

WSR 12-08-004
PERMANENT RULES
DEPARTMENT OF
SOCIAL AND HEALTH SERVICES

(Aging and Adult Services Administration)

[Filed March 22, 2012, 8:32 a.m., effective April 22, 2012]

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

Purpose: The department is amending and adding sections to these rules as a result of legislative activity during session and to be consistent with newly passed state law, ESSB 5708 Long-term care services.

The department added new WAC 388-78A-2032 and 388-78A-2035.

Citation of Existing Rules Affected by this Order: Amending WAC 388-78A-2020 and 388-78A-2030.

Statutory Authority for Adoption: Chapter 18.20 RCW.

Adopted under notice filed as WSR 12-01-113 on December 21, 2011.

Changes Other than Editing from Proposed to Adopted Version: Changes are shown with the new language underlined and deleted text lined through.

WAC 388-78A-2020 Definitions.

"Wellness program" means an educational program provided by the boarding home. It is a proactive and preventative approach to assist residents and nonresident individuals in achieving optimal levels of health, social, and emotional functioning. A wellness program does not include medical care or interventions.

WAC 388-78A-2030 Boarding home license required.

(1) A boarding home license is required to operate or maintain a boarding home as defined in chapter 18.20 RCW and this chapter.

(2) A boarding home license is required when any person other than a family member provides housing, one or more basic services, and one or more of the following:

(a) Assumes general responsibility for the safety and well-being of the residents except as provided in WAC 388-78A-2032;

(b) Provides domiciliary care which includes:

(i) Providing assistance with activities of daily living, either directly or indirectly as defined in this chapter and described in WAC 388-78A-2190;

(ii) Providing health support services, either directly or indirectly as defined in this chapter and described in WAC 388-78A-2200; or

(iii) Providing intermittent nursing services, either directly or indirectly as described in WAC 388-78A-2310.

(3) A boarding home license is required if the provision of items and services to a nonresident individual requires ongoing evaluation or assessment, ongoing care and service planning, ongoing intervention or ongoing monitoring of a nonresident individual's well-being as specified in this chapter.

(4) A boarding home may provide adult day services as defined in WAC 388-78A-2020 and as specified in WAC 388-78A-2360 to nonresident individuals, including independent living residents, on the boarding home premises.

NEW SECTION

WAC 388-78A-2032 Boarding home license not required.

(2) A boarding home license is not required for one or more of the following items and services that may, upon request of the nonresident individual, be provided to a nonresident individual:

(a) Emergency assistance provided on an intermittent or nonroutine basis;

(b) Systems including technology-based monitoring devices employed by independent senior housing, or independent living units in continuing care retirement communities, to respond to the potential need for emergency services;

(c) Scheduled and nonscheduled blood pressure checks;

(d) Nursing assessment services to determine whether referral to an outside health care provider is recommended;

(e) Making and reminding of health care appointments;

(f) Preadmission assessment, for the purposes of transitioning to a licensed care setting;

(g) Medication assistance which may include reminding or coaching the nonresident individual, opening the nonresident individual's [individual's] medication container, using an enabler, and handing prefilled insulin syringes to the nonresident individual;

(h) Prefilling insulin syringes which must be performed by a nurse licensed under chapter 18.79 RCW;

(i) Assessment to determine cause of a fall;

(j) Nutrition management and education services;

(k) Dental services;

(l) Wellness programs as defined in WAC 388-78A-2020; or

(m) Services customarily provided under the landlord tenant agreements governed by the residential landlord-tenant act, chapter 59.18 RCW.

SUMMARY OF COMMENTS RECEIVED	THE DEPARTMENT CONSIDERED ALL THE COMMENTS. THE ACTIONS TAKEN IN RESPONSE TO THE COMMENTS, OR THE REASONS NO ACTIONS WERE TAKEN, FOLLOW.
WAC 388-78A-2032 Requested the term "wellness program" be defined.	"Wellness program" definition is added to WAC 388-78A-2020, and referred to under WAC 388-78A-2032.
Requested clarification regarding the boarding home's ability to provide adult day services to nonresident individuals, including independent living residents, on the boarding home premises.	The department added language to clarify that, for the purposes of adult day services, nonresident individuals includes independent living residents in WAC 388-78A-2030.

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 2, Amended 2, 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; Other Alternative Rule Making: New 2, Amended 2, Repealed 0.

Date Adopted: March 20, 2012.

Katherine I. Vasquez
Rules Coordinator

AMENDATORY SECTION (Amending WSR 08-05-099, filed 2/15/08, effective 3/17/08)

WAC 388-78A-2020 Definitions. "Abandonment" means action or inaction by a person with a duty of care for a vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

"Abuse" means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a resident. In instances of abuse of a resident who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish. Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a resident, which have the following meanings:

(1) **"Mental abuse"** means any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a resident from family, friends, or regular activity, and verbal assault that includes ridiculing, intimidating, yelling, or swearing;

(2) **"Physical abuse"** means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an object, slapping, pinching, choking, kicking, shoving, prodding, or the use of chemical restraints or physical restraints;

(3) **"Sexual abuse"** means any form of nonconsensual sexual contact, including, but not limited to, unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual contact may include interactions that do not involve touching, including but not limited to sending a resident sexually explicit messages, or cuing or encouraging a resident to perform sexual acts. Sexual abuse includes any sexual contact between a staff person and a resident, whether or not it is consensual;

(4) **"Exploitation"** means an act of forcing, compelling, or exerting undue influence over a resident causing the resident to act in a way that is inconsistent with relevant past behavior, or causing the resident to perform services for the benefit of another.

"Activities of daily living" means the following tasks related to basic personal care: Bathing; toileting; dressing; personal hygiene; mobility; transferring; and eating.

"Adult day services" means care and services provided to a nonresident individual by the boarding home on the boarding home premises, for a period of time not to exceed ten continuous hours, and does not involve an overnight stay.

"Ambulatory" means capable of walking or traversing a normal path to safety without the physical assistance of another individual:

(1) **"Nonambulatory"** means unable to walk or traverse a normal path to safety without the physical assistance of another individual;

(2) **"Semiambulatory"** means physically and mentally capable of traversing a normal path to safety with the use of mobility aids, but unable to ascend or descend stairs without the physical assistance of another individual.

"Applicant" means the person, as defined in this section, that has submitted, or is in the process of submitting, an application for a boarding home license.

"Basic services" means housekeeping services, meals, nutritious snacks, laundry, and activities.

"Bathing fixture" means a bathtub, shower or sit-down shower.

"Bathroom" means a room containing at least one bathing fixture.

"Boarding home" means any home or other institution, however named, which is advertised, announced, or maintained for the express or implied purpose of providing housing, basic services, and assuming general responsibility for the safety and well-being of the residents, and may also provide domiciliary care, consistent with this chapter to seven or more residents after July 1, 2000. However, a boarding home that is licensed for three to six residents prior to or on July 1, 2000, may maintain its boarding home license as long as it is continually licensed as a boarding home. "Boarding home" does not include facilities certified as group training homes pursuant to RCW 71A.22.040, nor any home, institution or section thereof which is otherwise licensed and regulated under the provisions of state law providing specifically for the licensing and regulation of such home, institution or section thereof. Nor shall it include any independent senior housing, independent living units in continuing care retirement communities, or other similar living situations including those subsidized by the Department of Housing and Urban Development. "Boarding home" may also include persons associated with the boarding home to carry out its duties under this chapter.

"Building code" means the building codes and standards adopted by the Washington state building code council.

"Caregiver" means anyone providing hands-on personal care to another person including, but not limited to: Cuing, reminding or supervision of residents, on behalf of a boarding home, except volunteers who are directly supervised. Direct supervision means oversight by a person who has demonstrated competency in the basic training (and specialty training if required), or who has been exempted from the basic training requirements, is on the premises, and is quickly and easily available to the caregiver.

"Construction review services" means the office of construction review services within the Washington state department of health.

"Continuing care contract" means, as stated in RCW 70.38.025, a contract providing a person, for the duration of that person's life or for a term in excess of one year, shelter along with nursing, medical, health-related, or personal care services, which is conditioned upon the transfer of property, the payment of an entrance fee to the provider of such services, or the payment of periodic charges for the care and services involved. A continuing care contract is not excluded from this definition because the contract is mutually terminable or because shelter and services are not provided at the same location.

"Continuing care retirement community" means, as stated in RCW 70.38.025, an entity which provides shelter and services under continuing care contracts with its members and which sponsors or includes a health care facility or a health service.

"Contractor" means an agency or person who contracts with a licensee to provide resident care, services or equipment.

"Crimes relating to financial exploitation" means the same as "crimes relating to financial exploitation" as defined in RCW 43.43.830 or 43.43.842.

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

"Dietitian" means an individual certified under chapter 18.138 RCW.

"Document" means to record, with signature, title, date and time:

(1) Information about medication administration, medication assistance or disposal, a nursing care procedure, accident, occurrence or change in resident condition that may affect the care or needs of a resident; and

(2) Processes, events or activities that are required by law, rule or policy.

"Domiciliary care" means:

(1) Assistance with activities of daily living provided by the boarding home either directly or indirectly; or

(2) Health support services, if provided directly or indirectly by the boarding home; or

(3) Intermittent nursing services, if provided directly or indirectly by the boarding home.

"Enforcement remedy" means one or more of the department's responses to a boarding home's noncompliance with chapter 18.20 RCW and this chapter, as authorized by RCW 18.20.190.

"Financial exploitation" means the illegal or improper use, control over, or withholding of the property, income, resources, or trust funds of the vulnerable adult by any person or entity for any person's or entity's profit or advantage other than for the vulnerable adult's profit or advantage. Some examples of financial exploitation are given in RCW 74.34.-020(6).

"Food service worker" means according to chapter 246-217 WAC an individual who works (or intends to work) with or without pay in a food service establishment and handles unwrapped or unpackage food or who may contribute to the transmission of infectious diseases through the nature of his/her contact with food products and/or equipment and facilities. This does not include persons who simply assist residents with meals.

"General responsibility for the safety and well-being of the resident" means the provision of the following:

(1) Prescribed general low sodium diets;

(2) Prescribed general diabetic diets;

(3) Prescribed mechanical soft foods;

(4) Emergency assistance;

(5) Monitoring of the resident;

(6) Arranging health care appointments with outside health care providers and reminding residents of such appointments as necessary;

(7) Coordinating health care services with outside health care providers consistent with WAC 388-78A-2350;

(8) Assisting the resident to obtain and maintain glasses, hearing aids, dentures, canes, crutches, walkers, wheelchairs, and assistive communication devices;

(9) Observation of the resident for changes in overall functioning;

(10) Blood pressure checks as scheduled;

(11) Responding appropriately when there are observable or reported changes in the resident's physical, mental, or emotional functioning; or

(12) Medication assistance as permitted under RCW 69.41.085 and as described in RCW 69.41.010 and chapter 246-888 WAC.

"Harm" means a physical or mental or emotional injury or damage to a resident including those resulting from neglect or violations of a resident's rights.

"Health support services" means any of the following optional services:

(1) Blood glucose testing;

(2) Puree diets;

(3) Calorie controlled diabetic diets;

(4) Dementia care;

(5) Mental health care; or

(6) Developmental disabilities care.

"Independent living unit" means:

(1) Independent senior housing;

(2) Independent living unit in a continuing care retirement community or other similar living environments;

(3) Boarding home unit where domiciliary services are not provided; or

(4) Boarding home unit where one or more items listed under "general responsibilities" are not provided.

"Independent senior housing" means an independent living unit occupied by an individual or individuals sixty or more years of age.

"Infectious" means capable of causing infection or disease by entrance of organisms into the body, which grow and multiply there, including, but not limited to, bacteria, viruses, protozoans, and fungi.

"Licensee" means the person, as defined in this chapter, to whom the department issues the boarding home license.

"Licensed resident bed capacity" means the resident occupancy level requested by the licensee and approved by the department. All residents receiving domiciliary care or the items or services listed under general responsibility for the safety and well-being of the resident as defined in this section count towards the licensed resident bed capacity. Adult day services clients do not count towards the licensed resident bed capacity.

"Majority owner" means any person that owns:

- (1) More than fifty percent interest; or
- (2) If no one person owns more than fifty percent interest, the largest interest portion; or
- (3) If more than one person owns equal largest interest portions, then all persons owning those equal largest interest portions.

"Manager" means the person defined in this chapter, providing management services on behalf of the licensee.

"Management agreement" means a written, executed agreement between the licensee and the manager regarding the provision of certain services on behalf of the licensee.

"Mandated reporter":

(1) Is an employee of the department, law enforcement officer, social worker, professional school personnel, individual provider, an employee of a facility, an operator of a facility, an employee of a social service, welfare, mental health, adult day health, adult day care, home health, home care, or hospice agency, county coroner or medical examiner, Christian Science practitioner, or health care provider subject to chapter 18.130 RCW; and

(2) For the purpose of the definition of mandated reporter, "Facility" means a residence licensed or required to be licensed under chapter 18.20 RCW (boarding homes), chapter 18.51 RCW (nursing homes), chapter 70.128 RCW (adult family homes), chapter 72.36 RCW (soldiers' homes), chapter 71A.20 RCW (residential habilitation centers), or any other facility licensed by the department.

"Maximum facility capacity" means the maximum number of individuals that the boarding home may serve at any one time, as determined by the department.

(1) The maximum facility capacity includes all residents and respite care residents and adult day services clients.

(2) The maximum facility capacity is equal to the lesser of:

(a) The sum of the number of approved bed spaces for all resident rooms (total number of approved bed spaces), except as specified in subsection (3); or

(b) Twice the seating capacity of the dining area(s) consistent with WAC 388-78A-2300 (1)(h); or

(c) The number of residents permitted by calculating the ratios of toilets, sinks, and bathing fixtures to residents consistent with WAC 388-78A-3030; or

(d) For boarding homes licensed on or before December 31, 1988, the total day room area in square feet divided by ten square feet, consistent with WAC 388-78A-3050; or

(e) For boarding homes licensed after December 31, 1988, the total day room area in square feet divided by twenty square feet, consistent with WAC 388-78A-3050.

(3) For the purposes of providing adult day services consistent with WAC 388-78A-2360, one additional adult day services client may be served, beyond the total number of approved bed spaces, for each additional sixty square feet of day room area greater than the area produced by multiplying the total number of approved bed spaces by twenty square feet, provided that:

(a) There is ~~(a - at)~~ at least one toilet and one hand washing sink accessible to adult day services clients for every eight adult day services clients or fraction thereof;

(b) The total number of residents and adult day services clients does not exceed twice the seating capacity of the dining area(s) consistent with WAC 388-78A-2300 (1)(h); and

(c) The adult day services program area(s) and building do not exceed the occupancy load as determined by the local building official or state fire marshal.

"Medication administration" means the direct application of a prescribed medication whether by injection, inhalation, ingestion, or other means, to the body of the resident by an individual legally authorized to do so.

"Medication assistance" means assistance with self-administration of medication rendered by a nonpractitioner to a resident of a boarding home in accordance with chapter 246-888 WAC.

"Medication organizer" means a container with separate compartments for storing oral medications organized in daily doses.

"Medication service" means any service provided either directly or indirectly by a boarding home related to medication administration, medication administration provided through nurse delegation, medication assistance, or resident self-administration of medication.

"Neglect" means:

(1) A pattern of conduct or inaction resulting in the failure to provide the goods and services that maintain physical or mental health of a resident, or that fails to avoid or prevent physical or mental harm or pain to a resident; or

(2) An act or omission that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the resident's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100.

"Nonresident individual" means an individual who resides in independent senior housing, independent living units in continuing care retirement communities, or in other similar living environments or in an unlicensed room located within a boarding home ~~((and may receive one or more of the services listed in WAC 388-78A-2030 (2)(a) through (g)))~~. A nonresident individual may not receive from the boarding home:

(1) Domiciliary care ~~((as defined in this section))~~ directly or indirectly ~~((by the boarding home, and may not receive))~~; or

(2) The items or services listed ~~((under))~~ in the definition of "general responsibility for the safety and well-being of the resident" ~~((as defined in this section))~~, except ~~((during the time))~~ as allowed under WAC 388-78A-2032 or when the person is receiving adult day services ~~((as defined in this section))~~.

"Nonpractitioner" means any individual who is not a practitioner as defined in WAC 388-78A-2020 and chapter 69.41 RCW.

"Nurse" means an individual currently licensed under chapter 18.79 RCW as either a:

- (1) **"Licensed practical nurse"** (LPN); or
- (2) **"Registered nurse"** (RN).

"Over-the-counter (OTC) medication" means any medication that may be legally purchased without a prescriptive order, including, but not limited to, aspirin, antacids, vitamins, minerals, or herbal preparations.

"Person" means any individual, firm, partnership, corporation, company, association, joint stock association or any other legal or commercial entity.

"Physician" means an individual licensed under chapter 18.57 or 18.71 RCW.

"Practitioner" includes a licensed physician, osteopathic physician, podiatric physician, pharmacist, licensed practical nurse, registered nurse, advanced registered nurse practitioner, dentist, and physician assistant. Refer to chapter 69.41 RCW for a complete listing of practitioners.

"Prescribed medication" means any medication (legend drug, controlled substance, and over-the-counter) that is prescribed by an authorized practitioner.

"Prescriber" means a health care practitioner authorized by Washington state law to prescribe drugs.

"Problem" means a violation of any WAC or RCW applicable to the operation of a boarding home:

(1) **"Recurring problem"** means, for all purposes other than those described in RCW 18.20.400, that the department has cited the boarding home for a violation of WAC or RCW and the circumstances of (a) or (b) of this subsection are present:

(a) The department previously imposed an enforcement remedy for a violation of the same section of WAC or RCW for substantially the same problem following any type of inspection within the preceding thirty-six months; or

(b) The department previously cited a violation under the same section of WAC or RCW for substantially the same problem following any type of inspection on two occasions within the preceding thirty-six months.

(c) If the previous violation in (a) or (b) of this subsection was pursuant to WAC or RCW that has changed at the time of the new violation, citation to the equivalent current WAC or RCW section is sufficient.

(d) When there is a change in licensees between the first and the second or third citations, the new licensee must accept, and the department will consider, the prior licensee's compliance and enforcement record as part of the new licensee's compliance record at that boarding home if any person affiliated with the new licensee was affiliated with the prior licensee at the same boarding home. A person is considered affiliated with the licensee if the person is an applicant for the boarding home license, or is listed on the license application as a partner, officer, director, or majority owner of the applicant.

(2) **"Serious problem"** means:

(a) There has been a violation of a WAC or RCW; and

(b) Significant harm has actually occurred to a resident; or

(c) It is likely that significant harm or death will occur to a resident.

(3) **"Uncorrected problem"** means the department has cited a violation of WAC or RCW following any type of inspection and the violation remains uncorrected at the time the department makes a subsequent inspection for the specific purpose of verifying whether such violation has been corrected. When a change in licensees occurs, the new licensee is responsible for correcting any remaining violations that may exist, including complying with any plan of

correction in effect immediately prior to the change in licensees.

