULTIPURPOSE VEHICLES	CAB, COM, EX, FED, F/H, PAS, STA, TRK, FAR, FEX, H/C, ORV, RES, SCH	COM, F/H, STA, TRK, FAR and FEX-Scale weight F/H and STA-Number of seats
RECREATION VEHICLES		
TRAVEL TRAILERS (INCLUDING CAMP AND TENT TRAILERS)	EX, FED, TVL	
CAMPERS	CMP, EX, FED	
MOTOR HOMES	EX, FED, MH	
NOTE: Gross weight and seat requirements per RCW 46.16.040.		

~~(5)) Do all powered three-wheeled vehicles need to be licensed as motorcycles?~~

No. If the vehicle qualifies as a motorcycle as defined in RCW 46.04.330 or 46.04.332, it will be licensed as a motorcycle for street use. However, if the vehicle has a bench seat and a steering wheel as defined in RCW 46.04.330 or 46.04.332, it will be licensed as a passenger vehicle or truck.

~~((6)) (5) What license plates and use class will be assigned to my for hire vehicle?~~

The license plates and use class assigned to your for hire vehicle depends upon how you use your vehicle. All for hire vehicles transport passengers and commodities for compensation. For hire vehicles include cabulances, limousines, taxi cabs, and ~~((busses)) buses~~ hauling passengers for compensation in addition to transporting school children. There are two use classes and license plate combinations assigned to for hire vehicles:

(a) CAB use class vehicles are assigned passenger license plates. These vehicles are used exclusively for transporting passengers and their possessions; and

(b) F/H use class vehicles are assigned truck license plates. These vehicles not only transport passengers for compensation, but also transport commodities, without passengers, for compensation.

~~((7)) (6) When may truck license plates be assigned to my passenger vehicle?~~

Truck license plates may be assigned to your passenger vehicle whenever the vehicle is used to transport commodities, produce, freight or animals for commercial purposes. The use class would be COM instead of PAS. This would require a title application, a scale weight slip and a certified/notarized statement of use describing how the vehicle will be used commercially.

~~((8) When may passenger license plates be assigned to my pick-up truck?~~

~~Passenger license plates may only be assigned to your pick-up truck if it has been modified to qualify as a passenger vehicle. The department requires confirmation from the Washington state patrol that the vehicle has been modified to qualify for passenger use.~~

~~(9)) (7) What use classes and license plates will be assigned to school buses?~~

(a) EX use class and county exempt license plates will be assigned to a school bus owned or leased by an exempt agency (school district);

(b) SCH use class and passenger license plates will be assigned to a school bus owned or leased by an accredited private school; ~~((8))~~

(c) F/H use class and truck license plates will be assigned to school buses used for transporting passengers for compensation and not used exclusively for transporting school children to and from school or school related activities;

~~(d) (PAS) passenger; or~~

~~(e) (COM) commercial.~~

~~((10))~~ **(8) May I license my motorcycle or any other motor vehicle for both road and off road use?**

Yes, you may license your motorcycle or any other motor vehicle for both uses as long as the vehicle qualifies for road use. You will receive two registration certificates showing the vehicle is licensed for both uses. However, the certificate of ownership will show the use class associated with the road use.

~~((11))~~ **May I license my amphibious vehicle as a vehicle and a vessel?**

~~Yes, you may license your amphibious vehicle for both uses as long as it qualifies for both uses. You will receive two registration certificates showing the vehicle is licensed for both uses. However, the certificate of ownership will show the use class associated with the road use.~~

~~(12))~~ **(9) May I license my truck, truck tractor or tractor as a motor home?**

Yes, you may license your truck, truck tractor or tractor as a motor home if:

(a) The vehicle meets the definition of a motor home in RCW 46.04.305; and

~~(b) ((You provide a Washington state patrol inspection confirming your vehicle may be licensed as a motor home; and~~

~~(c))~~ You certify the vehicle qualifies as M/H and will be used exclusively as a motor home for personal use and ~~((is))~~ not ~~((used))~~ for commercial use.

~~((13))~~ **(10) Is my truck, truck tractor or tractor which I use exclusively for towing my travel trailer licensed differently than any other like truck?**

No. Your truck, truck tractor or tractor used exclusively for towing your travel trailer must be licensed in accordance with RCW 46.16.070. Depending on scale weight the use class will be TRK or COM.

WSR 07-22-096

PERMANENT RULES

DEPARTMENT OF

LABOR AND INDUSTRIES

(Apprenticeship and Training Council)

[Filed November 6, 2007, 10:37 a.m., effective January 1, 2008]

Effective Date of Rule: January 1, 2008.

Purpose: The purpose of this rule making is to amend rules regarding the demonstration of need for programs seeking geographical expansion, in WAC 296-05-316. Amendments need to be made in order for the rules to be consistent throughout the section as well as with the federal government's apprenticeship rules and regulations.

Citation of Existing Rules Affected by this Order: Amending WAC 296-05-316.

Statutory Authority for Adoption: Chapter 49.04 RCW.

Adopted under notice filed as WSR 07-16-114 on July 31, 2007.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 1, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: November 6, 2007.

Pete Crow, Chair
Apprenticeship and
Training Council

AMENDATORY SECTION (Amending WSR 05-10-087, filed 5/4/05, effective 6/15/05)

WAC 296-05-316 Apprenticeship agreements—Standards requirements. The WSATC shall have the authority to develop, administer, and enforce program standards for the operation and success of an apprenticeship and training program.

The sponsor's proposed program standards must include a list of duties and responsibilities of the program sponsor reasonably consistent with other approved program standards.

All apprenticeship agreements must comply with the approved program standards, chapter 49.04 RCW, and these rules. The standards of apprenticeship agreements must include the following:

(1) A statement of the trade or craft to be taught and the required hours for completion of apprenticeship which must not be less than two thousand hours of reasonably continuous employment.

(2) A statement identifying the program sponsor, establishing the apprenticeship committee and enumerating the sponsor's and committee's duties and responsibilities. This statement must include provisions to:

(a) Elect a chair and a secretary from employer and employee representatives of the committee.

EXCEPTION: This provision is not necessary for a plant program.

(b) Convene at least three annual regular meetings of the program sponsor and apprenticeship committee. The meetings shall be at least three times per year, be attended by a quorum of committee members (as defined in the approved program standards), be documented with minutes which must be periodically submitted to the department and made available to the WSATC upon request. Conference call meetings may be conducted in lieu of regular meetings but must not

exceed the number of attended meetings and no disciplinary action shall be taken at conference call meetings.

(c) ~~(Determine the program sponsor's need for apprentices in the area covered by the apprenticeship standards established under these rules.~~

~~The following are some examples of ways the program sponsor can demonstrate that the need for apprentices exists:~~

- ~~• Statistical analysis of workload projections;~~
- ~~• Demographics;~~
- ~~• Information relating to expected workload growth.)~~

Explain the program sponsor's request for apprentices in the area covered by the apprenticeship standards established under these rules and a plan to include reasonable continuous employment.

(d) Establish minimum standards of education and skilled occupational experience required of apprentices.

(e) Rotate apprentices in the various processes of the skilled occupation to assure a well-rounded, competent worker.

(f) Determine the adequacy of an employer to furnish proper on-the-job training in accordance with the provisions of the approved standards.

EXCEPTION: This does not apply to plant programs.

(g) Recommend competent instructors and related/supplemental instruction in accordance with local vocational requirements.

(h) Recommend a course outline for related/supplemental instruction, as well as coordinate related/supplemental instruction with on-the-job work experience.

(i) Hear and adjust all complaints of violations of apprenticeship agreements.

(j) Adopt, as necessary, program rules to administer the apprenticeship program in compliance with its standards, chapter 49.04 RCW, and these rules.

(k) Periodically review and evaluate apprentices before advancement to the apprentice's next wage progression period.

(l) Maintain apprenticeship records and records of the administrative program as may be required by the WSATC, chapter 49.04 RCW, and these rules. (See WAC 296-05-318.)

(3) The following Equal Employment Opportunity Pledge:

"The recruitment, selection, employment and training of apprentices during their apprenticeship shall be without discrimination because of race, sex, color, religion, national origin, age, disability or as otherwise specified by law. The sponsor shall take positive action to provide equal opportunity in apprenticeship and will operate the apprenticeship program as required by the rules of the Washington State Apprenticeship and Training Council and Title 29, Part 30 of the Code of Federal Regulations."

(4) When applicable, an affirmative action plan and selection procedures.

(5) A numeric ratio of apprentices to journey-level workers may not exceed one apprentice per journey-level worker. It must be consistent with proper supervision, training, safety, continuity of employment, and applicable provisions in collective bargaining agreement, if any. The ratio must be

described in the program standards and shall be specific and clear as to application in terms of job site, work group, department, or plant. An exception to this requirement may be granted by the WSATC.

(6) A statement of the related/supplemental instruction including content, format, hours of study per year (which shall be a minimum of one hundred forty-four hours per year).

(7) An attendance policy which includes a provision that if the apprentice fails to fulfill the related/supplemental instruction obligations, the sponsor may withhold the apprentice's periodic wage advancement, suspend or cancel the apprenticeship agreement. A provision that time spent in related/supplemental instruction classes shall not be considered as hours of work and the apprentice is not paid for the classroom time. A provision that the hours of actual attendance by the apprentice in related supplemental instruction classes must be reported to the department on a quarterly basis for industrial insurance purposes.

(8) A provision to ensure that the sponsor provides for instruction of the apprentice during the apprentice's related/supplemental instruction in safe and healthful work practices in compliance with the Washington Industrial Safety and Health Act, and applicable federal and state regulations.

(9) A provision for a formal agreement between the apprentice and the sponsor and for registering that agreement with the department.

(10) A provision for the timely notice to the department of all requests for disposition or modification of apprenticeship agreements including:

- Certificate of completion;
- Additional credit;
- Suspension;
- Military service;
- Reinstatement;
- Cancellation; and
- Corrections.

(11) A provision for advancing an apprentice's standing based on previous experience in the skilled trade or in some other related capacity.