"Prospective resident" means an individual who is seeking admission to a licensed boarding home and who has completed and signed an application for admission, or such application for admission has been completed and signed in their behalf by their legal representative if any, and if not, then the designated representative if any.

"Reasonable accommodation" and **"reasonably accommodate"** have the meaning given in federal and state antidiscrimination laws and regulations which include, but are not limited to, the following:

(1) Reasonable accommodation means that the boarding home must:

(a) Not impose admission criteria that excludes individuals unless the criteria is necessary for the provision of boarding home services;

(b) Make reasonable modification to its policies, practices or procedures if the modifications are necessary to accommodate the needs of the resident;

(c) Provide additional aids and services to the resident.

(2) Reasonable accommodations are not required if:

(a) The resident or individual applying for admission presents a significant risk to the health or safety of others that cannot be eliminated by the reasonable accommodation;

(b) The reasonable accommodations would fundamentally alter the nature of the services provided by the boarding home; or

(c) The reasonable accommodations would cause an undue burden, meaning a significant financial or administrative burden.

"RCW" means Revised Code of Washington.

"Records" means:

(1) **"Active records"** means the current, relevant documentation regarding residents necessary to provide care and services to residents; or

(2) **"Inactive records"** means historical documentation regarding the provision of care and services to residents that is no longer relevant to the current delivery of services and has been thinned from the active record.

"Resident" means an individual who:

(1) Chooses to reside in a boarding home, including an individual receiving respite care;

(2) Is not related by blood or marriage to the operator of the boarding home;

(3) Receives basic services; and

(4) Receives one or more of the services listed ~~((under))~~ in the definition of "general responsibility for the safety and well-being of the resident", and may receive domiciliary care or respite care provided directly, or indirectly, by the boarding home. A nonresident individual may receive services that are permitted under WAC 388-78A-2032.

"Resident's representative" means:

(1) The legal representative who is the person or persons identified in RCW 7.70.065 and who may act on behalf of the resident pursuant to the scope of their legal authority. The legal representative shall not be affiliated with the licensee, boarding home, or management company, unless the affiliated person is a family member of the resident; or

(2) If there is no legal representative, a person designated voluntarily by a competent resident in writing, to act in the resident's behalf concerning the care and services provided by the boarding home and to receive information from the boarding home if there is no legal representative. The resident's representative may not be affiliated with the licensee, boarding home, or management company, unless the affiliated person is a family member of the resident. The resident's representative under this subsection shall not have authority to act on behalf of the resident once the resident is no longer competent. The resident's competence shall be determined using the criteria in RCW 11.88.010 (1)(e).

"Respite care" means short-term care for any period in excess of twenty-four continuous hours for a resident to temporarily relieve the family or other caregiver of providing that care.

"Restraint" means any method or device used to prevent or limit free body movement, including, but not limited to:

(1) Confinement, unless agreed to as provided in WAC 388-78A-2370;

(2) **"Chemical restraint"** which means a psychopharmacologic drug that is used for discipline or convenience and not required to treat the resident's medical symptoms; and

(3) **"Physical restraint"** which means a manual method, obstacle, or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that restricts freedom of movement or access to his or her body, is used for discipline or convenience, and not required to treat the resident's medical symptoms.

"Room" means a space set apart by floor to ceiling partitions on all sides with all openings provided with doors or windows.

(1) **"Sleeping room"** means a room where a resident is customarily expected to sleep and contains a resident's bed.

(2) **"Resident living room"** means the common space in a resident unit that is not a sleeping room, bathroom or closet.

"Significant change" means a change in the resident's physical, mental, or psychosocial status that causes either life-threatening conditions or clinical complications.

"Special needs" means a developmental disability, mental illness, or dementia.

"Staff person" means any boarding home employee or temporary employee or contractor, whether employed or retained by the licensee or any management company, or volunteer.

"State fire marshal" means the director of fire protection under the direction of the chief of the Washington state patrol.

"Toilet" means a disposal apparatus used for urination and defecation, fitted with a seat and flushing device.

"Volunteer" means an individual who interacts with residents without reimbursement.

"Vulnerable adult" includes a person:

(1) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself; or

(2) Found incapacitated under chapter 11.88 RCW; or

(3) Who has a developmental disability as defined under RCW 71A.10.020; or

(4) Admitted to any facility, including any boarding home; or

(5) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW; or

(6) Receiving services from an individual provider.

(7) For the purposes of requesting and receiving background checks pursuant to RCW 43.43.832, it shall also include adults of any age who lack the functional, mental, or physical ability to care for themselves.

"WAC" means Washington Administrative Code.

"Wellness program" means an educational program provided by the boarding home. It is a proactive and preventative approach to assist residents and nonresident individuals in achieving optimal levels of health, social, and emotional functioning. A wellness program does not include medical care or interventions.

"Willful" means the deliberate, or nonaccidental, action or inaction by an alleged perpetrator that he/she knows or reasonably should have known could cause a negative outcome, including harm, injury, pain or anguish.

"WISHA" means the Washington Industrial Safety and Health Act, chapter 49.17 RCW administered by the Washington state department of labor and industries.

AMENDATORY SECTION (Amending WSR 04-16-065, filed 7/30/04, effective 9/1/04)

WAC 388-78A-2030 ((Applicability)) Boarding home license required. (1) A ~~((person must have a))~~ boarding home license ~~((issued by the department under chapter 18.20 RCW and this chapter, except as otherwise exempted by RCW 18.20.170 and subsection (2) of this section, if the person advertises as, or operates, or maintains a facility that meets the definition of a "boarding home" in this chapter, within Washington state and provides housing, one or more basic services, and one or more of the following))~~ is required to operate or maintain a boarding home as defined in chapter 18.20 RCW and this chapter.

(2) A boarding home license is required when any person other than a family member provides housing, one or more basic services, and one or more of the following:

(a) Assumes general responsibility for the safety and well-being of the residents except as provided in WAC 388-78A-2032;

(b) Provides domiciliary care which includes:

(i) Providing assistance with activities of daily living, either directly or indirectly as defined in this chapter and described in WAC 388-78A-2190;

~~((e) Provides)~~ (ii) Providing health support services, either directly or indirectly as defined in this chapter and described in WAC 388-78A-2200; or

~~((d) Provides)~~ (iii) Providing intermittent nursing services, either directly or indirectly as described in WAC 388-78A-2310.

~~((2))~~ (3) A boarding home license is ((not required for one or more of the following services that may be provided to a nonresident individual. These services may not include continual care or supervision of a nonresident individual without a boarding home license:

~~(a) Emergency assistance provided on an intermittent or nonroutine basis to any nonresident individual; or~~

~~(b) Systems employed by independent senior housing, or independent living units in continuing care retirement communities, to respond to the potential need for emergency services for nonresident individuals; or~~

~~(c) Infrequent, voluntary, and nonscheduled blood pressure checks for nonresident individuals; or~~

~~(d) Nurse referral services provided at the request of a nonresident individual to determine whether referral to an outside health care provider is recommended; or~~

~~(e) Making health care appointments at the request of nonresident individuals; or~~

~~(f) Preadmission assessment, at the request of the nonresident individual; or~~

~~(g) Services customarily provided under landlord tenant agreements governed by the Residential Landlord-Tenant Act, chapter 59.18 RCW; or~~

~~(h) Housing nonresident individuals who, without ongoing assistance from the boarding home, initiate and arrange for services with a practitioner licensed under Title 18 RCW or a home health, hospice, or home care agency licensed under chapter 70.127 RCW, or other persons as permitted by the boarding home.~~

~~(3) This section does not prohibit a boarding home from furnishing written information concerning available community resources to nonresident individuals or the individual's family members or legal representatives. However, the boarding home may not require the use of any particular service provider)) required if the provision of items and services to a nonresident individual requires ongoing evaluation or assessment, ongoing care and service planning, ongoing intervention or ongoing monitoring of a nonresident individual's well-being as specified in this chapter.~~

~~(4) The boarding home may provide adult day services as defined in WAC 388-78A-2020 and as specified in WAC 388-78A-2360 to nonresident individuals, including independent living residents, on the boarding home premises.~~

NEW SECTION

WAC 388-78A-2032 Boarding home license not required. (1) A boarding home license is not required for the housing, or services, customarily provided under landlord tenant agreements governed by the residential tenant act, chapter 59.18 RCW, or when housing nonresident individuals who chose to participate in the programs or services in subsection (2) of this section when offered by the boarding home licensee or the licensee's contractor.

(2) A boarding home license is not required for one or more of the following items and services that may, upon request of the nonresident individual, be provided to a nonresident individual:

(a) Emergency assistance provided on an intermittent or nonroutine basis;

(b) Systems including technology-based monitoring devices employed by independent senior housing, or independent living units in continuing care retirement communities, to respond to the potential need for emergency services;

(c) Scheduled and nonscheduled blood pressure checks;

(d) Nursing assessment services to determine whether referral to an outside health care provider is recommended;

(e) Making and reminding of health care appointments;

(f) Preadmission assessment, for the purposes of transitioning to a licensed care setting;

(g) Medication assistance which may include reminding or coaching the nonresident individual, opening the nonresident individual's medication container, using an enabler, and handing prefilled insulin syringes to the nonresident individual;

(h) Prefilling insulin syringes which must be performed by a nurse licensed under chapter 18.79 RCW;

(i) Assessment to determine cause of a fall;

(j) Nutrition management and education services;

(k) Dental services;

(l) Wellness programs as defined in WAC 388-78A-2020; or

(m) Services customarily provided under the landlord tenant agreements governed by the residential landlord-tenant act, chapter 59.18 RCW.

(3) This section does not prohibit a boarding home from furnishing written information concerning available community resources to nonresident individuals or the individual's family members or legal representatives. However, the boarding home may not require the use of any particular service provider.

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.

NEW SECTION

WAC 388-78A-2035 Disclosure statement to nonresident individuals. (1) A boarding home must provide each nonresident individual a disclosure statement upon admission and at the time that additional services are requested by the nonresident individual.

(2) The disclosure statement must notify the nonresident individual that:

(a) The resident rights of chapter 70.129 RCW do not apply to nonresident individuals;

(b) Licensing requirements for boarding homes under this chapter do not apply to nonresident units; and

(c) The jurisdiction of the long-term care ombudsman does not apply to nonresident individuals and nonresident units.

WSR 12-09-005

PERMANENT RULES SUPERINTENDENT OF PUBLIC INSTRUCTION

[Filed April 5, 2012, 9:43 a.m., effective May 6, 2012]

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

Purpose: This amended rule provides relief to districts, in consideration of public comments and recommendations.

A public hearing on this rule was initially held November 22, 2011. Testimony from the public hearing over-

whelmingly recommended that the WAC language be more generalized, and supported this final revision.

A second public hearing on this rule was held March 27, 2012. The rationale behind replacing the phrase "ending net cash and investments, revenues and expenditures" with the more generalized word "amounts" is that the proposed language allows districts to reconcile in a more appropriate way and makes sure that there is agreement between the county treasurers' records and the school districts' records.

Citation of Existing Rules Affected by this Order: Amending WAC 392-123-132.

Statutory Authority for Adoption: RCW 28A.150.290 (2).

Adopted under notice filed as WSR 12-05-062 on February 15, 2012.

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 0, Repealed 0.

Date Adopted: March 27, 2012.

Randy Dorn
State Superintendent

AMENDATORY SECTION (Amending Order 8-76, filed 7/23/76)

WAC 392-123-132 Reconciliation of monthly county treasurers' statements to district records. Every school district shall reconcile ~~((ending net cash and investments, revenues and expenditures))~~ amounts reported by the county treasurer with the district records for all funds. Any differences shall be noted and adjustments to school district records shall be made if necessary.

WSR 12-09-008
PERMANENT RULES
BOARD OF REGISTRATION
FOR PROFESSIONAL ENGINEERS
AND LAND SURVEYORS

[Filed April 5, 2012, 10:26 a.m., effective May 6, 2012]

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

Purpose: The existing rule needs to be revised to reflect passage of HB 1061, signed by the governor on May 5, 2011. With the passage of HB 1061, certified inspectors are no longer required to obtain professional development hours.

Citation of Existing Rules Affected by this Order: Amending chapter 196-34 WAC.

Statutory Authority for Adoption: Chapter 18.43 RCW.

Other Authority: Chapter 18.210 RCW.

Adopted under notice filed as WSR 12-02-011 on December 23, 2011.

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 12, Repealed 0.

Number of Sections Adopted at Request of a Nongovernmental Entity: New 0, Amended 12, 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 12, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: March 15, 2012.

George A. Twiss
Executive Director

Chapter 196-34 WAC

CONTINUING EDUCATION OF LICENSED PROFESSIONAL ON-SITE WASTEWATER TREATMENT SYSTEM DESIGNERS ~~((AND CERTIFIED INSPECTORS))~~

AMENDATORY SECTION (Amending WSR 06-11-118, filed 5/19/06, effective 7/1/06)

WAC 196-34-100 Purpose and effective date. The purpose of the ~~((continuing education))~~ professional development hours requirement is to encourage licensed on-site wastewater treatment system designers (designers) ~~((and certificate of competency holders (inspectors)))~~, under chapter 18.210 RCW, to maintain competency in their practice. ~~((On July 1, 2007 and thereafter,))~~ All designers ((and inspectors)) must meet these requirements as a condition of continued licensure ~~((certification))~~ under chapter 18.210 RCW.

AMENDATORY SECTION (Amending WSR 06-11-118, filed 5/19/06, effective 7/1/06)

WAC 196-34-105 Definitions. Terms used in this chapter are defined as follows:

(1) Professional development hour (PDH)~~((—))~~ - An hour engaged in a qualifying activity.

(2) ~~((Continuing education unit (CEU) — Unit of credit customarily used for continuing education courses. One continuing education unit equals ten professional development hours.~~

~~((—)))~~ College/unit semester/quarter hour~~((—))~~ - Completion of courses in college level curriculums satisfactory to the board.

~~((4))~~ 3 Qualifying activity~~((—))~~— Any activity that is related to on-site wastewater treatment systems or will help the designer ~~((or inspector))~~ to maintain their competency as an on-site wastewater treatment system professional.

~~((5))~~ Year That twelve month period between the renewal and expiration of a credential for a designer or inspector.

~~(6))~~ 4 Board~~((—))~~— The board of registration for professional engineers and land surveyors.

AMENDATORY SECTION (Amending WSR 06-11-118, filed 5/19/06, effective 7/1/06)

WAC 196-34-110 Requirements. ~~((Starting July 1, 2006;))~~ All designers ~~((and inspectors;))~~ wishing to maintain active practice must accumulate ~~((forty five))~~ thirty PDH for any given ~~((three year))~~ two-year period. ~~((Starting July 1, 2007))~~ The PDH accumulated by designers ~~((and inspectors))~~ are subject to audit by the board. ~~((Those individuals, who practice as both a designer and inspector, need only accumulate a total of forty five PDH for the three year period.))~~

AMENDATORY SECTION (Amending WSR 06-11-118, filed 5/19/06, effective 7/1/06)

WAC 196-34-115 Qualifying activities. The board believes that designers ~~((and inspectors))~~ under provisions of chapter 18.210 RCW should have the discretion to make independent choices on what activities help them to be improved practitioners. The board will not provide advance approvals for selected activities or vendors. The board expects designers ~~((and inspectors))~~ to seek out qualifying activities that can be demonstrated to the board as relevant to his or her ~~((continuing education))~~ professional development as a designer ~~((or inspector))~~.

AMENDATORY SECTION (Amending WSR 06-11-118, filed 5/19/06, effective 7/1/06)

WAC 196-34-120 Units. Qualifying activities earned and applied to one of the following categories may not be applied to another category.

1. College hours:
 - a. Completion of 1 college semester hour 45 PDH
 - b. Completion of 1 college quarter hour 30 PDH
- ~~((2.))~~ 1 Continuing education unit ~~40 PDH~~
- ~~3.))~~ 2. For publication or presentation of each:
 - a. Authored technical paper or article 10 PDH
 - b. Authored book 30 PDH
- ~~((4.))~~ 3. Obtaining a patent 10 PDH
- ~~((5.))~~ 4. Membership in professional/technical societies or government committees or boards. (Not to exceed a total of 5 PDH/year) 2 1/2 PDH
- ~~((6.))~~ 5. For each hour of attendance in a professional or technical society meetings with an informational program. (Not to exceed a total of 5 PDH/year) 1 PDH

~~((7.))~~ 6. For each hour of attendance at meetings or hearings of the board ~~((or On-site Advisory Committee))~~. (Not to exceed a total of 7 1/2 PDH/year) 1 PDH

~~((8.))~~ 7. For each hour of preparation and subsequent presentation (*) of a professional development program at seminars, professional/technical meetings, conventions or conferences. (Not to exceed 10 PDH/year) (*) *This credit does not apply to full-time faculty.* 1 PDH

~~((9.))~~ 8. Completion of the continuing education requirements for maintaining a credential as a registered sanitarian. 10 PDH

~~((10.))~~ 9. For each hour of participation in committees of organizations whose purpose is to develop codes, standards, examinations and regulations. 1 PDH

~~((11.))~~ 10. For each hour of participation in an activity involving substantial and organized peer interaction, excluding time spent during regular employment. (Not to exceed a total of 5 PDH/year) 1 PDH

~~((12.))~~ 11. For each hour of participation in organized courses, including employer provided courses, on environmental health topics/first aid/safety, technical or management skills. 1 PDH

~~((13.))~~ 12. For each hour of participation in sessions or courses, sponsored by technical or professional societies, organizations or the board. 1 PDH

~~((14.))~~ 13. For each hour of self-study. (Not to exceed a total of 5 PDH/year) 1 PDH

~~((15.))~~ 14. For each hour of work, outside normal duties of employment that involves participation in other recognized professional activities. (i.e. a designer working with a land surveyor) (Not to exceed a total of 2 PDH/year) 1 PDH

AMENDATORY SECTION (Amending WSR 06-11-118, filed 5/19/06, effective 7/1/06)

WAC 196-34-130 Determination of credit. The board is the final authority with respect to claimed qualifying activities and the respective PDH credit. Qualifying activity becomes eligible for credit upon completion of the given activity. ~~((Credits gained in excess of the fifteen PDH annual requirement may be carried forward to the next renewal period.))~~

AMENDATORY SECTION (Amending WSR 06-11-118, filed 5/19/06, effective 7/1/06)

WAC 196-34-135 Recordkeeping and audits. The designer ~~((or inspector))~~ is responsible for maintaining

records to be used to support credits claimed. Records should include date of activity, instructor's name, description of activity, number of contact hours and location. The designer (~~(or inspector)~~) is required to keep their records of (~~(continuing education)~~) professional development covering the cumulative time in the current renewal period plus the (~~(three)~~) two years before the last renewal. All (~~(continuing education)~~) professional development records and supporting documentation must be furnished to the board upon request.

If an audit disqualifies credits that were reported to the board by a designer (~~(or inspector)~~) and results in the licensee failing to complete the PDH requirements, the board may require the shortage to be made up over a period of time established by the board.