(12) A provision for the transfer of an apprentice from one training agent to another training agent or the sponsor in order to provide as much as possible, continuous employment and diversity of training experiences for apprentices.

(13) A provision for the amendment of the standards or deregistration of the program. This provision must comply with chapter 49.04 RCW, these rules, and WSATC policies and procedures.

(14) An apprenticeship appeal procedure in compliance with chapters 49.04, 34.05 RCW, and these rules.

(15) A statement of the processes in the trade or craft divisions in which the apprentice is to be taught and the approximate amount of time to be spent at each process.

(16) A statement of the number of hours to be spent by the apprentice in work and the number of hours to be spent in related/supplemental instruction which instruction shall be not less than one hundred forty-four hours per year.

(17) A statement of the minimum qualifications for persons entering the apprenticeship program including the age of the apprentice which may not be less than sixteen years of

age. All exceptions to minimum qualifications, if any, must be clearly stated and applied in a nondiscriminatory manner.

(18) Provision that the services of the supervisor and the WSATC may be utilized for consultation regarding the settlement of differences arising out of the apprenticeship agreement where such differences cannot be adjusted locally or as required by the established trade procedure.

(19) Provision that if an individual training agent is unable to fulfill its obligation under the apprenticeship agreement, it will transfer the obligation to the program sponsor.

(20) Such additional standards as may be prescribed in accordance with the provisions of this chapter.

(21) Disciplinary procedures and criteria for apprentices. The procedures may include a committee-imposed disciplinary probation during which the committee may according to expressed criteria:

- Withhold periodic wage advancements;
- Suspend or cancel the apprenticeship agreement;
- Take further disciplinary action; or
- The disciplinary procedures must include a notice to the apprentice that the apprentice has the right to file an appeal, of the committee's action, to the WSATC.

(22) A provision for an initial probation which the WSATC or the supervisor of apprenticeship may terminate an apprenticeship agreement at the written request by any affected party. The initial probation must not exceed twenty percent of the term of apprenticeship unless an exemption has been granted for longer probationary periods as specified by Civil Service or law. The initial probationary period must be expressed in hours of employment. During the initial probationary period, the apprenticeship agreement may be terminated by the sponsor or the apprentice without a hearing or stated cause. An appeal process is available to apprentices who have completed the initial probationary period.

(23) Provisions prohibiting discrimination on the race, sex, color, religion, national origin, age, disability or as otherwise specified by law during all phases of apprenticeship.

(24) Provisions to ensure adequate records of the selection process are kept for a period of at least five years and are available to the WSATC or its representative on request. ("Adequate records" means at least a brief summary of any interviews and the conclusions reached on each of the specific factors which are part of the total judgment concerning each applicant.)

(25) Provisions to ensure that local committee rules and regulations be consistent with these rules and the applicable apprenticeship agreement.

(26) Provisions to ensure any proposed standards for apprenticeship are reasonably consistent with any standards for apprenticeship already approved by the WSATC for the industry, craft or trade in question ~~((taking into account the WSATC's determination of the apprenticeship needs of the trade and geographic area. (Statistical analysis of workload projections, demographics, and information relating to expected workload growth are examples of ways the sponsor may demonstrate that the need for apprentices exists.)))~~. The goal is to achieve general statewide uniformity of standards in each industry, trade or craft. Proposed standards for a new program shall be considered consistent if they are equal to or exceed the minimum number of hours approved by the

United States Department of Labor for a trade, craft, or occupation. If the United States Department of Labor has not established a minimum number of hours for a trade, craft, or occupation, the WSATC may utilize its discretion to determine the minimum number of hours that must be achieved. In addition, the course content and delivery method must be designed to achieve the same levels of skills as existing standards within the state for that industry, trade, or craft.

(27) A provision to ensure that the progressively increasing wage scales based on specified percentages of journey-level wage, which must be submitted, at least annually, to the WSATC. These may be submitted on a form provided by the department.

A sample apprenticeship agreement and a standard form for program standards are available from the supervisor.

WSR 07-22-097

PERMANENT RULES

DEPARTMENT OF FISH AND WILDLIFE

[Order 07-274—Filed November 6, 2007, 10:43 a.m., effective December 7, 2007]

Effective Date of Rule: Thirty-one days after filing.

Purpose: This rule changes the application period of the department's ALEA grant program from January 2 - March 31 to December 1 - February 28.

Citation of Existing Rules Affected by this Order: Amending WAC 220-130-040 (Amending Order 03-306, filed 12/11/03, effective 1/11/04).

Statutory Authority for Adoption: RCW 77.12.047.

Adopted under notice filed as WSR 07-18-070 on September 4, 2007.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 3, 2007.

Susan Yeager
for Jerry Gutzwiler, Chair
Fish and Wildlife Commission

AMENDATORY SECTION (Amending Order 03-306, filed 12/11/03, effective 1/11/04)

WAC 220-130-040 Review and selection process. (1) The application method is on application forms provided by the department specifically for this purpose. Application forms will be available by request from the Olympia headquarters and at all regional offices of the department.

(2) Applications for projects will be accepted each year during the open application period of ~~((January 2 through March 31))~~ December 1 through February 28.

(a) Applications accepted prior to the start of a biennium may be for project funding for one or both years of the ensuing biennium.

(b) Applications accepted during the first year of a biennium will be for project funding in the second year of a biennium.

(3) The funding decision deadline is May 31 of the year of application.

(4) Exceptions to the funding deadline dates will only be allowed in the event of applications for volunteer projects which are responsive to an emergency situation which may arise and which has been declared to be an emergency by the director.

(5) The department will send each applicant, within forty-five days of receipt of each application, a written acknowledgment of the receipt of the application and give the applicant an estimated date when notification of acceptance or rejection of the proposal can be expected. The written acknowledgment will also provide the department's selection criteria and a general description of the review and selection process. Final decisions and notification of acceptance or rejection of proposals where funding is requested will be made only after the biennial budget is passed by the legislature and signed by the governor.

(6) The department will determine when a proposed project might affect the management programs of federal, other state, and local agencies and of treaty tribes and will make contact with these entities, when the department determines that it is appropriate to do so, during the review and selection process. If the department determines that ongoing coordination between a volunteer group and another agency or tribe would be appropriate, it may be required as a condition of the agreement, when issued.

(7) The department may provide suggested modifications to the proposal which would increase its likelihood of approval together with the name and telephone number of the person within the department responsible for monitoring the review of the proposal.

Purpose: To implement the provisions of ESHB 1249 relating to a once in a lifetime, one-license-year deferral of hunter education classes for people who are accompanied by a nondeferred, Washington-licensed hunter.

Statutory Authority for Adoption: RCW 77.12.047.

Adopted under notice filed as WSR 07-18-093 on September 5, 2007.

Changes Other than Editing from Proposed to Adopted Version: In WAC 232-12-228, subsection (1)(a) is changed to provide:

(1)(a) The applicant for deferral must:

(i) Be at least ten years of age when applying for the deferral; and

(ii) Not have failed the hunter education training course within the previous twelve months, if they took the course.

A subsection (1)(d) is added:

(1)(d) An accompanying hunter must remain close enough to the deferred hunter to have uninterrupted, unaided visual and auditory communication with the deferred hunter.

A (iii) is added to subsection (3)(b) to provide that deferred hunters:

(3)(b)(iii) Are only eligible to participate in general hunting seasons and/or youth opportunities.

Reasons for the above changes:

- Specific proximity requirements based on the age of the deferred hunter were removed. Instead, the same proximity requirement applies to all deferred hunters, no matter their age. This will provide for easier enforcement of the requirement.
- Deferred hunters must not have failed the hunter education training course within the previous twelve months. This will provide better assurance that deferred hunters are knowledgeable and skilled in the safe handling of firearms and are physically able to handle firearms safely.
- Deferred hunters will not be eligible to participate in permit hunts or raffle hunts. This will help to prevent fraud and abuse in the program.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 1, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 2, 2007.

Susan Yeager

for Jerry Gutzwiler, Chair
Fish and Wildlife Commission

WSR 07-22-100
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 07-276—Filed November 6, 2007, 11:54 a.m., effective December 7, 2007]

Effective Date of Rule: Thirty-one days after filing.

NEW SECTION

WAC 232-12-228 Hunter education deferral. (1) Pursuant to RCW 77.32.155, individuals may apply for a director-authorized, once in a lifetime, one-license-year deferral of hunter education training. To qualify, the applicant for deferral and his or her accompanying, licensed hunter must comply with the following requirements:

(a) The applicant for deferral must:

(i) Be at least ten years of age when applying for the deferral; and

(ii) Not have failed the hunter education training course within the previous twelve months, if he or she took the course.

(b) The accompanying, licensed hunter, as defined in RCW 77.32.155, must:

(i) Be over eighteen years of age; and

(ii) Provide proof that he or she had a Washington hunting license for the three years prior to being an accompanying, licensed hunter.

(c) To provide maximum supervision and to enhance safety afield, an accompanying, licensed hunter must supervise only one deferred hunter while afield.

(d) An accompanying hunter must remain close enough to the deferred hunter to have uninterrupted, unaided visual and auditory communication with the deferred hunter.

(2) Application procedures.

(a) Applicants for deferral must submit their applications to the department's hunter education division office in Olympia, Washington.

(b) Applicants for deferral must submit with each deferral application a twenty-dollar application fee payable via personal or cashier's check written to WDFW. Applications submitted without the required fee or information will not be processed and will be returned to the applicant.

(c) Deferral applications will be on forms prescribed by the department and may be made available to the public in both printed and electronic formats.

(3) License purchases.

(a) Individuals granted a deferral under this section will receive a special WILD identification number and a special authorization card that allow the applicant to purchase hunting licenses and tags for the license year during which the applicant requested a deferral. An applicant may not use his or her special WILD identification number and special authorization card for future hunting license purchases in Washington state.

(b) Individuals deferred under this administrative regulation:

(i) Must purchase hunting licenses and tags in accordance with current licensing procedures;

(ii) Must pay all hunting license and tag fees established under current law; and

(iii) Are only eligible to participate in general hunting seasons and/or youth opportunities.

(4) Possession of deferral authorization.

(a) Individuals hunting with a deferral under this administrative regulation must carry their department-issued deferral card at all times while hunting.

(b) Request for replacement of deferral cards must be made by the licensee. A duplicate deferral card may be issued at department offices.

(5) If either the deferred education licensee or the required nondeferred accompanying person, hunting under the authority of RCW 77.32.155(2), is convicted of a violation of this title, except for a violation of unlawful hunting of wild birds, RCW 77.15.400 (1) through (3), the department may revoke all hunting licenses and tags and order a suspension of one or both the deferred education licensee and the nondeferred accompanying person's hunting privileges for one year.

WSR 07-22-102**PERMANENT RULES****DEPARTMENT OF
FISH AND WILDLIFE**

[Order 07-273—Filed November 6, 2007, 12:43 p.m., effective December 7, 2007]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Amend WAC 232-28-285 2006-2007 Pilot cougar hunting seasons with the aid of dogs.

Citation of Existing Rules Affected by this Order: Amending WAC 232-28-285 (Amending Order 06-196, filed 8/15/06, effective 9/15/06).

Statutory Authority for Adoption: RCW 77.12.047.

Adopted under notice filed as WSR 07-19-098 on September 18, 2007.

A final cost-benefit analysis is available by contacting Lori Preuss, 600 Capitol Way North, Olympia, WA 98501-1091, phone (360) 902-2930, fax (360) 902-2155, e-mail preuslmp@dfw.wa.gov.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 2, 2007.

Susan Yeager

for Jerry Gutzwiler, Chair
Fish and Wildlife Commission

AMENDATORY SECTION (Amending Order 06-196, filed 8/15/06, effective 9/15/06)

WAC 232-28-285 ((2006-2007)) 2007-2008 Pilot cougar hunting seasons with the aid of dogs. As used in this section and in the context of pilot cougar hunting seasons, the following definitions apply:

"Accompany" means the dog handler and permit hunter must be in the physical presence of each other at the time dogs are released from a leash or unrestrained or starting a cougar track.

"Pursue" or "pursuit" means dogs are:

- Not on a leash or restrained; or
- Starting a cougar track; or
- In the act of tracking a cougar; or
- At a treed cougar.

Transporting dogs in a motorized vehicle or walking a dog on a leash is not pursuit.

"Dog owner" means a person that owns and hunts with dogs that are capable of detecting, tracking and treeing a cougar.

"Quota" means the targeted harvest goal. The actual harvest level may exceed the quota.

"Kill permit" allows a hunter to pursue or kill cougar.

"Pursuit permit" allows a hunter to pursue cougar.

(1) The pilot cougar-hunting season will allow use of dogs to hunt cougar. The hunts will consist of pursuit-or-kill seasons and pursuit-only seasons, and are allowed only in Chelan, Okanogan, Ferry, Stevens, and Pend Oreille counties.

(2) Pursuit-or-kill seasons:

Cougar may be pursued or killed with the aid of dogs from December 1, ((2006)) 2007, until the female zone quota has been killed, the total zone quota has been killed, or March 31, ((2007)) 2008, whichever occurs first; EXCEPT GMUs 101

and 204 where cougar may be pursued or killed from January 1, ((2007)) 2008, until the female zone quota has been killed, the total zone quota has been killed, or March 31, ((2007)) 2008, whichever occurs first.

(3) Pursuit-only seasons:

(a) If a zone quota is killed prior to March 31, ((2007)) 2008, cougar may be pursued with dogs in all or portions of that zone until March 31, ((2007)) 2008. Hunters may only pursue cougars in designated pursuit only areas identified on their kill or pursuit-only permit. Hunters may not kill cougar during pursuit-only seasons.

(b) Hunters selected for the pursuit-or-kill season (accompanied by up to three of their identified handlers) may participate in a pursuit-only season. Permit hunters that harvest a cougar under a kill permit may continue to pursue cougars until March 31. If a zone quota is killed, the department will also issue pursuit-only permit to hunters drawn at random from the unselected pool of applicants. The director will identify the number of pursuit-only hunters selected.

(4) Hunt areas and kill quotas:

Cougar seasons will be based on a quota system, where permit hunters using dogs may hunt and kill cougar until the allotted numbers of cougar have been killed from each hunt zone or March 31, ((2007)) 2008, whichever occurs first.

(a) Kill quotas start September 1 and will include all cougar killed during seasons with and without the aid of dogs, including cougar seasons under this section, cougar seasons without the aid of dogs authorized under WAC 232-28-272, depredation permits, landowner kill permits, and WDFW depredation authority.

(b) Individual problem cougar will continue to be killed on an as-needed basis utilizing depredation permits, landowner kill permits, and WDFW depredation authority even if these kills result in exceeding a zone quota.

CMU	Hunt Choice	Hunt Zone	Area Description	QUOTA	
				Total	Female
East Cascades North	9001	Okanogan	Those portions of GMUs 203, 209, 215, 218, 233, 224, 231, 239, and 242 within Okanogan County	28	11
	9002	Chelan	Those portions of GMUs 243, 244, 245, 246, 247, 249, 250, and 251 within Chelan County	10	4
Northeastern	9003	Ferry-Okanogan	GMUs 101, 204	26	10
	9004	Stevens-Pend Oreille	Those portions of GMUs 105, 108, 111, 113, 117, 121 within Stevens and Pend Oreille counties	38	15

(5) Quota hotline:

Permit hunters participating in a pursuit-or-kill season must call the toll free cougar quota hotline within twenty-four hours prior to each day hunting cougar to determine if the zone quota has been killed and the zone is closed. Hunters who hunt more than one consecutive day must call the quota hotline once daily to determine if the zone quota is killed. Hunters who harvest a cougar with the aid of dogs must notify the department within twenty-four hours of kill (excluding legal state holidays) and provide the hunter's name, date and location of kill, and sex of animal. The raw

pelt of a cougar, with proof of sex naturally attached, must be sealed by an authorized department employee within five days of the notification of kill. Any person who takes a cougar must present the cougar skull in such a manner that teeth and biological samples can be extracted to an authorized department employee at the time of sealing.

(6) Kill or pursuit-only permit eligibility:

(a) To apply for a kill or pursuit-only permit under this section, individuals must sign an affidavit provided by the department, certifying under penalty of false swearing under RCW 9A.72.040 that they are a dog owner. The affidavit

must be mailed to WDFW by the date and time identified by the director. Individuals not registered as a dog owner will not be issued a permit.

(b) To apply for a kill or pursuit-only permit under this section, individuals must purchase a cougar permit application and submit the application in compliance with WAC 232-28-291 by a date and time identified by the director.

(c) To be eligible for a permit, the participant must be a Washington resident who at the time of application for a permit possesses a valid big game license with cougar as a species option. The permit holder must use dogs while participating in a cougar hunt under this section.

(d) A permit will not be issued to any person who has been convicted of unlawful use of dogs under RCW 77.15.-245 within the five-year period prior to December 1, 2004. Any person issued a permit and who is subsequently convicted of any wildlife offense while participating in a pursuit-or-kill or pursuit-only season, or who violates any condition of the permit, will have the permit revoked and will be ineligible to participate in the remainder of the (~~three-year~~) pilot program.

(7) Permit issuance procedure:

(a) The number of kill permits for a pursuit-or-kill season with the aid of dogs may be established by the director, but will not exceed two times the total cougar quota for each hunt zone.

(b) The department will issue kill or pursuit-only permits to the persons whose applications are drawn at random. Individuals selected will be notified by telephone or mail. Individuals selected must return the signed affidavit to the department's wildlife program in Olympia within fifteen days of being notified. Failure to return the completed affidavit to the department will result in forfeit of the permit. Kill and pursuit-only permits may not be sold or reassigned.

(c) If a female zone quota or total zone quota is not killed in a hunt zone by January 15 (or sooner as identified by the director), then the department will issue kill permits to additional hunters. Hunters will be drawn at random from the unselected pool of applicants and must be a resident of one of the five counties.

(8) Qualifications for participation and requirements:

In addition to the provisions applicable to all cougar hunters:

(a) Successful applicants must complete a training program prior to participating in a pursuit-or-kill season or pursuit-only season with the aid of dogs.

(b) Participants must have their permit issued by the department in their possession while hunting cougar.

(c) Individuals selected for a kill permit may kill and possess two cougar per permit and only the permittee may kill the cougar(s). However, a kill permit holder may not kill a second cougar in a hunt zone until January 15 (or sooner as identified by the director).

(d) Individuals selected for a cougar kill or pursuit-only permit may use dog handlers. However, no more than three handlers may accompany the permittee while hunting or pursuing cougar. Dog handlers may not pursue cougar when the permit hunter is not present at the time the dogs are released from a leash or unrestrained. Dog handlers must have a dog handler identification card, issued by the department, in their

possession while participating in a pursuit-or-kill season or pursuit-only season.

(e) Dog handlers must be a Washington resident and possess a valid hunting license.

(f) It is unlawful to kill or possess spotted cougar kittens or adult cougars accompanied by spotted kittens.

(g) Participants must have a vehicle placard issued by the department. The vehicle placard must be placed in the permittee's and dog handler's vehicles and be visible from outside the vehicles at all times while hunting or pursuing cougar.

(h) Kill and pursuit-only permit hunters are required to maintain and return to the department a pilot cougar hunting season logbook. At the end of each day hunting cougar, the permit hunters must record their hunting activities, including that of their dog handlers, in their logbook. If requested by department staff, permit hunters must provide the logbook for inspection. Logbooks must be mailed to the department at WDFW-Pilot Cougar Hunt, 600 Capitol Way North, Olympia, WA 98501-1091 by April 10, (~~2007~~) 2008. A violation of this requirement under this subsection is punishable as an infraction under RCW 77.15.160.