AMENDATORY SECTION (Amending WSR 06-11-118, filed 5/19/06, effective 7/1/06)

WAC 196-34-140 Noncompliance with (~~(continuing education)~~) professional development. (1) A designer (~~(or inspector)~~) who fails to comply with the requirements of this chapter is subject to disciplinary action by the board.

(2) A designer (~~(or inspector)~~) who, through the course of an audit, is discovered to have falsified (~~(continuing education)~~) professional development documentation to the board is subject to disciplinary action by the board.

AMENDATORY SECTION (Amending WSR 06-11-118, filed 5/19/06, effective 7/1/06)

WAC 196-34-145 Waiver. The board may grant a waiver to the time requirement for collection of (~~(continuing education)~~) professional development to designers (~~(or inspectors)~~) who qualify. A request for a waiver must be made in writing and clearly state the justification and include any necessary documentation required by the board. All waivers expire on the next date of license(~~(certificate)~~) renewal unless the board grants an extension.

The board may grant waivers for:

(~~(a))~~) (1) Physical disability, prolonged illness, or other extenuating circumstances that pose a personal hardship.

(~~(b))~~) (2) Individuals who have been placed on active military duty for at least one hundred twenty days.

AMENDATORY SECTION (Amending WSR 06-11-118, filed 5/19/06, effective 7/1/06)

WAC 196-34-150 Exemption. Designers (~~(or inspectors)~~) who have been approved for "Inactive Status" as provided in WAC 196-34-155 are exempt from the requirement of collecting (~~(continuing education)~~) professional development hours.

AMENDATORY SECTION (Amending WSR 06-11-118, filed 5/19/06, effective 7/1/06)

WAC 196-34-155 Inactive status. Any designer (~~(or inspector)~~) who signs a board approved affirmation that they are not engaged in the practice as an on-site wastewater treatment system (~~(professional)~~) designer is eligible for inactive status. Those with inactive status are prohibited from any

practice as an on-site wastewater treatment system (~~(professional)~~) designer as provided in chapter 18.210 RCW. A designer (~~(or inspector)~~) on inactive status may reinstate their license to active status by written request to the board and payment of any applicable fees. In the first year of reactivated practice the designer (~~(or inspector)~~) may be required by the board to collect an additional fifteen PDH.

AMENDATORY SECTION (Amending WSR 06-11-118, filed 5/19/06, effective 7/1/06)

WAC 196-34-160 Comity/out-of-jurisdiction resident. The (~~(continuing education)~~) professional development requirements, as provided for in this chapter, may be satisfied when the board can verify that a designer (~~(or inspector)~~) has satisfied (~~(continuing education)~~) professional development requirements in another jurisdiction recognized by the board, as being equivalent to the requirements of this chapter.

WSR 12-09-016

PERMANENT RULES

OFFICE OF

FINANCIAL MANAGEMENT

[Filed April 5, 2012, 2:08 p.m., effective May 6, 2012]

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

Purpose: To establish official pay dates for state officers and employees for calendar year 2013.

Citation of Existing Rules Affected by this Order: Amending WAC 82-50-021.

Statutory Authority for Adoption: RCW 42.16.010(1) and 42.16.017.

Adopted under notice filed as WSR 12-04-091 on February 1, 2012.

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 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: April 4, 2012.

Sandi Stewart
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-10-019, filed 4/26/11, effective 5/27/11)

WAC 82-50-021 Official lagged, semimonthly pay dates established. Unless exempted otherwise under the pro-

visions of WAC 82-50-031, the salaries of all state officers and employees are paid on a lagged, semimonthly basis for the official twice-a-month pay periods established in RCW 42.16.010(1). The following are the official lagged, semi-monthly pay dates for calendar years (~~2011 and~~) 2012 and 2013:

((CALENDAR YEAR 2011	CALENDAR YEAR 2012
Monday, January 10, 2011	Tuesday, January 10, 2012
Tuesday, January 25, 2011	Wednesday, January 25, 2012
Thursday, February 10, 2011	Friday, February 10, 2012
Friday, February 25, 2011	Friday, February 24, 2012
Thursday, March 10, 2011	Friday, March 9, 2012
Friday, March 25, 2011	Monday, March 26, 2012
Monday, April 11, 2011	Tuesday, April 10, 2012
Monday, April 25, 2011	Wednesday, April 25, 2012
Tuesday, May 10, 2011	Thursday, May 10, 2012
Wednesday, May 25, 2011	Friday, May 25, 2012
Friday, June 10, 2011	Monday, June 11, 2012
Friday, June 24, 2011	Monday, June 25, 2012
Monday, July 11, 2011	Tuesday, July 10, 2012
Monday, July 25, 2011	Wednesday, July 25, 2012
Wednesday, August 10, 2011	Friday, August 10, 2012
Thursday, August 25, 2011	Friday, August 24, 2012
Friday, September 9, 2011	Monday, September 10, 2012
Monday, September 26, 2011	Tuesday, September 25, 2012
Friday, October 7, 2011	Wednesday, October 10, 2012
Tuesday, October 25, 2011	Thursday, October 25, 2012
Thursday, November 10, 2011	Friday, November 9, 2012
Wednesday, November 23, 2011	Monday, November 26, 2012
Friday, December 9, 2011	Monday, December 10, 2012
Friday, December 23, 2011	Monday, December 24, 2012))

<u>CALENDAR YEAR 2012</u>	<u>CALENDAR YEAR 2013</u>
<u>Tuesday, January 10, 2012</u>	<u>Thursday, January 10, 2013</u>
<u>Wednesday, January 25, 2012</u>	<u>Friday, January 25, 2013</u>
<u>Friday, February 10, 2012</u>	<u>Monday, February 11, 2013</u>
<u>Friday, February 24, 2012</u>	<u>Monday, February 25, 2013</u>
<u>Friday, March 9, 2012</u>	<u>Monday, March 11, 2013</u>
<u>Monday, March 26, 2012</u>	<u>Monday, March 25, 2013</u>
<u>Tuesday, April 10, 2012</u>	<u>Wednesday, April 10, 2013</u>
<u>Wednesday, April 25, 2012</u>	<u>Thursday, April 25, 2013</u>
<u>Thursday, May 10, 2012</u>	<u>Friday, May 10, 2013</u>
<u>Friday, May 25, 2012</u>	<u>Friday, May 24, 2013</u>
<u>Monday, June 11, 2012</u>	<u>Monday, June 10, 2013</u>
<u>Monday, June 25, 2012</u>	<u>Tuesday, June 25, 2013</u>
<u>Tuesday, July 10, 2012</u>	<u>Wednesday, July 10, 2013</u>
<u>Wednesday, July 25, 2012</u>	<u>Thursday, July 25, 2013</u>
<u>Friday, August 10, 2012</u>	<u>Friday, August 9, 2013</u>
<u>Friday, August 24, 2012</u>	<u>Monday, August 26, 2013</u>
<u>Monday, September 10, 2012</u>	<u>Tuesday, September 10, 2013</u>
<u>Tuesday, September 25, 2012</u>	<u>Wednesday, September 25, 2013</u>
<u>Wednesday, October 10, 2012</u>	<u>Thursday, October 10, 2013</u>
<u>Thursday, October 25, 2012</u>	<u>Friday, October 25, 2013</u>
<u>Friday, November 9, 2012</u>	<u>Friday, November 8, 2013</u>
<u>Monday, November 26, 2012</u>	<u>Monday, November 25, 2013</u>
<u>Monday, December 10, 2012</u>	<u>Tuesday, December 10, 2013</u>
<u>Monday, December 24, 2012</u>	<u>Tuesday, December 24, 2013</u>

WSR 12-09-025**PERMANENT RULES****EMPLOYMENT SECURITY DEPARTMENT**

[Filed April 6, 2012, 11:34 a.m., effective July 1, 2012]

Effective Date of Rule: July 1, 2012.

Purpose: To implement changes to the training benefits program made by chapter 4, Laws of 2011 (EHB 1091, Part III).

Citation of Existing Rules Affected by this Order: Repealing WAC 192-270-015 and 192-270-018; and amending WAC 192-270-005, 192-270-010, 192-270-017, 192-270-019, 192-270-035, 192-270-040, 192-270-045, 192-270-047, 192-270-050, 192-270-055, 192-270-065, and 192-270-070.

Statutory Authority for Adoption: RCW 50.12.010, 50.12.040, and 50.22.155(12).

Adopted under notice filed as WSR 12-05-027 on February 8, 2012.

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 12, Repealed 2.

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 1, Amended 12, Repealed 2.

Date Adopted: April 4, 2012.

Paul Trause
Commissioner

Chapter 192-270 WAC**TRAINING BENEFITS (~~(FOR DISLOCATED WORKERS)~~)**

AMENDATORY SECTION (Amending WSR 09-20-095, filed 10/7/09, effective 11/7/09)

WAC 192-270-005 Definitions. The definitions below apply to this chapter(~~(RCW 50.22.150,))~~ and RCW 50.22.155:

(1) "Labor market" means the geographic area in which workers in your particular occupation or with your particular (~~set of~~) skill(~~s~~) sets have customarily found work. For the purpose of determining whether you are a dislocated worker, "labor market" is based on your place of residence at the time you separated from employment. (~~You will not be considered a dislocated worker if, following your separation from work, you move from a labor market area where your skills are in demand to an area where they are declining.~~)

(2) ~~For claims with an effective date prior to April 5, 2009, "plurality of wages" means the largest proportion of~~

wages earned within a particular occupation or skill set. These wages must be earned in:

- (a) Your base year, and
- (b) At least two of the four twelve-month periods preceding your base year.

~~(3))~~ (2) "Skill sets" means the work-related knowledge and abilities needed to produce a particular product or provide a particular service.

~~((4))~~ (3) "Training benefits" means the additional benefits paid under RCW ~~((50.22.150 and))~~ 50.22.155 to eligible ~~((dislocated))~~ workers enrolled in and making satisfactory progress in a training program approved by the commissioner.

~~((5))~~ (4) For purposes of RCW 50.22.155 ~~(2)((b)(i))~~ (a)(ii)(A) relating to low income workers, the term "total wages" means wages in employment covered under Title 50 RCW or comparable federal or state laws.

AMENDATORY SECTION (Amending WSR 10-13-038, filed 6/8/10, effective 7/9/10)

WAC 192-270-010 Employment separations for dislocated workers—RCW 50.22.155. To be eligible for training benefits as a dislocated worker, you must have been ~~((terminated or received a notice of termination))~~ separated from your employer due to a permanent reduction in operations at your place of employment or for a reason that does not disqualify you from benefits. Training benefits are not available if you left work voluntarily ~~((as provided in RCW 50.20.050, regardless of whether you had))~~ without good cause ~~((for leaving))~~, or if you are disqualified from benefits for work-related misconduct under RCW ~~((50.20.060 or))~~ 50.20.066, and have not requalified for benefits.

When deciding whether your separation from employment makes you eligible for training benefits, the department will look at the last job you held for a period of at least seven weeks in employment covered by Title 50 RCW or ~~((the))~~ comparable federal or state laws ~~((of another state))~~.

AMENDATORY SECTION (Amending WSR 10-13-038, filed 6/8/10, effective 7/9/10)

WAC 192-270-017 Military veterans—RCW 50.22.155 ~~(2)((b))~~ (a)(ii)(B). (1) The term "during the twelve-month period" means ~~((the individual))~~ you served in the United States military or Washington National Guard at any point during the twelve-month period prior to application date.

(2) The term "application date" means the date on which ~~((the individual))~~ you filed an initial application for unemployment benefits.

AMENDATORY SECTION (Amending WSR 10-13-038, filed 6/8/10, effective 7/9/10)

WAC 192-270-019 Disabled individuals—RCW 50.22.155 ~~(2)((b)(iv))~~ (a)(ii)(D). (1) For purposes of this section:

(a) "Injury" means a trauma to the integrity or function of a tissue or organ and the resulting physical conditions;

(b) "Illness" means a condition marked by an obvious deviation from the normal healthy state, characterized by sickness, disease, or other disorder. Alcohol abuse, drug abuse, antisocial behavior, or criminal history alone, or your commitment to a treatment facility, is insufficient by itself to show "illness" within the meaning of this section.

(2) Verification of your injury or illness may, at the department's discretion, require verification from a physician.

AMENDATORY SECTION (Amending WSR 09-20-095, filed 10/7/09, effective 11/7/09)

WAC 192-270-035 Time frames. (1) Information about training benefits will be included in the claimant information booklet mailed to you at the time you file your application for unemployment benefits (see WAC 192-120-010). For purposes of subsections (2) and (3) of this section, the claimant information booklet is considered your notification of the eligibility requirements for the training benefits program.

~~((1))~~ (2) Submitting a training plan.

~~((a))~~ For claims with an effective date prior to April 5, 2009, you have 60 calendar days to submit a training plan to the department for approval, beginning on the date you are notified by the department about the eligibility requirements for training benefits. For new claims, the deadline will be 65 calendar days from the date your application for benefits is filed, which represents 60 days plus five days for the booklet to reach you by mail.

~~(b))~~ For claims with an effective date on or after April 5, 2009, except for dislocated workers eligible under RCW 50.22.155 (2)(a)(i), you have ~~((90))~~ ninety calendar days to submit a training plan to the department for approval, beginning on the date you are notified by the department about the eligibility requirements for training benefits. For new claims, the deadline will be ~~((95))~~ ninety-five calendar days from the date your application for benefits is filed, which represents ~~((90))~~ ninety days plus five days for the booklet to reach you by mail.

~~((2))~~ (3) Enrollment in training.

~~((a))~~ For claims with an effective date prior to April 5, 2009, you must be enrolled in training within 90 calendar days, beginning on the date you are notified by the department about the eligibility requirements for training benefits. For new claims, the deadline will be 95 calendar days from the date your application for benefits is filed, which represents 90 days plus five days for the booklet to reach you by mail.

~~(b))~~ For claims with an effective date on or after April 5, 2009, except for dislocated workers eligible under RCW 50.22.155 (2)(a)(i), you must be enrolled in training ~~((with [within] 120))~~ within one hundred twenty calendar days, beginning on the date you are notified about the eligibility requirements for training benefits. For new claims, the deadline will be ~~((125))~~ one hundred twenty-five calendar days from the date your application for benefits is filed, which represents ~~((120))~~ one hundred twenty days plus five days for the booklet to reach you by mail.

~~((3))~~ For claims with an effective date on or after April 5, 2009)) (4) If you are a dislocated worker eligible under RCW 50.22.155 (2)(a)(i), you must submit a training plan and enroll in training prior to the end of your benefit year.

(5) Except for dislocated workers eligible under RCW 50.22.155 (2)(a)(i), these ~~((timeframes))~~ time frames may be waived for good cause. For purposes of this section, "good cause" includes but is not limited to situations where:

(a) You were employer attached, including being on standby or partially unemployed, when you filed your claim for unemployment benefits but your attachment to your employer subsequently ended;

(b) You acted or failed to act on authoritative advice directly from department or partner staff upon which a reasonable person would normally rely;

(c) You were incapacitated due to illness or injury or other factors of similar gravity; or

(d) Other factors which would effectively prevent a reasonably prudent person, as defined in WAC 192-100-010, facing similar circumstances, from meeting the ~~((timelines))~~ time frames established under this section.

~~((4))~~ (6) If you return to work, and subsequently become unemployed, the time frames described in subsections ~~((1) and~~) (2) and (3) begin with the date you file your additional claim for benefits.

AMENDATORY SECTION (Amending WSR 01-11-085, filed 5/16/01, effective 6/16/01)

WAC 192-270-040 Enrollment in training. (1) To receive training benefits, you must be enrolled in an approved training program. Unless you are a dislocated worker eligible under RCW 50.22.155 (2)(a)(i), or a disabled individual as provided in RCW 50.22.155 (2)(c), you must be enrolled on a full-time basis as determined by the educational institution. ~~((You are enrolled in training if:~~

~~(1) You have))~~

(2) Prior to approval of your training plan, you must:

(a) Be preregistered for classes ~~((or are on a waiting list)); and~~

~~((2) You))~~ (b) Have a starting date of training ~~((; and))~~ that is not more than one quarter or term away.

(3) ~~((The starting date is not more than one quarter or term away-))~~ You are considered enrolled in training upon approval of your training plan.

AMENDATORY SECTION (Amending WSR 01-11-085, filed 5/16/01, effective 6/16/01)

WAC 192-270-045 Requirements for applying for training benefits. The following information must be included in your application for training benefits:

(1) Your name and either your Social Security account number or the claimant identification number assigned to you by the department;

(2) The name of the educational institution;

(3) The address of the educational institution;

(4) The department of the educational institution, if applicable;

(5) The name of the training program;

(6) A description of the training program, including remedial requirements if necessary;

(7) ~~((Your enrollment date or your place on the waiting list and expected enrollment date;))~~ The date your training program is expected to start;

(8) The duration of the training program, including the dates you plan to begin and complete training;

(9) Your employment history for the previous three years;

(10) Your plan for completion of the training if training benefits will run out prior to the completion of your plan;

(11) The occupation(s) trained for;

~~((10))~~ (12) A verification of your ~~((enrollment))~~ registration provided by the educational institution;

~~((11))~~ (13) A release of information form authorizing the educational institution to release grades, attendance, and other measures of program progress to the department; and

~~((12))~~ (14) Your signature.

AMENDATORY SECTION (Amending WSR 10-13-038, filed 6/8/10, effective 7/9/10)

WAC 192-270-047 Incomplete applications. An application that is incomplete ~~((will))~~ may be returned to you for completion. If the application is not returned to you for completion, the department will contact you to obtain the information needed to complete the application. The filing of an incomplete application does not extend the time frames under WAC 192-270-035 for filing a completed application for training benefits.

AMENDATORY SECTION (Amending WSR 10-13-038, filed 6/8/10, effective 7/9/10)

WAC 192-270-050 Criteria for approving training plans. (1) The department will consider the following factors when reviewing your application for training benefits:

(a) Whether you have a current benefit year as required by RCW 50.22.010(9);

(b) Your plan for completion of the training ~~((including, but not limited to, the financial resources you intend to use to complete your training when training benefits run out));~~

(c) ~~((Whether you have the qualifications and aptitudes to successfully complete the training;~~

~~((d))~~) For each of the following categories of workers:

(i) **Dislocated workers under RCW 50.22.155 (2)(a)(i):** Whether suitable employment is available in the labor market in which you currently reside and whether the training is likely to enhance your marketable skills and earning power, based on an assessment of what your earning power would be if training were not provided. If you were originally determined to be a dislocated worker, but moved from the area where your skills were declining to an area where your skills are in demand, you are not eligible for training benefits.

(ii) **Low income workers under RCW 50.22.155 (2)((b)(i)) (a)(ii)(A):** Whether vocational training is likely to enhance your earning potential. This consists of training for a career in a high demand occupation that will help you obtain and maintain stable, quality employment.