(9) The permit belongs to the state of Washington. The permit holder may be required to return to or turn over to the department the permit when, in the judgment of the department, the permit holder violates any conditions of the permit, violates trespass laws while acting under this permit, or violates any other criminal law or hunting regulation of the state while acting under this permit. If the permit holder is required to return to or turn over to the department the permit, the permit holder may request an appeal of that action in accordance with chapter 34.05 RCW. Appeal request shall be filed in writing and returned within twenty days of the date of action and be addressed to WDFW Legal Services Office, 600 Capitol Way North, Olympia, Washington 98501-1091.

WSR 07-22-109

PERMANENT RULES

DEPARTMENT OF HEALTH

[Filed November 6, 2007, 4:08 p.m., effective December 7, 2007]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The changes amend the reference to a particular month and year of accreditation standards. This will allow the department of health to accept students graduating from dental hygiene schools accredited by the American Dental Association, based on the Commission on Dental Accreditation standards, between January 1993 and June 2007 as meeting the standards for licensure.

Citation of Existing Rules Affected by this Order: Amending WAC 246-815-030.

Statutory Authority for Adoption: RCW 18.29.130.

Adopted under notice filed as WSR 07-15-077 on July 17, 2007.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 1, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 1, Repealed 0.

Date Adopted: November 6, 2007.

Mary C. Selecky
Secretary

AMENDATORY SECTION (Amending WSR 94-05-053, filed 2/10/94, effective 3/13/94)

WAC 246-815-030 Education requirements for licensure applicants. (1) To be eligible for dental hygiene licensure, the applicant must have successfully completed a dental hygiene education program approved by the secretary of the department of health. The secretary adopts ~~((those))~~ the standards of the American Dental Association Commission on Dental Accreditation ("CODA") relevant to the accreditation of dental hygiene schools, in effect ~~((in January, 1993))~~ through June 2007. In implementing the adopted standards, the secretary approves those dental hygiene education programs ~~((which were accredited by the commission as of January 1993-))~~ that are currently accredited and received initial "CODA" accreditation on or before June 30, 2007, provided, that the accredited education program's curriculum includes:

- (a) Didactic and clinical competency in the administration of injections of local anesthetic;
- (b) Didactic and clinical competency in the administration of nitrous oxide analgesia;
- (c) Didactic and clinical competency in the placement of restorations into cavities prepared by a dentist; and
- (d) Didactic and clinical competency in the carving, contouring, and adjusting contacts and occlusions of restorations.

(2) Dental hygiene education programs approved by the secretary of the department of health pursuant to the American Dental Association Commission on Dental Accreditation standards ~~((in effect in January, 1993,))~~ whose curriculum does not include the didactic and clinical competency enumerated in subsection (1)(a)(-) through (d) ((above)) of this section will be accepted if the applicant has successfully completed an expanded functions education program(s) approved pursuant to WAC 246-815-110, 246-815-120, and 246-815-130.

(3) A form will be provided in the department of health licensure application packages for the purpose of education verification.

(4) The standards of the American Dental Association Commission on Dental Accreditation relevant to the accreditation of dental hygiene schools are available from the American Dental Association, 211 East Chicago Ave., Chicago, IL 60611-2678, 312-440-2500, <http://www.ada.org/>.

WSR 07-22-118
PERMANENT RULES
DEPARTMENT OF ECOLOGY

[Order 07-13—Filed November 7, 2007, 10:34 a.m., effective December 8, 2007]

Effective Date of Rule: Thirty-one days after filing.

Purpose: The purpose of this rule making is to repeal chapters 173-180A, 173-180B, 173-180C, and 173-180D WAC. These rules have been replaced with new chapter 173-180 WAC, Facility oil handling standards and therefore are no longer necessary.

Also repealing chapters 317-10 and 173-181 WAC. These rules have been replaced with new chapter 173-182 WAC, Oil spill contingency planning and therefore are no longer necessary.

These rules have been replaced with new rules. Repealing these rules will eliminate the potential for confusion.

Citation of Existing Rules Affected by this Order: Repealing chapters 173-180A, 173-180B, 173-180C, 173-180D, 317-10, and 173-181 WAC.

Statutory Authority for Adoption: Chapters 90.56, 88.46, 90.48 RCW.

Adopted under notice filed as WSR 07-18-061 on August 31, 2007.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 90.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 7, 2007.

Jay J. Manning
Director

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 173-180A-010	Purpose.
WAC 173-180A-020	Authority.
WAC 173-180A-030	Definitions.
WAC 173-180A-040	Applicability.
WAC 173-180A-050	Compliance schedule.
WAC 173-180A-060	Vessel transfer requirements.
WAC 173-180A-070	Transmission pipeline transfer requirements.

WAC 173-180A-080	Secondary containment requirements for above-ground storage tanks.	WAC 173-180C-080	Program approval.
WAC 173-180A-090	Storage tank requirements.	WAC 173-180C-090	Inspections.
WAC 173-180A-100	Transfer pipeline requirements.	WAC 173-180C-095	Noncompliance with requirements.
WAC 173-180A-110	Inspections.	WAC 173-180C-098	Severability.
WAC 173-180A-120	Recordkeeping.		
WAC 173-180A-130	Noncompliance.		
WAC 173-180A-140	Rule review.		
WAC 173-180A-150	Severability.		

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 173-180B-010	Purpose.
WAC 173-180B-020	Authority.
WAC 173-180B-030	Definitions.
WAC 173-180B-040	Applicability.
WAC 173-180B-050	Manual preparation.
WAC 173-180B-060	Manual format requirements.
WAC 173-180B-070	Manual content requirements.
WAC 173-180B-080	Manual submittal.
WAC 173-180B-090	Manual review.
WAC 173-180B-100	Manual maintenance and use.
WAC 173-180B-110	Inspections.
WAC 173-180B-120	Manual update timeline.
WAC 173-180B-130	Noncompliance with manual requirements.
WAC 173-180B-140	Severability.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 173-180C-010	Purpose.
WAC 173-180C-020	Authority.
WAC 173-180C-030	Definitions.
WAC 173-180C-040	Applicability.
WAC 173-180C-050	Training requirements.
WAC 173-180C-060	Certification program.
WAC 173-180C-070	Minimum criteria for certification programs.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 173-180D-010	Purpose.
WAC 173-180D-020	Authority.
WAC 173-180D-030	Definitions.
WAC 173-180D-040	Applicability.
WAC 173-180D-050	Plan preparation.
WAC 173-180D-055	Plan format requirements.
WAC 173-180D-060	Plan content requirements.
WAC 173-180D-065	Plan submittal.
WAC 173-180D-070	Plan review.
WAC 173-180D-075	Inspections.
WAC 173-180D-080	Plan maintenance and use.
WAC 173-180D-085	Plan update timeline.
WAC 173-180D-090	Noncompliance with plan requirements.
WAC 173-180D-098	Severability.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 173-181-010	Purpose.
WAC 173-181-020	Authority.
WAC 173-181-030	Definitions.
WAC 173-181-035	Applicability.
WAC 173-181-040	Plan preparation.
WAC 173-181-045	Plan format requirements.
WAC 173-181-050	Plan content requirements.
WAC 173-181-060	Plan submittal.
WAC 173-181-065	Plan review.
WAC 173-181-070	Drills and inspections.
WAC 173-181-075	Plan maintenance and use.
WAC 173-181-080	Plan update timeline.
WAC 173-181-085	Noncompliance with plan requirements.

WAC 173-181-090	Contractor standards.	• WAC 173-183-320 will be amended to reflect the change.
WAC 173-181-092	Contractor approval information required.	The same law also provided a change in definition of oil to include "oils of any kind." This includes biological fuels, such as biodiesel. This change will affect all current rules that reference the definition.
WAC 173-181-094	Submittal of contractor approval applications.	• Change to the definition of "oil" to match the statute will be made to WAC 173-180-025, 173-184-025, 173-182-030, 173-183-100, and 317-05-020.
WAC 173-181-096	Contractor application review.	This amendment will make rules consistent with law.
WAC 173-181-098	Severability.	Citation of Existing Rules Affected by this Order: Amending WAC 173-180-025, 173-184-025, 173-182-030, 173-183-100, 173-183-320, and 317-05-020.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 317-10-010	Purpose.
WAC 317-10-020	Authority.
WAC 317-10-030	Definitions.
WAC 317-10-035	Applicability.
WAC 317-10-040	Plan preparation.
WAC 317-10-045	Plan format requirements.
WAC 317-10-050	Plan content requirements.
WAC 317-10-060	Plan submittal.
WAC 317-10-065	Plan review.
WAC 317-10-070	Drills and inspections.
WAC 317-10-075	Plan maintenance and use.
WAC 317-10-080	Plan update timeline.
WAC 317-10-085	Noncompliance with plan requirements.
WAC 317-10-090	Contractor standards.
WAC 317-10-092	Contractor approval information required.
WAC 317-10-094	Submittal of contractor approval applications.
WAC 317-10-096	Contractor application review.
WAC 317-10-098	Severability.

Statutory Authority for Adoption: Chapters 90.56, 88.46, 90.48 RCW.

Adopted under notice filed as WSR 07-18-062 on August 31, 2007.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 6, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's Own Initiative: New 0, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 6, Repealed 0.

Number of Sections Adopted Using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: November 7, 2007.

Jay J. Manning
Director

AMENDATORY SECTION (Amending WSR 93-07-004, filed 3/4/93, effective 4/4/93)

WAC 317-05-020 Definitions. (1) "Administrator" means the administrator of the office of marine safety.

(2) "Bulk" means material that is stored or transported in a loose, unpackaged liquid, powder, or granular form capable of being conveyed by a pipe, bucket, chute, or belt system.

(3) "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel or a passenger vessel, three hundred gross tons or more, including but not limited to, commercial fish processing vessels and freighters.

(4) "Covered vessel" means a tank vessel, cargo vessel, or passenger vessel.

(5) "Department" means the department of ecology.

(6) "Director" means the director of the department of ecology.

(7) "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

(8)(a) "Facility" means any structure, group of structures, equipment, pipeline, or device, other than a vessel, located on or near the navigable waters of the state that transfers oil in bulk to or from a tank vessel or pipeline, that is

WSR 07-22-119**PERMANENT RULES****DEPARTMENT OF ECOLOGY**

[Order 07-14—Filed November 7, 2007, 10:35 a.m., effective December 8, 2007]

Effective Date of Rule: Thirty-one days after filing.

Purpose: Chapter 347, Laws of 2007, (SB 5552) made changes to the natural resource damage assessment (NRDA) assessment penalty from \$50 to \$100 per gallon of oil spilled.

used for producing, storing, handling, transferring, processing, or transporting oil in bulk.

(b) A facility does not include any:

(i) Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state;

(ii) Retail motor vehicle motor fuel outlet;

(iii) Facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330;

(iv) Underground storage tank regulated by the department or a local government under chapter 90.76 RCW; or

(v) A stationary marine fuel outlet that does not dispense more than three thousand gallons of fuel to a ship that is not a covered vessel, in a single transaction.

(9) "Marine facility" means any facility used for tank vessel wharfage or anchorage, including any equipment used for the purpose of handling or transferring oil in bulk to or from a tank vessel.

(10) "Navigable waters of the state" means those waters of the state, and their adjoining shorelines, that are subject to the ebb and flow of the tide, or are used presently, have been used in the past, or may be susceptible for use to transport intrastate, interstate, or foreign commerce, or any of these factors.

(11) "Office" means the office of marine safety.

(12) "Oil" or "oils" means oil of any (naturally occurring) kind that is liquid (hydrocarbons) at atmospheric temperature and pressure (~~(coming from the earth, including condensate and natural gasoline,)~~) and any fractionation thereof, including, but not limited to, crude oil, petroleum, gasoline, fuel oil, diesel oil, oil sludge, oil refuse, biological oils and blends, and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed in Table 302 adopted August 14, 1989, under section 101(4) of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by P.L. 99-499.

(13) "Offshore facility" means any facility, as defined in subsection (8) of this section, located in, on, or under any of the navigable waters of the state, but does not include a facility any part of which is located in, on, or under any land of the state, other than submerged land. "Offshore facility" does not include a marine facility as defined in subsection (9) of this section.

(14) "Onshore facility" means any facility, as defined in subsection (8) of this section, any part of which is located in, on, or under any land of the state, other than submerged land, that because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters of the state or the adjoining shorelines.

(15)(a) "Owner or operator" means:

(i) In the case of a vessel, any person owning, operating, or chartering by demise (bareboat charter), the vessel;

(ii) In the case of an onshore or offshore facility, any person owning or operating the facility; and

(iii) In the case of an abandoned vessel, onshore, or offshore facility, the person who owned or operated the vessel, anchor or facility immediately before its abandonment.

(b) "Operator" does not include any person who owns the land underlying a facility if the person is not involved in the operations of the facility.

(16) "Passenger vessel" means a ship of three hundred or more gross tons with a fuel capacity of at least six thousand gallons carrying passengers for compensation.

(17) "Person" means any political subdivision, government agency, municipality, industry, public or private corporation, copartnership, association, firm, individual, ship, or any other entity whatsoever.

(18) "Ship" means any boat, ship, vessel, barge, or other floating craft of any kind.

(19) "Spill" means an unauthorized discharge of oil into the waters of the state.

(20) "State waters" means the navigable waters of the state.

(21) "Tank vessel" means a ship that is constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue, and that:

(a) Operates on the waters of the state; or

(b) Transfers oil in a port or place subject to the jurisdiction of this state.

A ship is constructed or adapted to carry oil in bulk as cargo or cargo residue if authorized to do so under the ship's certification. A vessel carries oil as cargo or cargo residue if the oil is carried for dispensing to other vessels or equipment off the vessel, or for delivery from point to point, regardless of whether direct compensation for carriage is involved. A vessel being used to collect spilled oil from the water, and may have some recovered oil storage capacity, does not carry oil as cargo.

AMENDATORY SECTION (Amending Order 06-02, filed 9/25/06, effective 10/26/06)

WAC 173-180-025 Definitions. (1) "Best achievable protection" means the highest level of protection that can be achieved through the use of the best achievable technology and those staffing levels, training procedures, and operational methods that provide the greatest degree of protection available. The director's determination of best achievable protection must be guided by the critical need to protect the state's natural resources and waters, while considering: The additional protection provided by the measures, the technological achievability of the measures, and the cost of the measures.

(2) "Best achievable technology" means the technology that provides the greatest degree of protection taking into consideration: Processes that are being developed, or could feasibly be developed, given overall reasonable expenditures on research and development; and processes that are currently in use. In determining what best achievable technology is, the director must consider the effectiveness, engineering feasibility, and commercial availability of the technology.

(3) "Boatyard" means a Class 4 facility which builds, repairs, or refurbishes nonrecreational vessels under three hundred gross tons, regardless of fuel capacity.

(4) "Boom" means flotation boom or other effective barrier containment material suitable for containment of oil discharged onto the surface of the water.

(5) "Bulk" means material that is stored or transported in a loose, unpackaged liquid, powder, or granular form capable of being conveyed by a pipe, bucket, chute, or belt system.

(6) "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel or a passenger vessel, three hundred or more gross tons, including but not limited to, commercial fish processing vessels and freighters.

(7) "Certification" means the documentation that a facility employee has met all requirements of an oil transfer training and certification program that meets the requirements of this chapter.

(8) "Class 1 facility" means a facility as defined in RCW 90.56.010 as:

(a) Any structure, group of structures, equipment, pipeline, or device, other than a vessel, located on or near the navigable waters of the state that transfers oil in bulk to or from a tank vessel or pipeline, that is used for producing, storing, handling, transferring, processing, or transporting oil in bulk.

(b) A Class 1 facility does not include any:

(i) Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state;

(ii) Underground storage tank regulated by ecology or a local government under chapter 90.76 RCW;

(iii) Motor vehicle motor fuel outlet;

(iv) Facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330; or

(v) Marine fuel outlet that does not dispense more than three thousand gallons of fuel to a ship that is not a covered vessel, in a single transaction.

(9) "Class 2 facility" means a railroad car, motor vehicle, portable device or other rolling stock, while not transporting oil over the highways or rail lines of the state, used to transfer oil to a nonrecreational vessel.

(10) "Class 3 facility" means a structure that:

(a) Transfers to a nonrecreational vessel with a capacity of ten thousand five hundred or more gallons of oil whether the vessel's oil capacity is used for fuel, lubrication oil, bilge waste, or slops or other waste oils;

(b) Does not transfer oil in bulk to or from a tank vessel or pipeline; and

(c) Does not include any: Boatyard, railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state; underground storage tank regulated by ecology or a local government under chapter 90.76 RCW; or a motor vehicle motor fuel outlet; a facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330.

(11) "Class 4 facility" means a structure that:

(a) Is a marina, boatyard, marine fueling outlet, and other fueling installations that transfer to a nonrecreational vessel with a capacity to hold less than ten thousand five hundred gallons of oil whether the vessel's oil capacity is used for fuel, lubrication oil, bilge waste, or slops or other waste oil;

(b) Does not transfer oil in bulk to or from a tank vessel or pipeline; and

(c) Does not include any: Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state; underground storage tank regulated by ecology or a local government under chapter 90.76 RCW;

or a motor vehicle motor fuel outlet; or a facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330.

(12) "Covered vessel" means a tank vessel, cargo vessel, or passenger vessel.

(13) "Director" means the director of the department of ecology.

(14) "Directly impact" means without treatment.

(15) "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping regardless of quantity.

(16) "Ecology" means the department of ecology.

(17) "Gross ton" means a vessel's approximate volume as defined in Title 46, United States Code of Federal Regulations (CFR), Part 69.

(18) "Innage" means the difference from the surface of the liquid to the tank bottom.

(19) "Navigable waters of the state" means those waters of the state, and their adjoining shorelines, that are subject to the ebb and flow of the tide and/or are presently used, have been used in the past, or may be susceptible for use to transport intrastate, interstate, or foreign commerce.

(20) "Nonrecreational vessel" means any vessel that is not a recreational vessel as defined in this section.

(21) "Oil" or "oils" means oil of any (naturally occurring) kind that is liquid ((hydrocarbons)) at atmospheric temperature and pressure ((coming from the earth, including condensate and natural gasoline;)) and any fractionation thereof, including, but not limited to, crude oil, petroleum, gasoline, fuel oil, diesel oil, oil sludge, oil refuse, biological oils and blends, and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed in Table 302.4 of 40 CFR Part 302 adopted August 14, 1989, under section 101(14) of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by P.L. 99-499.

(22) "Offshore facility" means any class facility, as defined in this section, located in, on, or under any of the navigable waters of the state, but does not include a facility any part of which is located in, on, or under any land of the state, other than submerged land.

(23) "Onshore facility" means any class facility, as defined in this section, any part of which is located in, on, or under any land of the state, other than submerged land, that because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters of the state or the adjoining shorelines.

(24) "Owner or operator" means:

(a) In the case of a vessel, a person who owns, operates, or charts by demise, a vessel;

(b) In the case of an onshore or offshore facility, a person who owns or operates this type of facility;

(c) In the case of an abandoned vessel or abandoned onshore or offshore facility, the person who owned or operated the vessel or facility immediately before its abandonment; and

(d) "Operator" does not include any person who owns the land underlying a facility if the person is not involved in the operations of the facility.

(25) "Passenger vessel" means a ship of three hundred or more gross tons with a fuel capacity of at least six thousand gallons carrying passengers for compensation.

(26) "Person" means any political subdivision, government agency, municipality, industry, public or private corporation, copartnership, association, firm, individual, or any other entity whatsoever.

(27) "Personnel" means individuals employed by, or under contract with a facility or vessel.

(28) "Person in charge" or "PIC" means a person qualified and designated as required under 33 CFR 155, for vessels, 33 CFR 154 for Class 1, 2, or 3 facilities, or if not designated, the person with overall responsibility for oil transfer operations.

(29) "Process pipelines" means a pipeline used to carry oil within the oil refining/processing units of a Class 1 facility, process unit to tankage piping and tankage interconnecting piping. Process pipelines do not include pipelines used to transport oil to or from a tank vessel or transmission pipeline.