(iii) ~~((For))~~ **Military veterans, current members of the Washington National Guard, and disabled individuals under RCW 50.22.155 (2)((b)) (a)(ii)(, (iii) and (iv)) (B), (C), and (D):** Whether training is needed to assist you in finding suitable work in your labor market.

~~((e))~~ (d) Whether the training relates to a high demand occupation(-

(i) ~~For claims with an effective date prior to April 5, 2009, "high demand" means that the number of job openings in the labor market for the occupation or with that skill set exceeds the supply of qualified workers.~~

~~((ii))~~ (ii) ~~For claims with an effective date on or after April 5, 2009, "high demand" means an occupation with a substantial number of current or projected employment opportunities);~~

~~((f))~~ (e) Whether the training is likely to enhance your marketable skills and earning power, based on an assessment of what your employment prospects would be if training were not approved; and

~~((g))~~ (f) Whether the educational institution and training program meet the performance criteria established by the workforce training and education coordinating board.

(2) Academic training ~~((may))~~ will not be approved during the first two years of a degree program. Academic training may be approved during subsequent academic years if it meets the criteria of subsection (1) and it meets specific requirements for certification, licensing, or for specific skills necessary for the occupation.

(3) The department may approve educational training that has been identified as necessary by the training facility as a prerequisite to a vocational training program that meets the criteria ~~((of))~~ in subsection (1) of this section.

AMENDATORY SECTION (Amending WSR 01-11-085, filed 5/16/01, effective 6/16/01)

WAC 192-270-055 Funding—Waiting lists. (1) This section does not apply to dislocated workers eligible under RCW 50.22.155 (2)(a)(i). Approval of training for these individuals is not contingent upon the availability of funding.

(2) For all other claimants eligible for training benefits under RCW 50.22.155, payment ((of training benefits)) is contingent upon the availability of funding. Training will not be approved under RCW ((50.22.150)) 50.22.155 unless ((the department has determined that)) funds are available to support your training plan.

~~((H))~~ (3) The amount of funds obligated will be the amount necessary to complete your training plan or the maximum amount authorized by RCW ~~((50.22.150-(5)(a)))~~ 50.22.155 (2)(g)(i), whichever is less.

~~((2))~~ (4) If you have been denied training benefits due to lack of funds, the department will consider whether you are eligible for commissioner approved training under WAC 192-200-020.

~~((3))~~ (5) Funds will be obligated ~~((in the following order:~~

(a) ~~First, otherwise eligible dislocated workers who are enrolled in training approved by the department as of February 13, 2000;~~

(b) ~~Second, other))~~ to otherwise eligible ((dislocated)) workers on a first-come, first-served basis, determined by the

date the completed training application is received by the department.

~~((4))~~ (6) Once all available funds have been obligated, individuals who have been denied training benefits due solely to the lack of funds will be placed on a waiting list. Priority on the waiting list will be determined by the date the claimant's completed training application was received by the department. As additional funds become available, this date will be used when obligating funds to claimants on the waiting list. In the event two or more claimants on the waiting list have the same date, priority will be given to that person who is closest to exhausting regular unemployment benefits.

~~((5))~~ (7) An individual's name may be removed from the waiting list, upon written notice, when the department determines it is appropriate. Examples include, but are not limited to:

(a) Written correspondence to the claimant from the department is returned by the U.S. postal service for lack of a current address, and the claimant has not filed a change of address with the department;

(b) The claimant fails to respond to written correspondence from the department by the date indicated in the correspondence;

(c) The claimant is not enrolled in or making satisfactory progress in full-time training; or

(d) Except as provided in RCW 50.22.155 (2)(g)(iv), implementation of the approved training program would result in benefits being paid more than two years beyond the end of the claimant's benefit year.

AMENDATORY SECTION (Amending WSR 01-11-085, filed 5/16/01, effective 6/16/01)

WAC 192-270-065 Certification of satisfactory progress. (1) In order to continue your eligibility for training benefits, the certification that you are making satisfactory progress in ~~((full-time))~~ training must be signed by the registrar or an equivalent person designated by your educational institution. Except for dislocated workers eligible under RCW 50.22.155 (2)(a)(i), and disabled individuals as provided in RCW 50.22.155 (2)(c), training must be full-time as determined by the educational institution.

(2) Except as provided in subsection (3), for training benefits purposes the term "satisfactory progress" means:

(a) Your grade point average does not fall below 2.0 for ~~((more than one quarter))~~ two consecutive terms;

(b) You maintain a grade point average sufficient to graduate from, or receive certification in, your approved area of study; and

(c) You are completing sufficient credit hours to finish your approved course of study within the time frame established under your approved training plan.

(3) In the case of self-paced or ungraded learning programs, "satisfactory progress" means participating in classes and passing certification examinations within the time frame established under your approved training plan.

AMENDATORY SECTION (Amending WSR 01-11-085, filed 5/16/01, effective 6/16/01)

WAC 192-270-070 Modifying a training plan. (1)

You must notify the department prior to making a significant modification to your approved training plan. A significant modification is one that impacts any of the approval criteria listed in WAC 192-270-050 and includes, but is not limited to, changes in:

- (a) Your course of study or major;
- (b) The educational institution;
- (c) The projected start or end dates for the training; or
- (d) Your enrolled credit hours.

(2) The department must determine your continued eligibility for training benefits any time you make a significant modification to your training plan, using the criteria listed in WAC 192-270-050 (1)(b)-(g). Except for dislocated workers eligible under RCW 50.22.155 (2)(a)(i), approval of a modification that increases the projected cost of the training is subject to the availability of funding. The department will conditionally pay benefits on a modified training plan until the modification is approved or denied.

(3) In general, you may make a significant modification to your plan one time. Subsequent modifications will not be approved except in unusual individual circumstances. However, this restriction does not apply while you are enrolled in educational courses that are a prerequisite to vocational training.

(4) Except for dislocated workers eligible under RCW 50.22.155 (2)(a)(i), if you modified your training plan without approval by the department, and that modification is subsequently disapproved, you are ineligible for training benefits for at least five years.

(5) Any benefits paid for a modified training plan that is not approved by the department constitute an overpayment and (~~shall be~~) are subject to recovery under RCW 50.20.190.

NEW SECTION

WAC 192-270-075 Will my benefits be reduced if I am working and receiving training benefits? (1) You are not unemployed during a week if:

- (a) You work the number of hours consistent with full-time work for your occupation; or
- (b) Your gross earnings equal or exceed one and one-third times your weekly benefit amount plus five dollars.

(2) There are two earnings deductions for claims filed effective July 1, 2012, and later:

(a) If you are not receiving training benefits and are unemployed for a week, the department will subtract five dollars from your gross earnings, multiply by seventy-five percent and round up to the nearest whole dollar. The resulting amount will be deducted from your weekly benefit amount.

Example: You have an unemployment claim effective July 1, 2012, and are receiving regular benefits. Your weekly benefit amount is four hundred dollars. During a week, you work twenty hours as a retail salesperson making ten dollars per hour. Your earnings deduction will be one hundred forty-seven dollars. Your unemployment benefit for the week will be two hundred fifty-three dollars.

(b) If you are receiving training benefits and are unemployed for a week, the department will subtract five dollars from your gross earnings, multiply by fifty percent and round up to the nearest whole dollar. The resulting amount will be deducted from your weekly benefit amount.

Example: You have an unemployment claim effective July 1, 2012, and are receiving training benefits. Your weekly benefit amount is four hundred dollars. During a week, you work twenty hours as a retail salesperson making ten dollars per hour. Your earnings deduction will be ninety-eight dollars. Your unemployment benefit for the week will be three hundred two dollars.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 192-270-015	Dislocated workers— Unlikely to return to employment—RCW 50.22.155 (2)(a) and 50.04.075.
WAC 192-270-018	Members of the Washington National Guard—RCW 50.22.155 (2)(b)(iii).

**WSR 12-09-035
PERMANENT RULES
DEPARTMENT OF
EARLY LEARNING**

[Filed April 11, 2012, 11:45 a.m., effective May 12, 2012]

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

Purpose: To adopt new public disclosure and related rules as they pertain to the department of early learning (DEL), describe DEL's organization (as required by RCW 42.56.040) and to give the public information about requesting DEL records.

Statutory Authority for Adoption: RCW 42.56.040 and 43.215.070; chapter 43.215 RCW.

Adopted under notice filed as WSR 12-02-081 on January 4, 2012.

Changes Other than Editing from Proposed to Adopted Version: RCW 34.05.325(6) requires the department to prepare a "concise explanatory statement" before any rule is filed for permanent adoption. The concise explanatory statement:

- Identifies the department's reasons for adopting the rule;
- Describes any differences between the proposed rule and the final rule, other than editing, and the reasons for the differences; and
- Summarizes all comments by category received on the proposal rules during the official comment period, the department's response to the comments, and whether any comments resulted in a change to the final rules, or giving the department's reasons if the rule was not changed.

The department sends the concise explanatory statement to everyone who commented on the proposed rules, or to anyone who requests it.

Reasons for Adopting the Rule: DEL is adopting as permanent, chapter 170-01 WAC, Public disclosure rules and related rules as they pertain to DEL, describe DEL's organization (as required by RCW 42.56.040) and to give the public information about requesting DEL's records.

Rule Development Process: On August 27, 2009, DEL filed a CR-101 preproposal public notice that began the rule development process. On December 10, 2009, a preliminary draft of chapter 170-01 WAC was circulated by e-mail and on-line for informal public review; no comments were received.

On January 4, 2012, DEL filed the formal proposed rules (CR-102 notice). Formal public hearings were held in the evening on February 7, 2012, in Tumwater, and on Saturday, February 11, 2012, in Spokane. No one from the public attended the February 7 hearing. One person attended the Spokane hearing, and formal testimony was given by Laura Bowman, a licensed child care center director. The comments from the hearing those received in writing are summarized by issue or WAC number in the table below. The table also includes the department responses to each issue raised in the public comments.

Differences Between the Proposed Rule and the Final Rule, Other than Editing. The following changes were made to the rules proposed as WSR 12-02-081.

I. CHANGES TO SECTIONS OF ADOPTED NEW CHAPTER 170-01 WAC - DEL PUBLIC DISCLOSURE RULES COMPARED TO THE PROPOSAL:

A. WAC 170-01-0030 Description of the department of early learning.

- In subsection (3), the word Lacey was changed to Olympia. DEL is relocating its administrative office to Olympia, Washington.

B. WAC 170-01-0120 How to make a public records request.

- In subsection (2)(a) requests may be delivered to: Department of Early Learning, 649 Woodland Square Loop S.E., Lacey, WA 98503, was changed to requests may be delivered to: Department of Early Learning, P.O. Box 40970, Olympia, WA 98504-0970.

Summary of Comments, Department Response, and Effect on the Final Rule: DEL received both written and public hearing comments on the proposed rules. The following table summarized the issues raised in public comments, by rule section and category, and the department's response. The response also indicates if the proposed rule was changed as a result of the comment, or if the proposed rule was not changed and why.

Summary of Comments	Department Response Was the Proposed Rule Changed as a Result? If Not, Explain Why.
<ul style="list-style-type: none"> Concerned that listing the names of staff that work at a specific child care facility and their background check status on child care check can have a negative impact on people who have restraining orders. 	<p>The final rule was not changed as a result of this comment. Rationale: Child care check is not a part of the public disclosure program, nor is it addressed in chapter 170-01 WAC.</p>
<ul style="list-style-type: none"> Submitted a public disclosure request and was not given the information for a month and a half. 	<p>The final rule was not changed as a result of this comment. Rationale: The new WAC sets specific guidelines for how and when staff will reply to requests for information.</p>

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 17, 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 17, Amended 0, Repealed 0.

Date Adopted: April 11, 2012.

Elizabeth M. Hyde
Director

Chapter 170-01 WAC

DISCLOSURE OF PUBLIC RECORDS

NEW SECTION

WAC 170-01-0010 Purpose. The purpose of this chapter is to provide rules for the department of early learning to implement the Public Records Act, chapter 42.56 RCW.

NEW SECTION

WAC 170-01-0020 Definitions. The definitions set forth in chapter 42.56 RCW shall apply to this chapter. Additional definitions not listed in the Public Records Act are listed in this section, except as provided in this section.

"DEL" or "department" means the department of early learning. Where appropriate, DEL also may refer to the officials and employees of the department of early learning.

"Disclosure" means inspection and/or copying of public records, unless the record is exempt from disclosure by law.

"Public records" includes anything prepared, owned, used or retained by the agency and can include agency publications, on-line information posted on internet sites owned or controlled by the agency, child care career and wage ladder information, ECEAP records, subsidy information, grants, requests for proposals and contract information, documents contained in licensing files, interagency communication including service level agreements and memorandums of understanding, e-mails, letters, memos, licensing complaint reports in CAMIS/FAMLINK, service episode records, records held by contractors if they related to agency's function or action, certain electronic records, and other records not readily available to the public such as old manuals or training materials. These records can be written, recorded or electronic.

To be a public record, a document must relate to the "conduct of government or the performance of any governmental or proprietary function." RCW 42.17.020(41). Almost all records held by an agency relate to the conduct of government; however, some do not. A purely personal record having no relation to the conduct of government is not a "public record." While the contents of the personal record might not be a public record, a transaction of the record itself may be.

"Public records officer" means the designated person for the department who oversees all records requests. This person is identified in the Washington state register.

"Redact" means to edit from a released record information that is exempt from disclosure to the public, by covering over the information with black ink or other method without deleting the information from the original record.

NEW SECTION

WAC 170-01-0030 Description of the department of early learning. (1) DEL was formed in July 2006 under chapter 265, Laws of 2006 to bring together child care and early learning programs previously under the departments of social and health services and commerce, as well as the state office of public instruction.

(2) The department was established to oversee child care licensing and early childhood learning programs and initiatives.

(3) The administrative office of the department of early learning is located in Olympia, Washington. To request any information, contact: P.O. Box 40970, Olympia, WA 98504-0970, or call toll free 1-866-482-4325.

(4) Field offices exist in Aberdeen, Bellevue, Bellingham, Bremerton, Everett, Kennewick, Kelso, Kent, Mount Vernon, Othello, Port Angeles, Seattle, Spokane, Tacoma, Tumwater, Vancouver, Wenatchee, and Yakima.

NEW SECTION

WAC 170-01-0040 Public records officer. DEL's director will appoint a public records officer (PRO) whose

responsibility is to serve as a "point of contact" for members of the public seeking public records. DEL will provide the public records officer's name and contact information by publishing it in the state register. DEL will also provide the public records officer's contact information on the department web site.

A request may be fulfilled by the PRO, or other DEL staff designated by the PRO.

NEW SECTION

WAC 170-01-0050 Records index. (1) The department keeps an index (list) of the following documents:

(a) Rules adopted by DEL under chapter 34.05 RCW.

(b) Substantive final orders issued by the department in adjudicative proceedings under chapter 34.05 RCW and chapter 170-03 WAC.

(c) Interpretive and policy statements filed by the department under chapter 34.05 RCW.

(2) The department finds that it would be unduly burdensome and would interfere with agency operations to maintain an index of other records because of the complexity and diversity of its operations and the resulting volume of manuals, correspondence, electronic data and constituent records.

(3) The department will make available for public disclosure all indices if at a future time they are developed for agency use.

NEW SECTION

WAC 170-01-0100 Availability of public records. Public records are available for inspection and copying during DEL's normal business hours, Monday through Friday, 8 a.m. to 5 p.m., excluding legal holidays. A department staff person must be present at all times when a record is being inspected. Appointments are not required but significantly help DEL provide prompt and efficient service. Some DEL records may be stored in other locations, in computer storage systems, or the state records warehouse, and may take time for DEL to identify and gather them. Other records may be exempt from disclosure. Original records cannot be removed from a DEL building. If required by law, DEL must redact information in a record before making it available for inspection. DEL staff will make copies of records on request.

NEW SECTION

WAC 170-01-0110 Organization of records. DEL will maintain its records in an organized manner and will take reasonable actions to protect records from damage and disorganization. Records available on the DEL web site at www.del.wa.gov are available to the public without a records request, and the department does not copy those records. Requestors are encouraged to view the documents available on the web site prior to submitting a records request.

NEW SECTION

WAC 170-01-0120 How to make a public records request. (1) Public records requests should be made directly to the DEL public records officer.

(2) Public records requests may be made verbally or in writing.

(a) Written requests may be sent by e-mail to public.records@del.wa.gov, by fax to 360-413-3482 or mail. Requests may be delivered to: Department of Early Learning, P.O. Box 40970, Olympia, WA 98504-0970.

(b) DEL's public records request form is on its web site.

(c) A written request without using the DEL public records request form should contain:

(i) Name of requestor;

(ii) Address of requestor;

(iii) Other contact information, including telephone number and any e-mail address;

(iv) The date on which the request was made;

(v) A sufficient description of the record requested; and

(vi) If the information being requested may include a list of individuals or businesses, a statement that the list will not be used for commercial purposes, which is prohibited by law.

NEW SECTION

WAC 170-01-0200 How DEL responds to your public records request. Within five business days after receiving the request, DEL will either:

(1) Provide the record(s);

(2) Acknowledge the request and give a reasonable time estimate of how long the department will take to provide records;

(3) Contact the requestor to clarify the request if it isn't understood by the public records officer; or

(4) Deny all or part of the request in writing, with reasons for the denial. The explanation will include the law that DEL relied upon in its denial.

At his or her discretion, the public records officer may send the request records by e-mail, fax, postal mail, or commercial delivery. The records may be delivered on paper, computer or compact discs, or other methods.

NEW SECTION

WAC 170-01-0210 What DEL considers a reasonable time estimate. DEL will roughly calculate the time it will take to fill the request. There is no standard amount of time for fulfilling a request, so reasonable estimates may vary. The estimates are based upon:

(1) The size of the record requested. A large request generally will take more time than a small request.

(2) The location or locations where requested records may be. Records may be stored at different DEL offices, or at state records storage facilities.

(3) The case load of the person filling the request. While providing public records is an essential function of the agency, it is not required to abandon its other, nonpublic records functions.

Example: A child care licensor who fills the request must work the public records request around their other duties monitoring and licensing facilities.

NEW SECTION

WAC 170-01-0220 Reasons for DEL extending the time needed to fill a public records request. DEL may need to extend the time needed to fill a public records request beyond the five days in order to:

(1) Locate and gather the information requested;

(2) Notify an individual or organization affected by the request, and to give them an opportunity to object if allowed by law;

(3) Determine whether: The information requested is exempt from disclosure; all or part of the request can be released; portions of the record must be redacted; or

(4) Wait for response after DEL has already contacted the requestor to clarify the intent, scope or specifics of the request. For example, if a request is objectively unclear, DEL will attempt to clarify. If the requestor fails to clarify the request within thirty days of the agency's request, the agency may consider the request abandoned. If the agency considers the request abandoned, it will send a closing letter to the requestor.

DEL will notify the requestor in writing if an extension is needed.