(30) "Public vessel" means a vessel that is owned, or demise chartered, and is operated by the United States government, or a government of a foreign country, and is not engaged in commercial service.

(31) "Recreational vessel" means a vessel owned and operated only for pleasure with no monetary gain involved, and if leased, rented, or chartered to another for recreational use, is not used for monetary gain. This definition applies to vessels such as house boats, ski boats, and other small craft on a rental or lease agreement.

(32) "Secondary containment" means containment systems, which prevent the discharge of oil from reaching the waters of the state.

(33) "Ship" means any boat, ship, vessel, barge, or other floating craft of any kind.

(34) "Spill" means an unauthorized discharge of oil into the waters of the state.

(35) "State" means the state of Washington.

(36) "Storage tank" means all aboveground containers connected to transfer pipelines or any aboveground containers greater than ten thousand gallons (two hundred thirty-eight barrels), including storage and surge tanks, used to store bulk quantities of oil. Storage tanks do not include those tanks regulated by chapter 90.76 RCW, rolling stock, wastewater treatment equipment, process pressurized vessels or other tanks used in the process flow through portions of the facility.

(37) "Tank vessel" means a ship that is constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue, and that:

(a) Operates on the waters of the state; or

(b) Transfers oil in a port or place subject to the jurisdiction of this state.

(38) "Transmission pipeline" means an interstate or intrastate pipeline subject to regulation by the United States Department of Transportation under 49 CFR 195 in effect on the effective date of this section, through which oil moves in transportation, including line pipes, valves, and other appurtenances connected to line pipe, pumping units, and fabricated assemblies associated with pumping units.

(39) "Transfer" means any movement of oil in bulk to or from a nonrecreational vessel or transmission pipeline.

(40) "Transfer pipeline" is a buried or aboveground pipeline used to carry oil to or from a tank vessel or transmission pipeline, or to a vessel and the first valve inside secondary containment at the facility provided that any discharge on the facility side of that first valve will not directly impact waters of the state. A transfer pipeline includes valves, and other appurtenances connected to the pipeline, pumping units, and fabricated assemblies associated with pumping units. A transfer pipeline does not include process pipelines, pipelines carrying ballast or bilge water, transmission pipelines, tank vessel or storage tanks. Instances where the transfer pipeline is not well defined will be determined on a case-by-case basis by ecology.

(41) "Topping off" means the receipt of oil into the last ten percent of available tank capacity in any tank.

(42) "Ullage" means the depth of space above the free surface of the liquid to the reference datum of that tank.

(43) "Waters of the state" include lakes, rivers, ponds, streams, inland waters, underground water, salt waters, estuaries, tidal flats, beaches and land adjoining the seacoast of the state, sewers, and all other surface waters and watercourses within the jurisdiction of the state of Washington.

AMENDATORY SECTION (Amending Order 00-03, filed 9/25/06, effective 10/26/06)

WAC 173-182-030 Definitions. (1) "Boom" means flotation boom or other effective barrier containment material suitable for containment, protection or recovery of oil that is discharged onto the surface of the water. Boom also includes the associated support equipment necessary for rapid deployment and anchoring appropriate for the operating environment. Boom will be classified using criteria found in the 2000 ASTM International F 1523-94 (2001) and ASTM International F 625-94 (Reapproved 2000), and the *Resource Typing Guidelines* found in chapter 13 of the 2000 Oil spill field operations guide.

(2) "Bulk" means material that is stored or transported in a loose, unpackaged liquid, powder, or granular form capable of being conveyed by a pipe, bucket, chute, or belt system.

(3) "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel or a passenger vessel, three hundred or more gross tons, including but not limited to commercial fish processing vessels and freighters.

(4) "Cascade" means to bring in equipment and personnel to the spill location in a succession of stages, processes, operations, or units.

(5) "Contract or letter summarizing contract terms" means:

(a) A written contract between a plan holder and a primary response contractor or proof of cooperative membership that identifies and ensures the availability of specified personnel and equipment within stipulated planning standard times; or

(b) A letter that identifies personnel, equipment and services capable of being provided by the primary response contractor within stipulated planning standard times; acknowl-

edges that the primary response contractor intends to commit the identified resources in the event of an oil spill.

(6) "Covered vessel" means a tank vessel, cargo vessel (including fishing and freight vessels), or passenger vessel required to participate in this chapter.

(7) "Dedicated" means equipment and personnel committed to oil spill response, containment, and cleanup that are not used for any other activity that would make it difficult or impossible for that equipment and personnel to provide oil spill response services in the time frames specified in this chapter.

(8) "Demise charter" means that the owner gives possession of the ship to the charterer and the charterer hires its own master and crew.

(9) "Director" means the director of the state of Washington department of ecology.

(10) "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

(11) "Dispersant" means those chemical agents that emulsify, disperse, or solubilize oil into the water column or promote the surface spreading of oil slicks to facilitate dispersal of the oil into the water column.

(12) "Effective daily recovery capacity" (EDRC) means the calculated capacity of oil recovery devices that accounts for limiting factors such as daylight, weather, sea state, and emulsified oil in the recovered material.

(13) "Ecology" means the state of Washington department of ecology.

(14) "Facility" means:

(a) Any structure, group of structures, equipment, pipeline, or device, other than a vessel, located on or near the navigable waters of the state that:

(i) Transfers oil in bulk to or from a tank vessel or pipeline; and

(ii) Is used for producing, storing, handling, transferring, processing, or transporting oil in bulk.

(b) A facility does not include any:

(i) Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state;

(ii) Underground storage tank regulated by ecology or a local government under chapter 90.76 RCW;

(iii) Motor vehicle motor fuel outlet;

(iv) Facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330; or

(v) Marine fuel outlet that does not dispense more than three thousand gallons of fuel to a ship that is not a covered vessel, in a single transaction.

(15) "Geographic Response Plans (GRP)" means response strategies published in the *Northwest Area Contingency Plan*.

(16) "Gross tons" means a vessel's approximate volume as defined under Title 46, United States Code of Federal Regulations, Part 69.

(17) "Incident command system (ICS)" means a standardized on-scene emergency management system specifically designed to allow its user(s) to adopt an integrated organizational structure equal to the complexity and demands of single or multiple incidents, without being hindered by jurisdictional boundaries.

(18) "In situ burn" means a spill response tactic involving controlled on-site burning, with the aid of a specially designed fire containment boom and igniters.

(19) "Interim storage" means a site used to temporarily store recovered oil or oily waste until the recovered oil or oily waste is disposed of at a permanent disposal site.

(20) "Maximum extent practicable" means the highest level of effectiveness that can be achieved through staffing levels, training procedures, deployment and tabletop drills incorporating lessons learned, use of enhanced skimming techniques and other best achievable technology. In determining what the maximum extent practicable is, the director shall consider the effectiveness, engineering feasibility, commercial availability, safety, and the cost of the measures.

(21) "Mobilization" means the time it takes to get response resources readied for operation and ready to travel to the spill site or staging area.

(22) "Navigable waters of the state" means those waters of the state, and their adjoining shorelines, that are subject to the ebb and flow of the tide and/or are presently used, have been used in the past, or may be susceptible for use to transport intrastate, interstate, or foreign commerce.

(23) "Nondedicated" means those response resources listed by a primary response contractor for oil spill response activities that are not dedicated response resources.

(24) "Nonpersistent or group 1 oil" means a petroleum-based oil, such as gasoline, diesel or jet fuel, which evaporates relatively quickly. Such oil, at the time of shipment, consists of hydrocarbon fractions of which:

(a) At least fifty percent, by volume, distills at a temperature of 340°C (645°F); and

(b) At least ninety-five percent, by volume, distills at a temperature of 370°C (700°F).

(25) "*Northwest Area Contingency Plan (NWACP)*" means the regional emergency response plan developed in accordance with federal requirements. In Washington state, the NWACP serves as the statewide master oil and hazardous substance contingency plan required by RCW 90.56.060.

(26) "Offshore facility" means any facility located in, on, or under any of the navigable waters of the state, but does not include a facility, any part of which is located in, on, or under any land of the state, other than submerged land.

(27) "Oil" or "oils" means (~~naturally occurring~~) oil of any kind that is liquid (hydrocarbons) at atmospheric temperature and pressure (~~(coming from the earth, including condensate and natural gasoline,)~~) and any fractionation thereof, including, but not limited to, crude oil, petroleum, gasoline, fuel oil, diesel oil, oil sludge, oil refuse, biological oils and blends, and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed in Table 302.4 of 40 C.F.R. Part 302 adopted August 14, 1989, under section 101(14) of the Federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by P.L. 99-499.

(28) "Oily waste" means oil contaminated waste resulting from an oil spill or oil spill response operations.

(29) "Onshore facility" means any facility, as defined in subsection (14) of this section, any part of which is located in, on, or under any land of the state, other than submerged land, that because of its location, could reasonably be expected to

cause substantial harm to the environment by discharging oil into or on the navigable waters of the state or the adjoining shorelines.

(30) "Operating environments" means the conditions in which response equipment is designed to function. Water body classifications will be determined using criteria found in the ASTM Standard Practice for Classifying Water Bodies for Spill Control Systems.

(31) "Owner" or "operator" means:

(a) In the case of a vessel, any person owning, operating, or chartering by demise, the vessel;

(b) In the case of an onshore or offshore facility, any person owning or operating the facility; and

(c) In the case of an abandoned vessel or onshore or offshore facility, the person who owned or operated the vessel or facility immediately before its abandonment.

Operator does not include any person who owns the land underlying a facility if the person is not involved in the operations of the facility.

(32) "Passenger vessel" means a ship of greater than three hundred gross tons with a fuel capacity of at least six thousand gallons carrying passengers for compensation.