NEW SECTION

WAC 170-01-0230 Reasons for DEL denying disclosure of all or part of a record. RCW 42.56.030 states that the Public Records Act "shall be liberally construed and its exemptions narrowly construed." DEL will provide all records required by law. However, there are times when all or part of a record request would be denied, such as when:

(1) The record is exempt from disclosure by law.

(2) The request is for lists of individuals for commercial purposes, including family home providers.

(3) The requestor has not asked for an identifiable record. The Public Records Act requires access to existing, identifiable public records in an agency's possession at the time of the request.

(4) The request requires DEL to collect or organize data to create a public record, or to give data that did not exist at the time of the public records request.

NEW SECTION

WAC 170-01-0240 Types of records that may be exempt from disclosure. With any public records request, disclosure must occur unless a specific exemption exists in statute that would allow for DEL to not disclose the record or the information within a record.

DEL is always prohibited by statute from disclosing lists of individuals, including family home providers, for commercial purposes.

The Public Records Act lists exemptions or allows for "other statute" exemptions. Requestors should be aware of the following exemptions, outside the Public Records Act, that restrict the availability of some documents held by DEL, for inspection and copying: For example, RCW 5.60.060(2) restricts privileged attorney-client communications between DEL staff and the office of the attorney general.

NEW SECTION

WAC 170-01-0250 If the public record requested is exempt from disclosure. If DEL determines that a record is exempt from disclosure, you will be informed in writing of the specific exemption authorizing DEL to withhold the record.

NEW SECTION

WAC 170-01-0260 If only part of the record requested is exempt from disclosure. DEL may redact (see WAC 170-01-0020) identifying details or other information when the information is not subject to disclosure. The requestor will be informed in writing of the exemptions authorizing DEL to withhold information within a record.

NEW SECTION

WAC 170-01-0270 DEL reviews of records request denials. If DEL denies all or part of a request, or redacts any portion of a record, the requestor may request a review of this decision by:

(1) Asking the public records officer for an internal DEL review.

(2) Asking for an external review by the attorney general's office.

Requestors may initiate this by sending a request for review to Public Records Review, Office of the Attorney General, P.O. Box 40100, Olympia, WA 98504-0100 or publicrecords@atg.wa.gov.

(3) Asking for a judicial review.

All review requests must be in writing (letter, fax or e-mail). All review requests must specify the part or parts of the denial or redaction that the requestor wishes to be reviewed.

After receiving a request for an internal review, the public records officer will refer the matter for review to the agency communications manager who may consult with other agency leaders. The denial will either be upheld or reversed within two business days after the receipt of the review request.

To initiate a court review of a public records case, a requestor can file a "motion to show cause" which directs the agency to appear before the court and show any cause why the agency did not violate the act. The case must be filed in the superior court in the county in which the record is maintained.

NEW SECTION

WAC 170-01-0300 Fees for inspecting or copying records. (1) **Costs for paper copies.** There is no cost to inspect records. Copying or duplicating fees are intended to equal DEL's costs, including costs of materials, machinery, and personnel. The fees charged may be reviewed periodically to assure their accuracy (RCW 42.56.120). Alternatively, if DEL has not determined the actual per page cost for photocopies of public records, it may charge up to fifteen cents for a standard black-and-white photocopy. The public records officer can share current fee rates.

(2) **Costs for electronic records.** The cost of electronic copies of records shall be determined by how the electronic records are delivered. DEL will charge no more than fair-market value for information that must be delivered on a CD-ROM, DVD or other tool. DEL may charge (put value) for a paper record to be scanned. There will be no charge for e-mailing electronic records, unless another cost applies, such as scanning.

(3) **Costs of mailing.** DEL may also charge actual costs of mailing or shipping a record, including the cost of the shipping container.

(4) **Payment.** Before beginning to make copies, the public records officer may require a deposit of up to ten percent of the estimated cost of copying all the records selected by the requestor. The public records officer may also require payment for the remainder of the copying costs before providing all the records. DEL will not charge sales tax when it makes copies of public records.

If all or part of a requested record is not paid for, or the requested record is not claimed within thirty calendar days, the department may consider the request as terminated. If terminated, the requestor must make a new records request to obtain the record.

Payment should be sent to the DEL Financial Services Office (P.O. Box 40970, Olympia, WA 98504-0970). Payment may be made by cash, check, or money order to the department of early learning. It should clearly be marked as payment for public records.

WSR 12-09-036**PERMANENT RULES
DEPARTMENT OF
EARLY LEARNING**

[Filed April 11, 2012, 12:02 p.m., effective May 12, 2012]

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

Purpose: The 2011 legislature adopted a series of spending reductions and revenue generating measures to help the state avoid a projected \$5.1 billion budget deficit in the 2011-2013 biennium. Among the measures enacted, the legislature identified anticipated revenue of nearly \$1 million in the biennium by directing the department of early learning (DEL) to raise annual license fees for child care center and family home child care licensees. See Appendix B in the 2011-13 Operating Budget Overview, 2ESHB 1087 published by the senate ways and means committee.

Subsection 617(2) of ESHB [2ESHB] 1087 states: "(2) *In accordance with RCW 43.215.255(2) and 43.135.055, the department is authorized to increase child care center and family home licensure fees in fiscal years 2012 and 2013 for costs to the department for the licensure activity, including costs of necessary inspection. These increases are necessary to support expenditures authorized in this section.*"

The proposed rules raise the base license fee for DEL-licensed child care centers and school-age center programs by twenty-five percent. Centers also pay a per-child fee for each child above the first twelve children - these fees are raised by fifty percent. To summarize:

- Base fee: Increased to \$125 (previously \$100) for the first twelve children in care; plus
- Per child fee: Increased to \$12 (previously \$8) per child after the first twelve children, up to the center's maximum capacity stated on its license.

Child care centers may be licensed for any number of children up to the safe capacity of the facility - some centers are licensed by DEL for more than two hundred fifty children.

The new license fee rates for child care centers and school-age center programs has been in effect by emergency rule since July 1, 2011, see rules filed as WSR 11-13-077 and 11-21-021. This proposal is to adopt the new fee amounts as permanent rules.

Family home child care licensees were increased by twenty-five percent to \$30 (from the previous \$24) in emergency rules filed as WSR 11-13-077 and 11-21-021, and in permanent rules filed as WSR 11-23-068 (effective March 31, 2012) implementing section 617(2) of 2ESHB 1087. This was the first increase for family home child care license fees since 1982. Family home providers do not pay a per-child fee.

Proposal of this rule is consistent with state office of financial management guidance regarding implementation of Executive Order 10-06 suspending noncritical rule making (extended by Executive Order 11-03), but allowing rules to proceed that are: "*... necessary to manage budget shortfalls, maintain fund solvency, or for revenue generating activities.*"

The legislature stated in 2ESHB 1087 that the child care license fee increases are necessary to support the expenditures authorized in the bill. These license fees are deposited to the state general fund and are not retained by DEL.

Concise Explanatory Statement

RCW 34.05.325(6) requires the department to prepare a "concise explanatory statement" before any rule is filed for permanent adoption. The concise explanatory statement:

- Identifies the department's reasons for adopting the rule.
- Describes any differences between the proposed rule and the final rule, other than editing, and the reasons for the differences; and
- Summarizes all comments by category received on the proposal [proposed] rules during the official comment period, the department's response to the comments, and whether any comments resulted in a change to the final rules, or giving the department's reasons if the rule was not changed.

The department sends the concise explanatory statement to everyone who commented on the proposed rules, or to anyone who requests it.

Reasons for Adopting the Rule: The 2011 legislature adopted a series of spending reductions and revenue generating measures to help the state avoid a projected \$5.1 billion budget deficit in the 2011-2013 biennium. Among the measures enacted, the legislature identified anticipated revenue of nearly \$1 million in the biennium by directing DEL to raise annual license fees for child care center and family

home child care licensees. See Appendix B in the 2011-13 Operating Budget Overview, 2ESHB 1087 published by the senate ways and means committee.

Subsection 617(2) of ESHB [2ESHB] 1087 states: "(2) In accordance with RCW 43.215.255(2) and 43.135.055, the department is authorized to increase child care center and family home licensure fees in fiscal years 2012 and 2013 for costs to the department for the licensure activity, including costs of necessary inspection. These increases are necessary to support expenditures authorized in this section." The proposed rules raise the base license fee for DEL-licensed child care centers and school-age center programs by twenty-five percent. Centers also pay a per-child fee for each child above the first twelve children - these fees are raised by fifty percent. To summarize:

- Base fee: Increased to \$125 (previously \$100) for the first twelve children in care; plus
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The legislature stated in 2ESHB 1087 that the child care license fee increases are necessary to support the expenditures authorized in the bill. These license fees are deposited to the state general fund and are not retained by DEL.

Rule Development Process: On May 31, 2011, DEL filed a CR-101 preproposal public notice that began the rule development process. In July 2011, DEL circulated a news-letter via e-mail and on-line informing the public about all of the bills that were passed by the 2011 legislature. Two written comments were received.

On January 4, 2012, DEL filed the formal proposed rules (CR-102 notice). Formal public hearings were held in the evening on February 7, 2012, in Tumwater, and on Saturday, February 11, 2012 in Spokane. No one from the public attended the February 7 hearing. One person attended the Spokane hearing, and formal testimony was given by Laura

Bowman, a licensed child care center director. The comments from the hearing and those received in writing are summarized by issue or WAC number in the table below. The table also includes the department responses to each issue raised in the public comments.

Differences Between the Proposed Rule and the Final Rule, Other than Editing: No changes were made to the rules proposed as WSR 12-02-079.

Summary of Comments; Department Response, and Effect on the Final Rule: DEL received both written and public hearing comments on the proposed rules. The following table summarized the issues raised in public comments and the department's response. The response also indicates if the proposed rule was changed as a result of the comment, or if the proposed rule was not changed and why.

Summary of Comments	Department Response Was the Proposed Rule Changed as a Result? If Not, Explain Why.
<ul style="list-style-type: none"> For most centers, increasing any fees is a financial hardship especially with the economy and the huge increase to the minimum wages. I know in my area alone, four centers that have closed due to the financial hardships. The jump from \$4.00 two years ago to the current proposed \$12.00 is too high of an increase. Centers that serve middle and high income families will simply incorporate the fee increase into higher parent rates. But for centers serving a majority of low-income children on DSHS subsidies, there is no way to raise those state rates, which are already fifty percent of current market rates. I have a child care center and it is has been extremely difficult with the way the economy is to keep the doors open. We provide a quality environment and make very little money, if any at all. Even the littlest raise in fees would be 	<p>The final rule was not changed as a result of this comment. Rationale:</p> <p>The 2011 legislature adopted a series of spending reductions and revenue generating measures to help the state avoid a projected \$5.1 billion budget deficit in the 2011-2013 biennium. Among the measures enacted, the legislature identified anticipated revenue of nearly \$1 million in the biennium by directing DEL to raise annual license fees for child care center and family home child care licensees. See Appendix B in the 2011-13 Operating Budget Overview, 2ESHB 1087 published by the senate ways and means committee.</p> <p>Subsection 617(2) of ESHB [2ESHB] 1087 states: "(2) In accordance with RCW 43.215.255(2) and 43.135.055, the department is authorized to increase child care center and family home licensure fees in fiscal years 2012 and</p>

Summary of Comments	Department Response Was the Proposed Rule Changed as a Result? If Not, Explain Why.
<p>extremely difficult at this time.</p>	<p>2013 for costs to the department for the licensure activity, including costs of necessary inspection. These increases are necessary to support expenditures authorized in this section."</p>

Reasons Supporting Proposal: RCW 43.215.255 states, in part: "(1) The director shall charge fees to the licensee for obtaining a license ... (3) The director shall establish the fees charged by rule." DEL must adopt rules to set or revise fees for obtaining a child care license to comply with the proviso in section 617(2) of ESHB [2ESHB] 1087.

Citation of Existing Rules Affected by this Order: Amending WAC 170-151-070 and 170-295-0060.

Statutory Authority for Adoption: RCW 43.215.070 and 43.215.060, chapter 43.215 RCW.

Adopted under notice filed as WSR 12-02-079 on January 4, 2012.

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 2, 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 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 0, Amended 2, Repealed 0.

Date Adopted: April 11, 2012.

Elizabeth M. Hyde
Director

AMENDATORY SECTION (Amending WSR 10-24-016, filed 11/19/10, effective 12/20/10)

WAC 170-151-070 How do I apply or reapply for a license? (1) You must comply with the department's application procedures and submit to the department:

(a) A completed department-supplied application for school-age child care center license, including attachments, ninety or more days before the:

- (i) Expiration of your current license;
- (ii) Opening date of your center;
- (iii) Relocation of your center; or
- (iv) Change of the licensee.

(b) A completed background check form for each staff person or volunteer having unsupervised or regular access to the child in care; and

(c) The annual licensing fee is:

~~(i) ((For new licenses issued by the department before July 1, 2010, or for licensees whose annual licensing fees are due before July 1, 2010, forty-eight dollars per year for the first twelve children plus four dollars for each additional child over the licensed capacity of twelve children; or~~

~~(ii)) For new licenses issued ((after June 30, 2010)) before July 1, 2011, or for licensees whose annual licensing fees are due ((after June 30, 2010)) before July 1, 2011, one hundred dollars per year for the first twelve children plus eight dollars for each additional child over the licensed capacity of twelve children; or~~

(ii) For new licenses issued after June 30, 2011, or for licensees whose annual licensing fees are due after June 30, 2011, one hundred twenty-five dollars per year for the first twelve children, plus twelve dollars per year for each additional child over the licensed capacity of twelve children.

(2) In addition to the required application materials specified under subsection (1) of this section, you must submit to the department:

(a) An employment and education resume of the person responsible for the active management of the center and of the site coordinator;

(b) Copies of diplomas or education transcripts of the director and site coordinator; and

(c) Three professional references each for you, the director, and the site coordinator.

(3) You, as the applicant for a license under this chapter must be twenty-one years of age or older.

(4) You must conform to rules and regulations approved or adopted by the:

(a) State department of health and relating to the health care of children at school-age child care centers;

(b) State fire marshal's office, establishing standards for fire prevention and protection of life and property from fire, under chapter 212-12 WAC.

(5) The department must not issue a license to you until the state fire marshal's office has certified or inspected and approved the center.

(6) The department may exempt a school site possessing a fire safety certification signed by the local fire official within six months prior to licensure from the requirement to receive an additional fire safety inspection by the state fire marshal's office.

(7) You must submit a completed plan of deficiency correction, when required, to the department of health and the department licensur before the department will issue you a license.

(8) You, your director and site coordinator must attend department-provided orientation training.

AMENDATORY SECTION (Amending WSR 10-24-016, filed 11/19/10, effective 12/20/10)

WAC 170-295-0060 What are the requirements for applying for a license to operate a child care center? (1)

To apply or reapply for a license to operate a child care center you must:

(a) Be twenty-one years of age or older;

(b) The applicant, director and program supervisor must attend the orientation programs that we provide, arrange or approve;

(c) Submit to us a completed and signed application for a child care center license or certification using our forms (with required attachments).

(2) The application package must include the following attachments:

(a) The annual licensing fee. The fee is based on your licensed capacity, and is:

~~(i) ((For new licenses issued by the department before July 1, 2010, or for licensees whose annual licensing fees are due before July 1, 2010, forty-eight dollars for the first twelve children plus four dollars for each additional child over the licensed capacity of twelve children; or~~

~~(ii)) For new licenses issued ((after June 30, 2010)) before July 1, 2011, or for ((licenses)) licensees whose annual license fees are due ((after June 30, 2010)) before July 1, 2011, one hundred dollars per year for the first twelve children plus eight dollars for each additional child over the licensed capacity of twelve children; or~~

(ii) For new licenses issued after June 30, 2011, or for licensees whose annual license fees are due after June 30, 2011, one hundred twenty-five dollars per year for the first twelve children, plus twelve dollars for each additional child over the licensed capacity of twelve children;

(b) If the center is solely owned by you, a copy of your:

(i) Photo identification issued by a government entity; and

(ii) Social Security card that is valid for employment or verification of your employer identification number((-));

(c) If the center is owned by a corporation, verification of the corporation's employer identification number;

(d) An employment and education resume for:

(i) The person responsible for the active management of the center; and

(ii) The program supervisor((-));

(e) Diploma or education transcript copies of the program supervisor;

(f) Three professional references each, for yourself, the director, and the program supervisor;

(g) Articles of incorporation if you choose to be incorporated;

(h) List of staff (form is provided in the application);

(i) Written parent communication (child care handbook);

(j) Copy of transportation insurance policy (liability and medical);

(k) In-service training program (for facilities employing more than five persons);

(l) A floor plan of the facility drawn to scale;

(m) A copy of your health care plan reviewed and signed by an advisory physician, physician's assistant, or registered nurse;

(n) A copy of your policies and procedures that you give to parents; and

(o) A copy of your occupancy permit.

(3) You must submit to the department a completed background check form for all persons required to be authorized by DEL to care for or have unsupervised access to the children in care under chapter 170-06 WAC; and

(4) You must submit your application and reapplication ninety or more calendar days before the date:

- (a) You expect to open your new center;
- (b) Your current license is scheduled to expire;
- (c) You expect to relocate your center;
- (d) You expect to change licensee; or
- (e) You expect a change in your license category.

WSR 12-09-037
PERMANENT RULES
HIGHER EDUCATION
COORDINATING BOARD

[Filed April 11, 2012, 2:27 p.m., effective May 12, 2012]

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

Purpose:

- Increase or establish fees for initial degree authorization, degree authorization renewal, degree authorization reapplication, new program applications and new site applications as previously authorized by the Washington state legislature in the 2011-2013 operating budget (2ESHB 1087).
- Add definitions related to the establishment of new fees.
- Create an exemption category for nonpublic degree-granting institutions recognized as Washington institutions by the Washington state legislature.

Citation of Existing Rules Affected by this Order: Amending WAC 250-61-050, 250-61-060, 250-61-085, 250-61-090, 250-61-100, 250-61-120, 250-61-170, and 250-61-180.

Statutory Authority for Adoption: RCW 28B.76.120 and 28B.85.020.

Adopted under notice filed as WSR 12-01-051 on December 15, 2011.

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 4, 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 4, 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: March 29, 2012.

Dr. Randy Spaulding
 Director of Academic Affairs

Chapter 250-61 WAC

REGULATIONS FOR ((~~THE DEGREE AUTHORIZATION~~)) DEGREE-GRANTING INSTITUTIONS ACT

AMENDATORY SECTION (Amending WSR 09-20-033, filed 9/30/09, effective 10/31/09)

WAC 250-61-050 Definitions. The definitions set forth in this section are intended to supplement the definitions in chapter 28B.85 RCW and shall apply throughout this chapter.

(1) "Act" means the Degree-Granting Institutions Act, chapter 28B.85 RCW.

(2) "Board" means the Washington higher education coordinating board.

(3) "Executive director" means the executive director of the board or the executive director's designee.

(4) "Accrediting association" means a national or regional accrediting association that is recognized by the board and the Secretary of the U.S. Department of Education.

(5) "Degree-granting institution" means an entity that offers educational credentials, instruction, or services prerequisite to or indicative of a degree.

(6) "College" means an institution which offers two-year and/or four-year programs culminating with associate and/or baccalaureate degrees. In some instances, a college may also offer first professional degree programs and/or graduate programs culminating with master's degrees.

(7) "University" means a multiunit institution with varied educational roles including instruction, promotion of scholarship, preservation and discovery of knowledge, research and public service. Such institutions provide a wide range of undergraduate and graduate studies, programs in professional fields, and may also provide programs leading to a doctorate.

(8) "Private vocational school" means a nonpublic entity that offers postsecondary programs designed to prepare individuals with the skills and training required for employment in a specific trade, occupation, or profession related to the educational program.

(9) "Seminary" means an institution which offers one or more professional programs to candidates for the ministry, rabbinate, or priesthood.

(10) "Degree" means any designation, appellation, letters, or words including but not limited to "associate," "bachelor," "master," "doctor," or "fellow" which signify or imply satisfactory completion of the requirements of an academic program of study at the postsecondary level.

(11) "Associate degree" means a lower division undergraduate degree that requires no fewer than 60 semester hours or 90 quarter hours.

(12) "Bachelor's degree" or "baccalaureate degree" means an undergraduate degree that requires no fewer than 120 semester hours or 180 quarter hours.

(13) "Master's degree" means a graduate degree that requires no fewer than 24 semester hours or 36 quarter hours beyond the baccalaureate degree.

(14) "Doctor's degree" or "doctorate" means a postgraduate degree that requires no fewer than 60 semester hours or 90 quarter hours beyond the baccalaureate degree.

(15) "False academic credential" means a document that signifies or implies satisfactory completion of the requirements of an academic program of study beyond the secondary level issued by a person or entity that:

(a) Is not accredited by a board-recognized accrediting association or does not have the international equivalent to such accreditation; or

(b) Is not authorized by the board; or

(c) Has not been exempted or granted a waiver from the requirements of authorization by the board.

Additionally, it can mean a credential falsely claimed to have been earned from an institution accredited by a board-recognized accrediting association; authorized by the board; or that has been exempted or granted a waiver by the board.

(16) "Program of study" means any course or grouping of courses prerequisite to or indicative of a degree.

(17) "Resident-based instruction" means a course or series of courses or degree programs which are taught by faculty at a specific location where students physically attend the course or program.

(18) "Distance learning" means a form of educational instruction other than classroom instruction, to include, but not limited to, correspondence, video-conferencing, television, internet transmission, or other electronic communication.

(19) "Credit" means the unit by which an institution measures its course work. The number of credit assigned to a course is generally defined by the number of hours per week in class and preparation and the number of weeks in a term. One credit is usually assigned for three hours of student work per week or its equivalent. The three hours of student work per week is usually comprised of a combination of one hour of lecture and two of homework or three hours of laboratory. Semester and quarter credits are the most common systems of measuring course work. A semester credit is generally based on at least a fifteen week calendar or 45 hours of student work. A quarter credit is generally based on at least a ten week calendar or 30 hours of student work.

(20) "Faculty" means personnel who are appointed by the institution for purposes of teaching, research, mentoring, advisory roles and/or other activities relating to the development and delivery of the instructional programs of the institution.

(21) "To operate" means but is not limited to the following:

(a) Offering courses for academic credit at any Washington location or via distance learning from a Washington location.

(b) Granting or offering to grant degrees in Washington for credit obtained within or outside the state.

(c) Maintaining or advertising a Washington location, mailing address, telecommunications number or internet server for any purpose or any other function of a degree-granting institution, other than contact with the institution's former students for any legitimate purpose related to their having attended.

(d) Advertising, promoting, publicizing, soliciting or recruiting for the institution or its offerings that is targeted specifically at Washington citizens, excluding multi-institutional college fairs.

(22) "Suspend" means that, due to deficiencies, the board interrupts for a stated time the institution's authority to recruit and enroll new students, but it may continue serving currently enrolled students for the remainder of the term. Authorization or exemption may be reinstated, provided the deficiencies have been resolved to the satisfaction of the board.

(23) "Withdraw" means that, due to significant deficiencies or failure to meet the criteria of authorization or exemption, the board has withdrawn the authorization or exemption granted to an institution. Upon withdrawal, the institution must cease all degree-granting operations immediately.

(24) "Accredited institution" means an institution that has been accredited by an accrediting association recognized by the board and the Secretary of the U.S. Department of Education.

(25) "Additional program" means a degree program that:

(a) Differs in title and curriculum from any currently authorized program; or

(b) Is comprised of a curriculum that is twenty-five percent or more different in content than any currently authorized program.

(26) "Additional site" means a site at which the institution will provide both administrative services as well as educational instruction.

AMENDATORY SECTION (Amending WSR 09-20-033, filed 9/30/09, effective 10/31/09)

WAC 250-61-060 Exemption criteria. No exemption from the requirements for degree authorization is considered to be permanent. The exemption granted is dependent upon the institution's maintenance of the conditions under which the exemption was granted.

The provisions of this chapter do not apply to:

(1) Honorary credentials clearly designated as such on the front side of the diploma or certificate and awarded by institutions offering other educational credentials in compliance with state law.

(2) Any public college, public university, public community college, or public technical college or institute operating as part of the public higher education system of this state.

(3) Institutions that have received institutional accreditation from an association recognized by the board and the Secretary of the U.S. Department of Education, Provided:

(a) The institution has been continuously offering degree program(s) in Washington for fifteen years or more; and

(b) The institution was established originally within the state of Washington and has operated as the same organization continuously from that date until the present. An institution is considered to have operated as the same organization continuously if it has no significant alteration of primary location, ownership, or incorporation and no closure involving cessation of substantially all organized instructional and administrative activity; and

(c) The institution has been accredited as a degree-granting institution for ten years or more by an accrediting association recognized by the board and the Secretary of the U.S. Department of Education, and maintains such accreditation status; and

(d) The institution maintains eligibility to participate in Title IV financial aid programs.

(4) A branch campus, extension center, or off-campus facility operating within the state of Washington, which is affiliated with an institution domiciled outside this state, Provided:

(a) It has continuously offered degree programs in Washington for fifteen years or more; and

(b) It has held separate institutional accreditation as a free-standing institution for ten years or more by an accrediting association recognized by the board and the Secretary of the U.S. Department of Education, and maintains such accreditation status; and

(c) It maintains eligibility to participate in Title IV financial aid programs.

(5) Institutions offering instruction on a federal enclave solely to federal employees and their dependents. If the institution offers or advertises instruction for other persons, the institution shall be subject to authorization.

(6) Institutions recognized by the Washington state legislature as an accredited Washington degree-granting institution, provided the institution maintains all conditions specified in the legislation as part of the recognition.

(7) Tribally controlled Native American colleges.

~~((7))~~ (8) Institutions which offer program(s) of study whose sole stated objective is training in the religious beliefs of the controlling religious organization and/or preparation of students for occupations that are primarily church-related, Provided:

(a) The institution's mission reflects its religious nature; and

(b) The institution's degree program(s) in title and abbreviation, curriculum content, and objectives reflect the strictly religious nature of the institution; and

(c) The institution's program(s) require a prescribed program of study, which must be successfully completed prior to the granting of a degree; and

(d) The institution's program(s) of study are represented in an accurate manner in institutional catalogs, web sites, and other official published materials; and

(e) The institution does not claim or publicize accreditation from an accrediting association that is not recognized by the board and the Secretary of the U.S. Department of Education.

~~((8))~~ (9) In the case of institutions which offer both religious and secular programs, the secular programs shall be subject to the requirements of chapter 28B.85 RCW.

~~((9))~~ (10) Institutions not otherwise exempt which offer only workshops and seminars and institutions offering only credit-bearing workshops or seminars lasting no longer than three calendar days.

AMENDATORY SECTION (Amending WSR 09-20-033, filed 9/30/09, effective 10/31/09)

WAC 250-61-085 Accreditation requirements. An institution operating in Washington shall:

(1) Be accredited by ~~((a board recognized))~~ an accrediting association recognized by the board and the Secretary of the U.S. Department of Education; or

(2) Have applied for accreditation to an accrediting association recognized by the board and the Secretary of the U.S. Department of Education and such application is pending before the accrediting association; or

(3) Have been granted a temporary waiver by the board of the requirement for accreditation based upon submission of a plan for accreditation as outlined in the initial authorization application; or

(4) Have been granted an exemption by the board of the requirement for accreditation based upon the following condition: The school has filed, and kept current with appropriate amendments, at the higher education coordinating board an affidavit by each president of two separate accredited colleges or universities accredited by an accrediting association recognized by the board and the Secretary of the U.S. Department of Education stating that the majority of course credits offered by the unaccredited institution are generally acceptable or transferable to the accredited college or university which each president represents.

AMENDATORY SECTION (Amending WSR 09-20-033, filed 9/30/09, effective 10/31/09)

WAC 250-61-090 Administrative requirements. (1) Name. The official name of the institution shall be consistent with, and appropriate to, the program(s) of study offered.

(2) Purpose. The institution shall clearly define its purpose or mission in an official statement which describes its role in higher education. The statement shall reflect the practices of the institution.

(3) Administration and governance. The institution shall be governed by bylaws or policies defining a chain of authority and responsibility.

(a) Administrators shall normally be graduates of accredited institutions and have academic credentials and prior higher education administrative experience for their area of responsibility.

(b) The main campus of the institution shall have, as a minimum, personnel to adequately staff the following roles: A chief executive officer, academic officer, registrar, business officer, student services officer, library director, and, if financial aid services are offered, financial aid officer. These officers shall be accessible to students, faculty, and other personnel located at the main campus and at educational sites or centers in Washington. In the event that the proposed Washington site is a branch campus of an out-of-state institution, the branch campus shall also have sufficient personnel to adequately serve the students at that location.

(i) The chief executive and academic officers shall have at least a master's degree from an accredited institution and experience in college-level management, teaching, and academic administration, unless the institution can demonstrate that these are not the normally accepted standards for an institution offering the same level of instruction.

(ii) The registrar shall have at least a baccalaureate degree from an accredited institution and college-level experience in admissions and student records, unless the institution can demonstrate that these are not the normally accepted standards for an institution offering the same level of instruction.

(iii) The business, student services, and financial aid officers and library director shall have at least a baccalaureate degree from an accredited institution and experience in their assigned areas, unless the institution can demonstrate that these are not the normally accepted standards for an institution offering the same level of instruction.

(c) The institution shall specify an individual who will serve as the principal contact person for each educational site or academic center in Washington.

(d) The institution shall have policies and provisions for the involvement of faculty in the academic affairs, curriculum development, and governance of the institution.

(e) The institution shall have policies and provisions for faculty selection, orientation, teaching load, supervision, evaluation, and professional development.

(4) The following conditions shall disqualify an individual(s) as an administrator of a degree-granting institution:

(a) Conviction of a felony within the past ten years;

(b) Involuntary surrender of authorization or a license to operate a school in Washington;

(c) Having been served with a cease and desist order for activities in violation of the current *Washington Administrative Code*; or

(d) Denial of renewal of authorization or a license because of violation of the current *Washington Administrative Code*.

AMENDATORY SECTION (Amending WSR 09-20-033, filed 9/30/09, effective 10/31/09)

WAC 250-61-100 Academic requirements. (1) Educational programs. Each program shall require the completion of a prescribed program of study leading to the attainment of competence in an interdisciplinary area or specific field of study. Programs shall generally meet the guidelines or standards of an accrediting association recognized by the board and the Secretary of the U.S. Department of Education that accredits similar programs of study.

(a) Associate degrees:

(i) An associate degree shall require at least ninety quarter credits or sixty semester credits.

(A) An associate degree intended for occupational preparation shall require, as a minimum, general education requirements that comprise a recognizable body of instruction in three program-related areas:

(I) Communications;

(II) Computation; and

(III) Human relations.

(B) The general education requirements of all other associate degrees shall be consistent with the current guidelines of the Washington inter-college relations commission.

(ii) The following associate degree designations shall be acceptable:

(A) The associate of arts (A.A.), and associate of science (A.S.) for programs which emphasize the liberal arts and sciences. These programs generally satisfy the general education requirements for a baccalaureate degree and are transfer oriented.

(B) The associate in applied technology (A.A.T.), associate in applied science (A.A.S.), associate of occupational

science (A.O.S.) and other such applied or technology-related degree designations for programs which emphasize preparation for occupations at the technical level. These programs generally do not satisfy the general education requirements for a baccalaureate degree and are not transfer-oriented.

(b) Baccalaureate degrees: A baccalaureate degree shall require at least one hundred eighty quarter credits or one hundred twenty semester credits. The degree shall require a distinct major and, as a minimum, twenty-five percent of the program shall be in general education curricula.

(c) Master's degrees:

(i) A master's degree program shall require at least thirty-six quarter credits or twenty-four semester credits, specialization in an academic or professional area, and a demonstration of mastery.

(ii) The following master's degree designations shall be acceptable:

(A) The master of arts (M.A.) and master of science (M.S.) for programs which advance study and exploration in the discipline. The majority of credit for M.A. and M.S. degrees shall be at the graduate level in the major field.

(B) The master of business administration (M.B.A.), master of fine arts (M.F.A.), master of education (M.Ed.), etc. for programs which emphasize professional preparation.

(d) Doctoral degrees:

(i) Doctoral degree programs shall provide a broad range of advanced course offerings, faculty in ancillary and supporting fields, access to adequate laboratory and research facilities, and a wide range of current reference materials in the subject field. A doctoral degree shall require at least three full academic years of specialized postbaccalaureate study. To obtain a doctoral degree a student shall be required to demonstrate, through comprehensive examination, the ability to perform research at the level of the professional scholar or perform the work of a professional that involves the highest levels of knowledge and expertise.

(ii) The following doctoral degree designations shall be acceptable:

(A) The doctor of philosophy (Ph.D.) degree for programs which are oriented toward original research and require a dissertation.

(B) A professional doctoral degree (J.D., Ed.D., etc.) for programs which emphasize technical knowledge and professional competence and require either a research thesis or a project involving the solution of a substantial problem of professional interest.

(e) Distance learning program(s) of study must be comparable in content, faculty, and resources to those offered in residence, and include regular student-faculty interaction by computer, telephone, mail, or face-to-face meetings.

(f) Noncollegiate learning.

(i) Undergraduate credit for noncollegiate learning may be awarded when validated through a portfolio or similar procedure. The institution shall maintain copies of examinations, portfolios, and evaluations used in this process. Noncollegiate learning credit shall constitute no more than twenty-five percent of an undergraduate degree program.

(ii) Credit awarded for noncollegiate learning at the graduate level must be consistent with the minimum standards as published by the school's accrediting association.

(2) Faculty.

(a) Faculty shall be professionally prepared and graduates of accredited institutions and, as a group, the institutions from which they earned their degrees shall be diverse.

(b) Faculty shall be sufficient in number and kind and in the proportion of full-time and part-time positions to sustain rigorous courses, programs, and services.

(c) Faculty teaching academic courses at the undergraduate degree level shall have a master's degree in the assigned or related program area from an accredited institution. Faculty assigned to teach in vocational-technical subjects shall have educational credentials and experience compatible with their teaching assignment. Faculty assigned to teach general education courses within any undergraduate program shall have a master's degree in a related area from an accredited institution.

(d) Faculty teaching at the master's degree level in programs which emphasize advanced study and exploration in a discipline shall have an earned doctorate in a related field from an accredited institution and experience in directing independent study and research. Faculty teaching in master's programs which emphasize professional preparation shall have, as a minimum, a master's degree from an accredited institution and documented achievement in a related field.

(e) Faculty teaching at the doctoral level shall have an earned doctorate in a related field from an accredited institution and experience in teaching and directing independent study and research.

(3) Admissions. Admission requirements shall be based on the institution's objectives and consistently applied to each program of study. Through preenrollment assessments, testing and advising, the institution shall determine the readiness and ability of each student to succeed in his/her degree program. Institutions shall use only those tests reviewed and approved by the U.S. Department of Education.

High school graduation or the equivalent shall be required for undergraduate admission. A baccalaureate degree or the equivalent shall be required for admission into graduate programs. Special undergraduate admission may be granted, based on the applicant's general educational development.

(4) Enrollment contract. If an enrollment contract is utilized, the institution shall discuss all terms and provisions of the contract with the student prior to the student's execution of the contract. The contract shall contain an (~~acknowledgement~~) acknowledgment section directly above the student's signature blank for the student to acknowledge that the institution discussed all terms and provisions of the contract with the student and that the student understands all financial obligations and responsibilities.

(5) Evaluation. The institution shall provide evidence that it has procedures for continuing evaluation and improvement of educational programs, quality of instruction, and overall operations of the institution.

(a) Student, alumni, and employer evaluations of the effectiveness of the curricula shall be considered in these evaluations.

(b) The institution's chief academic officer or designee shall periodically evaluate all areas of the institution to determine their effectiveness in fulfilling institutional objectives and meeting the standards set forth in these regulations or implied in the statute. The results of those evaluations shall be submitted to board staff upon request.

AMENDATORY SECTION (Amending WSR 09-20-033, filed 9/30/09, effective 10/31/09)

WAC 250-61-120 Catalog requirements. (1) An institution granted authorization shall publish a catalog supplemented as necessary by other published materials, providing sufficient information for students to obtain an adequate understanding of the institution, its programs, policies and procedures. Institutional catalogs shall be published at least once every two years and be provided to students at the time of their enrollment. Electronic catalogs must be archived and students must have access to the archived information.

(2) An institution granted authorization shall print a statement in a prominent position in the catalog and on its web site that reads: "(Name of institution) is authorized by the Washington higher education coordinating board (HECB) and meets the requirements and minimum educational standards established for degree-granting institutions under the Degree-Granting Institutions Act. This authorization is subject to periodic review and authorizes (name of institution) to offer (~~the following~~) specific degree programs(~~(-List))~~. The HECB may be contacted for a list of currently authorized programs. Authorization by the HECB does not carry with it an endorsement by the board of the institution or its programs. Any person desiring information about the requirements of the act or the applicability of those requirements to the institution may contact the HECB at P.O. Box 43430, Olympia, WA 98504-3430."

(3) The catalog shall include elements as required by the board in application materials such that a prospective student may become reasonably informed about the institution, its offerings, policies and procedures.

AMENDATORY SECTION (Amending WSR 09-20-033, filed 9/30/09, effective 10/31/09)

WAC 250-61-170 Application requirements. (1) Initial application.

(a) Institutions seeking initial standard authorization shall contact the board staff to arrange for a preliminary conference to discuss the authorization criteria, application procedures and the review process.

(b) An institution shall submit a fully completed application packet using forms provided by board staff. The application packet will not be considered complete until all required elements have been received by the board.

(c) For standard authorization, an initial application fee in the amount of (~~two~~) five thousand dollars is to be submitted along with the application packet. The check is to be made payable to the Washington state treasurer.