(33) "Persistent oil" means petroleum-based oil that does not meet the distillation criteria for a nonpersistent oil. Persistent oils are further classified based on both specific and American Petroleum Institute (API) observed gravities corrected to 60°F, as follows:

(a) Group 2 - specific gravity greater than or equal to 0.8000 and less than 0.8500. API gravity less than or equal to 45.00 and greater than 35.0;

(b) Group 3 - specific gravity greater than or equal to 0.8500, and less than 0.9490. API gravity less than or equal to 35.0 and greater than 17.5;

(c) Group 4 - specific gravity greater than or equal to 0.9490 and up to and including 1.0. API gravity less than or equal to 17.5 and greater than 10.00; and

(d) Group 5 - specific gravity greater than 1.0000. API gravity equal to or less than 10.0.

(34) "Person" means any political subdivision, government agency, municipality, industry, public or private corporation, co-partnership, association, firm, individual, or any other entity whatsoever.

(35) "Pipeline" means a pipeline connected to a facility, and not owned or operated by the facility referred to in subsection (14) of this section.

(36) "Pipeline tank farm" means a facility that is linked to a pipeline but not linked to a vessel terminal.

(37) "Plan" means oil spill response, cleanup, and disposal contingency plan for the containment and cleanup of oil spills into the waters of the state and for the protection of fisheries and wildlife, shellfish beds, natural resources, and public and private property from such spills as required by RCW 90.56.210 and 88.46.060.

(38) "Planning standards" means goals and criteria that ecology will use to assess whether a plan holder is prepared to respond to the maximum extent practicable to a worst case spill. Ecology will use planning standards for reviewing oil spill contingency plans and evaluating drills.

(39) "Primary response contractor (PRC)" means a response contractor that has been approved by ecology and is

directly responsible to a contingency plan holder, either by a contract or other approved written agreement.

(40) "Public vessel" means a vessel that is owned, or demise chartered, and is operated by the United States government, or a government of a foreign country, and is not engaged in commercial service.

(41) "Regional response list" means a regional equipment list established and maintained by spill response equipment owners in the northwest area.

(42) "Resident" means the spill response resources are staged at a location within the described planning area.

(43) "Responsible party" means a person liable under RCW 90.56.370.

(44) "Ship" means any boat, ship, vessel, barge, or other floating craft of any kind.

(45) "Spill" means an unauthorized discharge of oil which enters waters of the state.

(46) "Spill assessment" means determining product type, potential spill volume, environmental conditions including tides, currents, weather, river speed and initial trajectory as well as a safety assessment including air monitoring.

(47) "Tank vessel" means a ship that is constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue, and that:

(a) Operates on the waters of the state; or

(b) Transfers oil in a port or place subject to the jurisdiction of this state.

(48) "Transmission pipeline" means a pipeline whether interstate or intrastate, subject to regulation by the United States Department of Transportation under 49 C.F.R. 195, as amended through December 5, 1991, through which oil moves in transportation, including line pipes, valves, and other appurtenances connected to line pipe, pumping units, and fabricated assemblies associated with pumping units.

(49) "Transfer site" means a location where oil is moved in bulk on or over waters of the state to or from a covered vessel by means of pumping, gravitation, or displacement.

(50) "Recovery system" means a skimming device, storage work boats, boom, and associated material needed such as pumps, hoses, sorbents, etc., used collectively to maximize oil recovery.

(51) "Umbrella plan" means a single plan that covers multiple vessels or facilities.

(52) "Vessel terminal" means a facility that is located on marine or river waters and transfers oil to or from a tank vessel.

(53) "Waters of the state" means all lakes, rivers, ponds, streams, inland waters, underground water, salt waters, estuaries, tidal flats, beaches and lands adjoining the seacoast of the state, sewers, and all other surface waters and watercourses within the jurisdiction of the state of Washington.

(54) "Worst case spill" means:

(a) For an offshore facility, the largest possible spill considering storage, production, and transfer capacity complicated by adverse weather conditions; or

(b) For an onshore facility, the entire volume of the largest above ground storage tank on the facility site complicated by adverse weather conditions, unless ecology determines that a larger or smaller volume is more appropriate given a

particular facility's site characteristics and storage, production, and transfer capacity; or

(c) For a vessel, a spill of the vessel's entire cargo and fuel complicated by adverse weather conditions; or

(d) For pipelines, the size of the worst case spill is dependent on the location of pump stations, key block valves, geographic considerations, or volume of the largest breakout tank. The largest volume determined from three different methods, complicated by adverse weather conditions:

(i) The pipeline's maximum time to detect the release, plus the maximum shutdown response time multiplied by the maximum flow rate per hour, plus the largest line drainage volume after shutdown;

(ii) The maximum historic discharge from the pipeline; and

(iii) The largest single breakout tank or battery of breakout tanks without a single secondary containment system. Each operator shall determine the worst case discharge and provide the methodology, including calculations, used to arrive at the volume.

(55) "WRIA" means a water resource inventory area as defined in chapter 173-500 WAC.

AMENDATORY SECTION (Amending Order 91-13, filed 4/23/92, effective 5/24/92)

WAC 173-183-100 Definitions. (1) "Columbia River estuary environment" means the habitat and all other public resources associated with or dependent on the estuarine waters of the Columbia River.

(2) "Compensation schedule" means the set of procedures enumerated in WAC 173-183-300 through 173-183-870 to determine the public resource damages resulting from an oil spill for cases in which damages are not quantifiable at a reasonable cost.

(3) "Damages" means the amount of monetary compensation necessary to:

(a) Restore any injured public resource to its condition before sustaining injury as a result of an oil discharge in violation of chapter 90.48 or 90.56 RCW, to the extent technically feasible, including any loss in value incurred during the period between injury and restoration in cases where damages are quantifiable at a reasonable cost; or

(b) Adequately compensate for the loss or diminution in value as determined through application of the compensation schedule provided in WAC 173-183-300 through 173-183-870 in cases where damages are not quantifiable at a reasonable cost.

(4) "Department" means the department of ecology.

(5) "Director" means the director of the department of ecology, or his or her designee.

(6) "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

(7) "Estuarine environment" means the habitat and all other public resources associated with or dependent on estuarine waters of the state.

(8) "Estuarine waters" or "estuarine waters of the state" means the waters within state jurisdiction that are semienclosed by land but have open, partly obstructed, or sporadic access to the ocean, and in which seawater is at least occa-

sionally diluted by freshwater runoff from land. Estuarine waters of the state include adjacent tidal flats and beaches up to the limit of tidal inundation or wave splash. For purposes of this chapter, estuarine waters of the state include those designated on the map attached as Appendix 1 to this chapter, and the portion of the Columbia River estuary within state jurisdiction upstream to river mile 46 or the line drawn perpendicularly across the river which touches the upstream end of Puget Island.

(9) "Freshwater stream, river, and lake environment" means the habitat and all other public resources associated with or dependent on the streams, rivers, and lakes under state jurisdiction.

(10) "Freshwater wetland" or "freshwater wetlands" means lands transitional between terrestrial and freshwater aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water, and lands having one or more of the following attributes at least periodically: The land supports predominantly hydrophytes; the substrate is predominately undrained hydric soil; and the substrate is nonsoil and saturated with water or covered by shallow water at some time during the growing season each year.

(11) "Freshwater wetland environment" means the habitat and all other public resources associated with or dependent on the freshwater wetlands of the state.

(12) "Freshwaters" or "freshwaters of the state" means all waters of the state except those classified as marine and estuarine waters of the state as defined in this chapter, including lakes, rivers, streams, ponds, other surface waters and wetlands.

(13) "Habitat" means the substrate and complement of associated biota not otherwise included in the vulnerability rankings in the applicable compensation schedule(s) that is part of this chapter.

(14) "Immediate removal" or "immediately removes" means removal of the spilled oil, or portions thereof, from the receiving environment by the potentially liable party within six hours of spill initiation.

(15) "Initial department responder" means the department of ecology spill responder who first arrives at the scene of the spill.

(16) "Injury" or "injuries" means an adverse change, either long- or short-term, to a public resource resulting either directly or indirectly from exposure to a discharge of oil in violation of chapter 90.48 or 90.56 RCW.

(17) "Loss in services" means a temporary or permanent reduction in the ability of the resource to provide its use or benefit to the public or to other resources.

(18) "Loss in value or lost value" of a damaged resource means the amount equal to the sum of consumptive, nonconsumptive, and indirect use values, as well as lost taxation, leasing, and licensing revenues during the period between injury and restoration; indirect use values may include existence, bequest, option, and aesthetic values.

(19) "Marine and estuarine habitats" mean the habitats found in marine and estuarine waters of the state as defined in this chapter.

(20) "Marine birds" means all seabirds, shorebirds, waterfowl, raptors and other avifauna that are dependent on marine and estuarine environments of the state for some por-

tion of their life requirements including feeding, breeding, and habitat.

(21) "Marine environment" means the habitat and all other public resources associated with or dependent on marine waters of the state.

(22) "Marine fish," in context of the compensation schedule, means the species listed in Appendix 2.

(23) "Marine mammals" means the cetaceans, pinnipeds, sea otters, and river otters associated with marine and estuarine waters of the state.

(24) "Marine waters" or "marine waters of the state" means all coastal waters not appreciably diluted by freshwater, including open coastal areas, straits, and euhaline inland waters extending from the seaward limit of state jurisdiction to:

(a) The landward limit of tidal inundation or wave splash; or

(b) The seaward limit of estuarine waters of the state.

(25) "Not quantifiable at a reasonable cost" means any diminution in value of a public resource that cannot be measured with sufficient precision or accuracy by currently available and accepted procedures within a reasonable time frame.

(26) "Oil" or "oils" means (~~naturally occurring~~) oil of any kind that is liquid ((hydrocarbons)) at atmospheric temperature and pressure ((coming from the earth, including condensate and natural gasoline,)) and any fractionation thereof, including, but not limited to, crude oil, petroleum gasoline, fuel oil, diesel oil, oil sludge, oil refuse, biological oils and blends, and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed in Table 302.4 of C.F.R. Part 302 adopted August 14, 1989, under section 101(14) of the Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by P.L. 99-499.

(27) "On scene coordinator" (OSC) means the department official who supervises the spill response team and compiles the initial report concerning the facts and circumstances of the spill for the department.

(28) "Person" means any political subdivision, government agency, municipality, industry, public or private corporation, copartnership, association, firm, individual, or any other entity whatsoever.