(d) For field placement authorization, an initial application fee in the amount of two thousand dollars is to be submitted along with the application packet. The check is to be made payable to the Washington state treasurer.

(2) Renewal application.

(a) Authorized institutions must submit an application for renewal of authorization on a biennial basis when requested by board staff.

(b) No later than the due date provided by the board, an institution seeking renewal must submit a fully completed renewal application packet using the forms provided by board staff. Failure to provide all requested materials by the due date may result in temporary suspension of the institution's authorization.

(c) For standard authorization, a renewal application fee in the amount of ~~(one)~~ two thousand five hundred dollars is to be submitted along with the application packet. The check is to be made payable to the Washington state treasurer.

(d) For field placement authorization, a renewal application fee in the amount of one thousand dollars is to be submitted along with the application packet. The check is to be made payable to the Washington state treasurer.

(3) Additional program(s).

(a) If an institution proposes to offer additional program(s) of study during the current authorization period, the institution shall submit a new program application well in advance of the proposed offering.

(b) An additional program application fee in the amount of one thousand dollars per program is to be submitted along with the application packet.

(c) The program(s) of study may not be offered, advertised or promoted prior to the granting of authorization.

(4) Additional site(s).

(a) If an institution proposes to offer programs at a new site in Washington, the institution shall submit a new site application well in advance of the proposed start of operations at that site.

(b) An additional site application fee in the amount of five hundred dollars per site is to be submitted along with the application packet.

(c) The site may not be utilized, advertised or promoted prior to the granting of authorization.

(5) Change of ownership or control. A significant change of ownership or control of an institution shall nullify any previous authorization. The chief administrator, representing the new owner(s), shall notify the board as soon as the change is known. If the chief administrator asserts in a written statement that all conditions set forth in the act and these rules are being met or will be met before offering instruction, the executive director may issue a temporary certificate of authorization for a maximum of one hundred eighty days. The new ownership shall complete an application for initial authorization and submit the application to the board no later than sixty days prior to the expiration of the temporary certificate of authorization.

AMENDATORY SECTION (Amending WSR 09-02-008, filed 12/29/08, effective 1/29/09)

WAC 250-61-180 Application review procedures. (1) Staff analysis. Following receipt of a fully completed application, board staff shall review and analyze the material submitted.

(2) Additional documentation and site visit. If board staff determines it is necessary to verify or supplement the information provided in the application, the staff may require additional written documentation and/or arrange for a site visit. The expense for any site visits shall be paid by the institution applying for authorization.

(3) External consultants. At the discretion of the executive director, the expertise of other higher education experts may be used to assist in the evaluation of the documentation submitted. The cost for the services of the evaluation expert(s) shall be paid by the institution applying for authorization. The fee for such services is five hundred dollars per program per consultant, to be submitted by the institution upon request by the board during the review process. The check is to be made payable to the higher education coordinating board.

(4) Comment period. Upon completion of a preliminary review, the board shall post a notification of the request for authorization on its web site for a set period of time. Any persons having knowledge as to why the institution or its program(s) may not meet the requirements for degree authorization may provide comment to the board on the proposal.

(5) Staff recommendations. After the final review has been completed, board staff shall summarize its findings and develop a recommendation to the executive director regarding the application. This recommendation will take one of the following forms:

(a) That the institution be granted authorization, subject to biennial reporting and maintenance of the conditions under which authorization has been granted.

(b) That the institution be granted conditional authorization, subject to additional conditions as established by the board, and maintenance of the conditions under which authorization has been granted.

(c) That the institution be denied authorization.

(6) Notification. Following the executive director's decision to authorize or deny the institution's request, a letter signifying the action shall be sent from the executive director to the chief administrative officer of the institution.

(a) The letter of authorization will serve as official authorization for the institution to operate in Washington for the specific programs and locations designated in the letter.

(b) An institution denied authorization shall be provided with an explanation as to how the institution and/or its programs failed to meet the criteria for authorization. Any institution denied standard authorization that wishes to reapply within one year of the denial date may submit a new fully completed initial application packet and pay a reapplication fee of ~~(one)~~ four thousand dollars. Any institution denied field placement authorization that wishes to reapply within one year of the denial date may submit a new fully completed initial application packet and pay a reapplication fee of one thousand dollars. The check is to be made payable to the Washington state treasurer.

WSR 12-09-040
PERMANENT RULES
OLYMPIC REGION
CLEAN AIR AGENCY

[Filed April 12, 2012, 3:56 p.m., effective May 13, 2012]

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

Purpose: Revise the registration program fee structure and to adjust the registration fee amounts to reflect the costs of implementing the registration program.

Citation of Existing Rules Affected by this Order: Amending ORCAA Regulations Rules 1.4, 3.1, 4.4.

Statutory Authority for Adoption: Chapter 70.94 RCW.

Adopted under notice filed as WSR 12-04-021 on January 25, 2012.

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 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: April 11, 2012.

Francea L. McNair
 Executive Director

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 12-10 issue of the Register.

WSR 12-09-046
PERMANENT RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 12-61—Filed April 13, 2012, 2:43 p.m., effective May 14, 2012]

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

Purpose: The purpose of this proposal is to amend several WAC sections to update references from Title 75 RCW to the proper reference of Title 77 RCW. Additionally, some substitutions and additions of words are made to clarify the rules and rectify typographical errors. WAC 232-14-010 is repealed, as it was determined the section was outdated and unnecessary.

Reasons Supporting Proposal: This rule change proposal was discussed during the fish and wildlife commission conference call on April 6, 2012. The proposed changes were adopted by the commission at the April 13, 2012, commission meeting. The changes are part of an agency WAC overhaul project that will increase clarity, accuracy, and effi-

ciency of the Washington department of fish and wildlife administrative code.

Citation of Existing Rules Affected by this Order: Repealing WAC 232-14-010; and amending WAC 220-12-010, 220-12-020, 220-16-211, 220-20-015, 220-20-051, 220-20-065, 220-88-020, and 220-88-040.

Statutory Authority for Adoption: RCW 34.05.353 (1)(b), (c), and (d), 77.12.047 and 77.50.050, chapters 77.65 and 77.70 RCW.

Adopted under notice filed as WSR 12-03-120 on January 18, 2012.

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 8, 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: April 13, 2012.

Miranda Wecker, Chair
 Fish and Wildlife Commission

AMENDATORY SECTION (Amending WSR 98-06-031, filed 2/26/98, effective 5/1/98)

WAC 220-12-010 Food fish—Classification. The following (~~(fishes)~~) species are classified as food fish under RCW (~~(75.08.080)~~) 77.12.047 and are subject to the provisions of this title:

Rock sole

Barracuda

Pacific barracuda

Sphyræna argentea

Cyprinids

Carp

Cyprinus carpio

Cods and hake

Pacific hake or whiting

Merluccius productus

Walleye pollock

Theragra chalcogrammus

Pacific Tomcod

Microgadus proximus

Pacific Cod or true cod

Gadus macrocephalus

Flounder, sole and halibut

Butter sole or Bellingham sole

C-O sole

Isopsetta isolepis

Dover sole

Pleuronichthys coenosus

English sole

Microstomus pacificus

Flathead sole

Parophrys vetulus

Pacific halibut

Hippoglossoides elassodon

Petræ sole

Hippoglossus stenolepis

Rex sole

Eopsetta jordani

Glyptocephalus zachirus
Lepidopsetta bilineata
Citharichthys sordidus
Psettichthys melanostictus
Lyopsetta exilis
Citharichthys stigmaeus
Platichthys stellatus

Atheresthes stomias

(Pleuronectiformes)
Delolepsis gigantea

Greenling

Lingcod
 Rock greenling
 Kelp greenling
 All other species of greenling

Ophiodon elongatus
Hexagrammos superciliosus
Hexagrammos decagrammus

(Hexagrammidae)

Herring and herring-like fishes

Northern anchovy
 Pacific sand lance or candlefish
 Pacific herring
 Pacific sardine or pilchard
 American shad

Engraulis mordax
Ammodytes hexapterus
Clupea harengus pallasii
Sardinops sagax
Alosa sapidissima

Mackerels, tunas and jacks (carangids)

Pacific bonito
 Pacific mackerel
 Jack mackerel
 Monterey Spanish mackerel
 Spanish mackerel
 Yellowtail
 Albacore
 Bluefin tuna
 Skipjack tuna
 Yellowfin tuna
 All other species of tunas and mackerels

Sarda chiliensis
Scomber japonicus
Trachurus symmetricus
Scomberomorus concolor
Scomberomorus maculatus
Seriola dorsalis
Thunnus alalunga
Thunnus thynnus
Euthynnus pelamis
Thunnus albacares

(Scombridae)

Pacific pomfret
 Pacific pompano
 Plainfin midshipman
 Ratfish
 Rattails, all species

Brama japonica
Peprilus simillimus
Parichthys notatus
Hydrolagus coliei
 (Coryphaenoididae)

Skates

Longnose skate
 Big skate
 All other species of skates

Raja rhina
Raja binoculata
 (Rajidae)

Rockfish

Bocaccio
 Black rockfish
 Brown rockfish
 Copper rockfish

Sebastes paucispinis
Sebastes melanops
Sebastes auriculatus
Sebastes caurinus

Greenstriped rockfish
 Canary rockfish
 Pacific Ocean perch
 Yelloweye or raspehead rockfish
 Rosefish or splitnose rockfish
 Silvergray rockfish
 Quillback rockfish
 Yellowtail rockfish
 All other species of rockfish
 Sablefish

Sebastes elongatus
Sebastes pinniger
Sebastes alutus

Sebastes ruberrimus
Sebastes diploproa
Sebastes brevispinis
Sebastes maliger
Sebastes flavidus
 (Scorpaenidae)
Anoplopoma fimbria

Salmon

Chinook or King salmon (except in its landlocked form as defined in WAC 232-12-018)
 Chum or dog salmon
 Pink or humpback
 Coho or silver (except in its landlocked form as defined in WAC 232-12-018)
 Sockeye or blue back
 Masu
 Atlantic salmon (except in its landlocked form)

Oncorhynchus tshawytscha

Oncorhynchus keta
Oncorhynchus gorbuscha
Oncorhynchus kisutch

Oncorhynchus nerka
Oncorhynchus masu
Salmo salar

Sculpins

Brown Irish lord
 Buffalo sculpin
 Cabezon
 Great sculpin

 Pacific Staghorn sculpin
 Red Irish lord

Hemilepidotus spinosus
Enophrys bison
Scorpaenichthys marmoratus
Myoxocephalus polyacanthocephalus

Leptocottus armatus
Hemilepidotus hemilepidotus

Seabass and drums

White seabass
 All other seabass and drums

Cynoscion nobilis
 (Sciaenidae and Serranidae)

Sharks

Sixgill shark
 Soupfin shark
 Dogfish or spiny dogfish
 All other species of sharks

Hexanchus griseus
Galeorhinus zyopterus
Squalus acanthias
 (Squaliformes and Hexanchiformes)

Smelts

Eulachon or Columbia River smelt
 Longfin smelt
 Surf smelt
 All other species of smelt

Thaleichthys pacificus
Spirinchus dilatatus
Hypomesus pretiosus
 (Osmeridae)

Sturgeons

Green sturgeon
 White sturgeon

Acipenser medirostris
Acipenser transmontanus

Surfperches

Blue perch or striped seaperch	<i>Embiotoca lateralis</i>
Kelp perch	<i>Brachyistius frenatus</i>
Redtail surfperch	<i>Amphistichus rhodoterus</i>
Shiner perch	<i>Cymatogaster aggregata</i>
Pile perch	<i>Rhacochilus vacca</i>
Walleye surfperch	<i>Hyperprosopon argenteum</i>
White seaperch	<i>Phanerodon furcatus</i>
All other species of perch	(Embiotocidae)
Wolf-eel	<i>Anarrhichthys ocellatus</i>

Hagfishes

Pacific hagfish	<i>Eptatretus stouti</i>
Black hagfish	<i>Eptatretus deani</i>
Pacific sand dab	
Sand sole	
Slender sole	
Speckled sand dab	
Starry flounder	
Turbot or Arrowtooth flounder	
All other species of sole and flounder	
Giant wrymouth	

AMENDATORY SECTION (Amending Order 10-64, filed 3/19/10, effective 5/1/10)

WAC 220-12-020 Shellfish—Classification. The following species are classified as shellfish under RCW ((75-08-080)) 77.12.047 and are subject to the provisions of this title:

Abalone

Pinto abalone	<i>Haliotis kamtschatkana</i>
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Mussel

Blue mussel	<i>Mytilus trossulus</i>
California mussel	<i>Mytilus californianus</i>
Mediterranean mussel	<i>Mytilus galloprovincialis</i>

Scallops

Pacific pink scallop	<i>Chlamys rubida</i>
Rock scallop	<i>Crassadoma gigantea</i>
Spiny scallop	<i>Chlamys hastata</i>
Weatherwane scallop	<i>Patinopecten caurinus</i>

Clams

All macoma clams	<i>Macoma spp.</i>
Butter clam	<i>Saxidomus giganteus</i>
Common cockle	<i>Clinocardium nuttallii</i>
Geoduck	<i>Panopea abrupta</i>
Horse or Gaper clam	<i>Tresus nuttallii,</i> <i>Tresus capax</i>
Mud or soft shell clam	<i>Mya arenaria</i>
Manila clam	<i>Venerupis philippinarum</i>
Piddock	<i>Zirfaea pilsbryi</i>

Razor clam	<i>Siliqua patula</i>
Rock or native little neck clam	<i>Leukoma staminea</i>
Varnish clam	<i>Nuttallia obscurata</i>
All other marine clams existing in Washington in a wild state	

Oysters

All oysters	(Ostreidae)
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Squid

All squid	Sepiolida or Teuthida
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Octopus

Octopus	<i>Enteroctopus dofleini</i>
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Barnacles

Goose barnacle	<i>Pollicipes polymerus</i>
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Shrimp

Coonstripe shrimp	<i>Pandalus danae</i>
Coonstripe shrimp	<i>Pandalus hypsinotus</i>
Ghost or sand shrimp	<i>Neotrypaea spp.</i>
Humpy shrimp	<i>Pandalus goniurus</i>
Mud shrimp	<i>Upogebia pugettensis</i>
Ocean pink shrimp	<i>Pandalus jordani</i>
Pink shrimp	<i>Pandalus eous</i>
Sidestripe shrimp	<i>Pandalopsis dispar</i>
Spot shrimp	<i>Pandalus platyceros</i>

Crab

Dungeness or Pacific crab	<i>Cancer magister</i>
Red rock crab	<i>Cancer productus</i>
Tanner crab	<i>Chionoecetes tanneri</i>
King and box crab	<i>Lopholithodes spp.</i>

Crawfish

Crawfish	<i>Pacifastacus sp.</i>
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Sea cucumber

Sea cucumber	<i>Parastichopus californicus</i>
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Sea urchin

Green urchin	<i>Strongylocentrotus droebachiensis</i>
Red urchin	<i>Strongylocentrotus franciscanus</i>
Purple urchin	<i>Strongylocentrotus purpuratus</i>

AMENDATORY SECTION (Amending Order 920, filed 5/13/71)

WAC 220-16-211 Geographical definitions—Puget Sound tributaries. The term "Puget Sound tributaries" ((shall be construed to)) includes the waters of all fresh water rivers and streams tributary to Puget Sound as defined in WAC ((220-15-210)) 220-16-210 and ((including)) all tributaries flowing into said rivers and streams.

AMENDATORY SECTION (Amending Order 02-278, filed 11/6/02, effective 12/7/02)

WAC 220-20-015 Lawful and unlawful acts—Salmon. (1) It is unlawful to operate in any river, stream or channel any gill net gear longer than three-fourths the width of the stream; this provision shall supersede all other regulations in conflict with it.

(2) It is unlawful to operate any net for removing snags from state waters without permit from the department (~~(of fisheries)~~).

(3) It is unlawful to take, fish for or possess for commercial purposes chinook salmon less than 28 inches in length or coho salmon less than 16 inches in length, except as follows:

(a) In the Puget Sound, Grays Harbor, Willapa Bay and Columbia River commercial salmon net fisheries, there is no minimum size limit on salmon taken with gill net gear.

(b) In the Pacific Ocean commercial salmon troll fishery, frozen chinook salmon, dressed heads off (~~(shall)~~), must be 21 1/2 inches minimum, and frozen coho salmon, dressed heads off (~~(shall)~~), must be 12 inches minimum, measured from the midpoint of the clavicle arch to the fork of the tail.

(c) This subsection does not apply to salmon raised in aquaculture.

(4) It is unlawful to set, maintain, or operate any reef net gear at any location which places the stern ends of either or both reef net boats of said gear less than a distance of 800 feet in front of or behind the head buoys of any row or reef net gear, within the boundaries of the Lummi Island Reef Net Fisheries Area, as described in RCW (~~(75.12.140)~~) 77.50.-050.

(5) It is (~~(lawful)~~) permissible to possess salmon for any purpose (~~(which)~~) that were lawfully obtained from state and federal government fish hatcheries and facilities. Subsections (3) and (12) of WAC 220-20-010 and subsection (3) of WAC 220-20-015 do not apply to salmon possessed under this subsection.

(6) It is unlawful to take or fish for food fish from a commercial salmon trolling vessel with gear other than lawful troll line gear while said vessel is engaged in commercial fishing or has commercially caught fish aboard.

(7) It (~~(shall be)~~) is unlawful to angle for salmon for personal use from any vessel that is engaged in commercial salmon trolling or has commercially caught salmon aboard.

AMENDATORY SECTION (Amending Order 94-162, filed 11/14/94, effective 12/15/94)

WAC 220-20-051 Vessel designation requirements.

(1) In any licensed fishery for which a vessel is required under chapter (~~(75.28)~~) 77.65 RCW, or for any delivery of food fish or shellfish, or for any charter fishery, it is unlawful to fish for, harvest, deliver, or possess food fish or shellfish unless:

(a) The licensee has designated the vessel from which the food fish or shellfish are to be taken or delivered(;);

(b) The department has issued a commercial license to the licensee showing the vessel so designated(;); and

(c) The vessel operator has the commercial license in physical possession.

(2) The following definitions apply to this section:

(a) "Documentation" means vessel documentation by the United States Coast Guard showing eligibility for the fishery. Once documentation is presented as evidence of ownership, it becomes the only acceptable evidence of ownership unless the vessel is remeasured, found to be less than five net tons, and no longer eligible for documentation.

(b) "Initial designation" means the designation by an individual licensee of a vessel to be used in a commercial fishery, for delivery of food fish or shellfish, or for charter fishing. Designation by that licensee on additional licenses is not "initial designation," and required evidence of ownership is the same as for continuing designation.

(c) "Continuing designation" means reapplication for a commercial license with no change in vessel designation.

(3) A licensee does not have to own the vessel being designated on the license. However, each licensee initially designating a vessel, except nontransferable emergency salmon delivery licensees, and every licensee continuing designation after the fourth continuous designation, must offer evidence of ownership. The following is the only acceptable evidence of ownership:

(a) For initial designation of a vessel measuring less than thirty-two feet in length, evidence of ownership may be either current state vessel registration or current documentation.