(29) "Potentially liable party" means the person or persons who may be liable for damages resulting from an oil spill.

(30) "Preassessment screening" means the investigation and determination of the facts and circumstances surrounding an oil spill which are used to determine whether a damage assessment investigation should be conducted, or alternatively, whether the compensation schedule will be used to assess damages.

(31) "Public resources" or "publicly owned resources" means fish, animals, vegetation, land, waters of the state, and other resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by the state.

(32) "Reasonable cost" for a damage assessment means a cost that is anticipated to be less than the amount of damages that may have occurred or may occur.

(33) "Receiving environment" means waters of the state exposed to the spill and all public resources associated with or dependent on the exposed waters.

(34) "Resource damage assessment committee" or "RDA committee" means the preassessment screening committee established under RCW 90.48.368 and charged with determining whether to conduct detailed damage assessment studies or to apply the compensation schedule for oil spills into waters of the state, and overseeing reconnaissance and damage assessment activities.

(35) "Restoration or enhancement projects or studies" means an activity that is intended to restore, replenish, restock, or replace public resources, or to further investigate the long-term effect of resource injuries as determined by the RDA committee for the benefit of the public.

(36) "Salmon," in context of the compensation schedule, means the species listed in Appendix 3.

(37) "Scientific advisory board" means the advisory group established by the department to assist in development of the compensation schedule as required by RCW 90.48.-366.

(38) "Season" or "seasons" means winter, spring, summer, and/or fall, where winter occurs during the months December through February, spring occurs during the months March through May, summer occurs during the months June through August, and fall occurs during the months September through November.

(39) "Shellfish," in context of the compensation schedule, means the species listed in Appendix 4, but does not include privately grown shellfish on public lands.

(40) "Spill" means an unauthorized discharge of oil into waters of the state.

(41) "State" means state of Washington.

(42) "State trustee agencies" means the state agencies with responsibility for protecting and/or managing public resources.

(43) "Subregion" or "subregions" means the areas into which state marine and estuarine waters have been divided for purposes of the compensation schedule as designated on the maps attached as

Appendix 1.

(44) "Technical feasibility" or "technically feasible" means that given available technology, a restoration or enhancement project can be successfully completed at a cost that is not disproportionate to the value of the public resource before the injury.

(45) "Trust resources" means the public resource(s) under a particular state agency's jurisdiction for protection and/or management.

(46) "Unquantifiable damage" means any diminution in value of a public resource that cannot be measured with sufficient precision or accuracy by currently available and accepted procedures within a reasonable period of time.

(47) "Waters of the state" or "state waters" includes lakes, rivers, ponds, streams, inland waters, underground water, salt waters, estuaries, tidal flats, beaches, and lands adjoining the seacoast of the state, sewers, and all other surface waters and watercourses within the jurisdiction of the state of Washington.

(48) "Wetland" or "wetlands" means lands transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water, and lands having one or more of the following attributes at least periodically: The land supports predominantly hydrophytes; the substrate is predominantly undrained hydric soil; and the substrate is nonsoil and saturated with water or covered by shallow water at some time during the growing season each year.

AMENDATORY SECTION (Amending Order 91-13, filed 4/23/92, effective 5/24/92)

WAC 173-183-320 Compensation schedule. (1) The compensation schedule determines adequate compensation for unquantifiable damages or for damages not quantifiable at a reasonable cost for persons liable under RCW 90.48.142.

(2) Adequate compensation as determined from the compensation schedule is derived from preexisting information of resource vulnerability to a class of oil spilled in a particular subregion of the state during a particular season, plus any additional information collected at the reconnaissance stage of the spill response.

(3) Under RCW 90.48.366, the amount of compensation assessed under this schedule shall be no less than one dollar per gallon of oil spilled and no greater than ~~((fifty))~~ one hundred dollars per gallon of oil spilled.

AMENDATORY SECTION (Amending Order 06-02, filed 9/25/06, effective 10/26/06)

WAC 173-184-025 Definitions. Unless the context clearly requires otherwise, the definitions in chapter 317-05 WAC and the following apply to this chapter:

(1) "Boatyard" means a class 4 facility which builds, repairs, or refurbishes nonrecreational vessels under three hundred gross tons, regardless of fuel capacity.

(2) "Boom" means flotation boom or other effective barrier containment material suitable for containment of oil that is discharged onto the surface of the water.

(3) "Bulk" means material that is stored or transported in a loose, unpackaged liquid, powder, or granular form capable of being conveyed by a pipe, bucket, chute, or belt system.

(4) "Bunkering" means a bulk oil transfer operation to replenish a self-propelled vessel with fuel or lubricating oil.

(5) "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel or a passenger vessel, three hundred or more gross tons, including but not limited to, commercial fish processing vessels and freighters.

(6) "Class 1 facility" means a facility as defined in RCW 90.56.010 as:

(a) Any structure, group of structures, equipment, pipeline, or device, other than a vessel, located on or near the navigable waters of the state that transfers oil in bulk to or from a tank vessel or pipeline, that is used for producing, storing, handling, transferring, processing, or transporting oil in bulk.

(b) A facility does not include any:

(i) Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state;

(ii) Underground storage tank regulated by ecology or a local government under chapter 90.76 RCW;

(iii) Motor vehicle motor fuel outlet;

(iv) Facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330; or

(v) Marine fuel outlet that does not dispense more than three thousand gallons of fuel to a ship that is not a covered vessel, in a single transaction.

(7) "Class 2 facility" means a railroad car, motor vehicle, portable device or other rolling stock, while not transporting oil over the highways or rail lines of the state, used to transfer oil to a nonrecreational vessel.

(8) "Class 3 facility" means a structure that:

(a) Transfers to a nonrecreational vessel with a capacity of ten thousand five hundred or more gallons of oil whether the vessel's oil capacity is used for fuel, lubrication oil, bilge waste, or slops or other waste oils;

(b) Does not transfer oil in bulk to or from a tank vessel or pipeline; and

(c) Does not include any: Boatyard, railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state; underground storage tank regulated by ecology or a local government under chapter 90.76 RCW; or a motor vehicle motor fuel outlet; a facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330.

(9) "Class 4 facility" means a structure that:

(a) Is a marina, boatyard, marine fueling outlet and other fueling installations that transfers to a nonrecreational vessel with a capacity to hold less than ten thousand five hundred gallons of oil whether the vessel's oil capacity is used for fuel, lubrication oil, bilge waste, or slops or other waste oil;

(b) Does not transfer oil in bulk to or from a tank vessel or pipeline; and

(c) Does not include any: Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state; underground storage tank regulated by ecology or a local government under chapter 90.76 RCW; or a motor vehicle motor fuel outlet; or a facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330.

(10) "Covered vessel" means a tank vessel, cargo vessel, or passenger vessel.

(11) "Discharge" means any spilling, leaking, pumping, pouring, emitting, emptying, or dumping regardless of quantity.

(12) "Ecology" means the department of ecology.

(13) "Gross ton" means a vessel's approximate volume as defined in Title 46, United States Code of Federal Regulations (CFR), Part 69.

(14) "Navigable waters of the state" means those waters of the state, and their adjoining shorelines, that are subject to the ebb and flow of the tide and/or are presently used, have been used in the past, or may be susceptible for use to transport intrastate, interstate, or foreign commerce.

(15) "Nonrecreational vessel" means any vessel that is not a recreational vessel as defined in this section.

(16) "Oil" or "oils" means oil of any ~~((naturally occurring))~~ kind that is liquid ~~((hydrocarbons))~~ at atmospheric temperature and pressure ~~((coming from the earth, including~~

~~condensate and natural gasoline,))~~ and any fractionation thereof, including, but not limited to, crude oil, petroleum, gasoline, fuel oil, diesel oil, oil sludge, oil refuse, biological oils and blends, and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed in Table 302.4 of 40 CFR Part 302 adopted August 14, 1989, under section 101(4) of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by P.L. 99-499.

(17) "Owner" or "operator" means:

(a) In the case of a vessel, any person owning, operating, or chartering by demise, the vessel;

(b) In the case of an onshore or offshore facility, any person owning or operating the facility;

(c) In the case of an abandoned vessel, onshore, or offshore facility, the person who owned or operated the vessel or facility immediately before its abandonment; and

(d) "Operator" does not include any person who owns the land underlying a facility if the person is not involved in the operations of the facility.

(18) "Passenger vessel" means a ship of three hundred or more gross tons with a fuel capacity of at least six thousand gallons carrying passengers for compensation.

(19) "Person" means any political subdivision, government agency, municipality, industry, public or private corporation, co-partnership, association, firm, individual, ship, or any other entity whatsoever.

(20) "Person in charge" or "PIC" means a person qualified and designated as required under 33 CFR 155, for vessels, 33 CFR 154 for class 1, 2, or 3 facilities, or if not designated, the person with overall responsibility for oil transfer operations.

(21) "Personnel" means individuals employed by, or under contract with a facility or vessel.

(22) "Public vessel" means a vessel that is owned, or demise chartered, and is operated by the United States government, or a government of a foreign country, and is not engaged in commercial service.

(23) "Recreational vessel" means a vessel owned and operated only for pleasure with no monetary gain involved and if leased, rented, or chartered to another for recreational use is not used for monetary gain. This definition applies to vessels such as house boats, ski boats, and other small craft on a rental or lease agreement.

(24) "Ship" means any boat, ship, vessel, barge, or other floating craft of any kind.

(25) "Spill" means an unauthorized discharge of oil into the waters of the state.

(26) "State" means the state of Washington.

(27) "Tank vessel" means a ship that is constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue, and that:

(a) Operates on the waters of the state; or

(b) Transfers oil in a port or place subject to the jurisdiction of this state.

(28) "Transfer" means any movement of oil in bulk to or from a nonrecreational vessel or transmission pipeline.

(29) "Waters of the state" includes lakes, rivers, ponds, streams, inland waters, underground water, salt waters, estuaries, tidal flats, beaches and lands adjoining the seacoast of

the state, sewers, and all other surface waters and water-courses within the jurisdiction of the state of Washington.