(b) For initial designation of a vessel thirty-two feet or greater in length, evidence of ownership is:

(i) Current documentation; or

(ii) Coast Guard verification that the vessel does not meet the minimum tonnage requirement for documentation (simplified admeasurement); or

(iii) Verification from the American Bureau of Shipping that the vessel does not meet the minimum tonnage requirement for documentation (formal admeasurement).

(c) For continuing designation of vessel less than thirty-two feet in length, evidence of ownership may be either current state vessel registration or current documentation.

(d) For continuing designation of a vessel between thirty-two and thirty-six feet in length, evidence of ownership is current state registration for vessels with state registration numbers or current documentation for documented vessels.

(e) For continuing designation of a vessel greater than thirty-six feet in length, evidence of ownership is:

(i) Current documentation; or

(ii) Coast Guard verification that the vessel does not meet the minimum tonnage requirement for documentation (simplified admeasurement); or

(iii) Verification from the American Bureau of Shipping that the vessel does not meet the minimum tonnage requirement for documentation (formal admeasurement).

(4) Every vessel designated to participate in a commercial fishery or to deliver food fish or shellfish must have the official Coast Guard documentation number, complete state registration number, or Alaska department of fish and game registration number permanently displayed in ten-inch tall numbers, or letters and numbers, of proportionate width, clearly visible from each side of the vessel. It is unlawful to participate in a commercial fishery or deliver food fish or shellfish without having such numbers displayed. This subsection does not apply to salmon guide, charter, or nontrans-

ferable emergency salmon delivery licensees, or to Canadian vessels delivering under a nonlimited entry delivery license.

AMENDATORY SECTION (Amending Order 94-162, filed 11/14/94, effective 12/15/94)

WAC 220-20-065 Commercial licensing—Business organizations—Operator designation. Any person (~~which~~) that holds a commercial fishing license or delivery license and is a business organization may designate one natural person to act on behalf of the license holder to operate a designated vessel as provided for in this section:

(1) If the business is a sole proprietorship, the designated operator must be the sole proprietor.

(2) If the business is a partnership, the designated operator must be a partner.

(3) If the business is a corporation, the designated operator must be a corporate officer.

(4) In addition to the designated operator, a license holder (~~who~~) that is a business organization may designate up to two alternate operators.

(5) A license holder (~~which~~) that is a business organization may substitute the designated operator by surrendering the fishery license card, redesignating the operator under the criteria provided for in this section, and paying the replacement license fee provided for in RCW (~~(75.28.030))~~ 77.65-.050.

AMENDATORY SECTION (Amending Order 92-89, filed 9/3/92, effective 10/4/92)

WAC 220-88-020 Experimental fishery permits. (1) The director will issue experimental fishery permits after the date the rules take effect designating a fishery as either an emerging commercial fishery or an expanding commercial fishery and establishing the number and qualifications of permit holders (~~(take effect)~~).

(2) Only persons meeting the following requirements may hold an experimental fishery permit:

(a) The person must hold a commercial fishing license under chapter (~~(75.28))~~ 77.65 RCW for the gear (~~(to))~~ that will be used with the experimental fishery permit, or the person must own a vessel that holds such a commercial fishing license. An experimental fishery permit is supplemental to a commercial fishing license, and may not be used unless the fisher or the fisher's vessel is currently licensed.

(b) No person ineligible to hold a commercial fishing license will be issued an experimental fishery permit. The person must meet the qualifications established for the experimental fishery permit that the person seeks.

(c) In the event an emerging or expanding commercial fishery arises from a trial commercial fishery, the director shall consider whether a fisher making application for an experimental fishery permit had previously held a trial commercial fishery permit for that fishery.

(3) An experimental fishery permit will not be issued for any species for which a license, endorsement, or validation limitation has been established pursuant to chapter (~~(75.30))~~ 77.70 RCW, or for any fishery under the jurisdiction of the secretary of commerce.

(4) The director may at any time close an emerging or expanding commercial fishery for conservation reasons.

AMENDATORY SECTION (Amending Order 92-89, filed 9/3/92, effective 10/4/92)

WAC 220-88-040 Trial commercial fishery permits.

(1) Applications for trial commercial fishery permits must specify the species, fishing area, and fishing method to be used.

(2) The department will respond to any request for a trial commercial fishery permit within sixty days of receiving the application.

(3) Only persons who hold a commercial fishing license under chapter (~~(75.28))~~ 77.65 RCW for the gear (~~(to))~~ that will be used with the trial commercial fishery permit, or persons who own a vessel that holds such a commercial fishing license, are eligible to hold a trial commercial fishery permit. A trial commercial fishery permit is supplemental to a commercial fishing license, and may not be used unless the fisher or the fisher's vessel is currently licensed.

(4) The director will issue a trial commercial fishery permit for a newly classified species only after the director has by rule classified the species as a food fish or shellfish in chapter 220-12 WAC. If emergency classification is required, the director will issue the trial commercial fishery permit only for the period of emergency classification, and will not renew the permit unless the department has received a request for permanent classification at least two weeks before the end of the permit period.

(5) The director may redesignate a trial commercial fishery as an emerging or expanding commercial fishery if the director finds that there is a need to limit participation. A trial commercial fishery permit for that fishery does not guarantee future eligibility for an experimental fishery permit.

(6) The director may at any time close a trial commercial fishery for conservation reasons.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 232-14-010 Hydraulic Code guidelines.

WSR 12-09-052 PERMANENT RULES OFFICE OF

INSURANCE COMMISSIONER

[Insurance Commissioner Matter No. R 2011-30—Filed April 16, 2012, 3:33 p.m., effective May 17, 2012]

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

Purpose: This new rule will prevent the issuance of certificates of insurance that purport to alter the terms of a policy or endorsement of insurance.

Statutory Authority for Adoption: RCW 48.02.060.

Adopted under notice filed as WSR 12-05-070 on February 16, 2012.

Changes Other than Editing from Proposed to Adopted Version: WAC 284-30-355 (1)(a), the word "group" was added for clarification.

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 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 1, Amended 0, Repealed 0.

Date Adopted: April 16, 2012.

Mike Kreidler
Insurance Commissioner

NEW SECTION

WAC 284-30-355 Certificates of insurance. (1) The following definitions apply to this section.

(a) "Certificate" or "certificate of insurance" means any document, without regard to title or description, that is issued by an insurer, insurance producer, or surplus line broker as evidence of property or casualty insurance coverage. Certificate or certificate of insurance as used in this section does not include an insurance policy, insurance binder, an automobile insurance identification or information card, or a certificate issued to a person or entity that has purchased coverage under a group master policy.

(b) "Certificate holder" means any person, other than a policyholder, that requests, obtains, or possesses a certificate.

(c) "Property" means the insurance coverages described in RCW 48.11.040.

(d) "Casualty" means the insurance coverages described in RCW 48.11.070.

(e) "Insurance binder" means a temporary document that serves as evidence of insurance until the insurance policy is issued.

(f) "Insurance policy" means the executed insurance policy issued to the named insured as part of an insurance transaction as defined in RCW 48.01.060.

(2) This section applies to all:

(a) Certificate holders, policyholders, insurers, insurance producers, surplus line brokers; and

(b) Certificates issued as evidence of insurance coverage for risks located in this state without regard to where a certificate holder, policyholder, insurer, insurance producer, or surplus line broker is located.

(3)(a) If a certificate holder is named within the policy or endorsement and the policy or endorsement requires notice to be provided to the certificate holder, a certificate holder only possesses a right to notice of:

(i) Cancellation;

(ii) Nonrenewal; or

(iii) A material change, or any similar notice concerning the insurance policy.

(b) The insurance policy governs the terms and conditions of the notice, including the timing of the notice.

(4) No person may knowingly demand or require an insurer, insurance producer, surplus line broker, or policyholder to issue a certificate that contains any false or misleading information or that purports to alter, amend, or extend the coverage provided by the insurance policy.

(5) No person may knowingly issue or circulate a certificate that contains any false or misleading information or that purports to alter, amend, or extend the coverage provided by the insurance policy.

(6) No person may issue, demand, or require, either in addition to or in lieu of a certificate, a document that contains any false or misleading information or that purports to alter, amend, or extend the coverage provided by the insurance policy.

(7)(a) Nothing in this section affects or excuses a person's obligation to obtain an insurance policy for the benefit of a third party that conforms to specific contractual or legal requirements.

(b) Notwithstanding any requirement, term, or condition of any contract, the insurance coverage provided by the referenced policy of insurance is subject to all the terms, exclusions, and conditions of the policy. A certificate of insurance does not confer new or additional rights beyond what the referenced policy of insurance provides.

WSR 12-09-056

PERMANENT RULES

DEPARTMENT OF

LABOR AND INDUSTRIES

[Filed April 17, 2012, 8:40 a.m., effective May 21, 2012]

Effective Date of Rule: May 21, 2012.

Purpose: The Washington legislature established a new stay-at-work program for the department to administer effective June 15, 2011. The law authorizes reimbursements to employers who provide transitional or light duty work to injured workers unable to return to their regular job because of work restrictions related to their injury. The new law allows L&I to reimburse employers for some costs without negatively impacting their experience rating.

These new rules allow the department to administer the program efficiently and equitably. It ensures the requirements for participating in the program are clear and understandable, and reimbursements are appropriate.

Statutory Authority for Adoption: RCW 51.04.020 and 51.32.090.

Adopted under notice filed as WSR 11-24-061 on December 6, 2011, with supplemental notice filed as WSR 12-04-072 on January 31, 2012.

Changes Other than Editing from Proposed to Adopted Version: The term "job" was replaced by "work" and the "employer of injury" for occupational disease claims was further defined to include having "previously employed the

worker." This was done for clarity and did not change the meaning or intent of the proposed rule.

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 5, 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 5, 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 5, Amended 0, Repealed 0.

Date Adopted: April 17, 2012.

Judy Schurke
Director

Chapter 296-16A WAC

STAY-AT-WORK PROGRAM

NEW SECTION

WAC 296-16A-010 What is the stay-at-work program? The stay-at-work program encourages employers insured with the department to bring their injured workers back to work quickly and safely. If eligible, we will reimburse an employer for up to half the basic gross wages the employer paid to the injured worker during light duty or transitional work, and for the cost of instruction, tools, and clothing the worker needed to perform the approved light duty or transitional work. WAC 296-16A-020 through 296-16A-050 are the rules for employers insured with the department who are requesting stay-at-work reimbursements.

NEW SECTION

WAC 296-16A-020 I am an employer insured with the department—How can I qualify for stay-at-work reimbursements? To qualify for stay-at-work reimbursements:

(1) You must be the "employer at the time of injury" or "employer of injury" on a claim. You are the employer at the time of injury if the worker was injured while working for you. For occupational disease claims, you are the employer if your experience rating has been or will be affected by the claim because you previously employed the worker, or you were the last employer to employ the worker when the claim was filed (even if the claim will not affect your experience rating).

(2) Your worker must be eligible for temporary total disability or temporary partial disability benefits to be eligible; your worker's attending provider must have restricted your worker from performing his or her usual work.

(3) You must give the attending provider and your worker a description of the light duty or transitional work you would like your worker to do, and the attending provider must, in writing, release your worker to do that work.

(4) You must not ask your worker to perform work other than that approved by the attending provider.

(5) You must incur an actual expense before you request reimbursement. We cannot pay you in advance.

(6) We cannot reimburse you for stay-at-work expenses incurred before June 15, 2011.

NEW SECTION

WAC 296-16A-030 What can I be reimbursed for? If the attending provider restricts your worker from performing his or her usual work, you may ask the attending provider to release your worker to perform light duty or transitional work for you. If the attending provider does so, you may employ your worker consistent with the attending provider's release. You can then receive reimbursement for some of the costs associated with that employment:

(1) **Wages:** Fifty percent of basic gross wages you paid your worker, for up to sixty-six days actually worked in a twenty-four month period, up to a maximum of ten thousand dollars total wage reimbursement per claim.

(a) Basic gross wages means the basic hourly wages or salary. Basic gross wages do not include tips, commissions, bonuses, board, housing, fuel, health care, dental care, vision care, per diem, reimbursements for work-related expenses, or any other payments.

(b) A partial day worked counts as one day. Example: Your worker works a four-hour shift. This counts as one day out of the sixty-six.

(c) If your worker's single shift spans two calendar days that shift counts as one day. Example: Your worker's single shift starts at 10:00 p.m., November 14th, and continues until 6:30 a.m., November 15th. This counts as one day out of the sixty-six.

(d) The sixty-six days do not have to be consecutive.

(e) If the light duty or transitional work lasts more than sixty-six days, you may choose which sixty-six days to seek reimbursement for.

(f) You may not be reimbursed more than once for the same days worked. For example, if your worker has two active claims you cannot be reimbursed wage subsidies for the same dates on both claims.

(g) We cannot reimburse you for dates you employed your worker that are more than twenty-four months after the earliest day we have already reimbursed on the claim. Example: The first work date for which you were reimbursed was February 1, 2012. Your twenty-four month eligibility period ends January 31, 2014.

(h) You must submit your request for reimbursement within one year of the date the work was performed.

(2) **Training costs** you incurred to enable your worker to perform the light duty or transitional work, up to one thousand dollars per claim:

(a) Training expenses include the purchase of books or materials, or payment to someone outside your organization to provide training (tuition or fees).

(b) We will not reimburse you for the value of "in-house" training provided by your organization.

(c) You must submit your request for reimbursement within one year of the date of purchase.

(3) **Clothing** you provided your worker, necessary to perform the light duty or transitional work, up to four hundred dollars per claim:

(a) If you normally provide such clothing to your workers, we cannot reimburse you.

(b) When the work ends, the clothing belongs to your worker.

(c) You must submit your request for reimbursement within one year of the date of purchase.

(4) **Tools and equipment** you purchased to enable your worker to perform the light duty or transitional work, up to two thousand five hundred dollars per claim:

(a) If you normally provide such tools and equipment to your workers, we cannot reimburse you.

(b) When the work ends, the tools and equipment belong to the employer.

(c) You must submit your request for reimbursement within one year of the date of purchase.

NEW SECTION

WAC 296-16A-040 What if my worker has more than one claim or other qualifying employers? (1) We will reimburse you only once for an incurred expense: If your worker has more than one claim, we will not reimburse you more than once for the same wages paid or training, clothing, or equipment provided.

(2) If we receive valid reimbursement requests from different employers for the same claim, we will pay the requests in the order received by the department up to the per claim limits.

NEW SECTION

WAC 296-16A-050 How do I apply for reimbursements? (1) To request reimbursements, fill out the appropriate stay-at-work reimbursement form we will supply you that is available on our web site. One form is for wage reimbursement and there is a separate form for all other reimbursements. Once you have completed the form or forms, mail or fax them to us at the address or fax number provided on the form.

(2) For all stay-at-work reimbursements, in addition to the completed forms, we also need:

(a) Documentation from the attending provider restricting your worker from his or her usual work for the dates you are requesting reimbursement;

(b) A written description of the light duty or transitional work that enables the attending provider to relate the physical activities of the work to your worker's restrictions;

(c) The attending provider's written approval releasing the worker to do that work.

(3) For wage reimbursement, we need documentation such as payroll records and time cards that verify the dates worked and basic gross wages paid.

(4) For tools and equipment, clothing, and training, we need itemized receipts showing your expenses.

WSR 12-09-057

PERMANENT RULES

DEPARTMENT OF

LABOR AND INDUSTRIES

[Filed April 17, 2012, 8:41 a.m., effective June 30, 2012]

Effective Date of Rule: June 30, 2012.

Purpose: The boiler program's budget and projected revenue indicate a fee increase is necessary to help cover the cost of ongoing services. The boiler program was given the authority by 2ESHB 1087, which passed the 2011 legislature, to increase fees to cover the program's expenditures.

The purpose of this rule making is to increase the fees for the boiler program. Fee increases are necessary to cover the costs for ongoing service delivery.

Citation of Existing Rules Affected by this Order: Amending WAC 296-104-700 What are the inspection fees—Examination fees—Certificate fees—Expenses?

Statutory Authority for Adoption: Chapter 70.79 RCW and chapter 50, Laws of 2011 (2ESHB 1087).

Adopted under notice filed as WSR 12-02-056 on January 3, 2012.

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: April 17, 2012.

Robert E. Olson, Chair
Board of Boiler Rules

AMENDATORY SECTION (Amending WSR 10-06-049, filed 2/24/10, effective 4/1/10)

WAC 296-104-700 What are the inspection fees—Examination fees—Certificate fees—Expenses? The following fees shall be paid by, or on behalf of, the owner or user upon the completion of the inspection. The inspection fees apply to inspections made by inspectors employed by the state.

Boiler and pressure vessel installation/reinstallation permit (excludes inspection and certificate of inspection fee): \$50.00.

Certificate of inspection fees: For objects inspected, the certificate of inspection fee per object is ~~\$(20.70)~~ 21.50.

Hot water heaters per RCW 70.79.090, inspection fee: ~~\$(6.50)~~ 6.70.

Heating boilers:	Internal	External
Cast iron—All sizes	\$((34.80))	\$((27.80))
	<u>36.30</u>	<u>29.00</u>
All other boilers less than 500 sq. ft.	\$36.30	\$((27.80))
	<u>36.30</u>	<u>29.00</u>
500 sq. ft. to 2500 sq. ft.	\$((69.40))	\$((34.80))
	<u>72.40</u>	<u>36.30</u>
Each additional 2500 sq. ft. of total heating surface, or any portion thereof	\$((27.80))	\$((13.70))
	<u>29.00</u>	<u>14.20</u>
Power boilers:	Internal	External
Less than 100 sq. ft.	\$((34.80))	\$((27.80))
	<u>36.30</u>	<u>29.00</u>
100 sq. ft. to less than 500 sq. ft.	\$((42.10))	\$((27.80))
	<u>43.90</u>	<u>29.00</u>
500 sq. ft. to 2500 sq. ft.	\$((69.40))	\$((34.80))
	<u>72.40</u>	<u>36.30</u>
Each additional 2500 sq. ft. of total heating surface, or any portion thereof	\$((27.80))	\$((13.70))
	<u>29.00</u>	<u>14.20</u>
Pressure vessels:		
Square feet shall be determined by multiplying the length of the shell by its diameter.		
	Internal	External
Less than 15 sq. ft.	\$((27.80))	\$((20.70))
	<u>29.00</u>	<u>21.50</u>
15 sq. ft. to less than 50 sq. ft.	\$((41.30))	\$((20.70))
	<u>43.00</u>	<u>21.50</u>
50 sq. ft. to 100 sq. ft.	\$((48.10))	\$((27.80))
	<u>50.10</u>	<u>29.00</u>
For each additional 100 sq. ft. or any portion thereof	\$((48.10))	\$((13.70))
	<u>50.10</u>	<u>14.20</u>
Nonnuclear shop inspections, field construction inspections, and special inspection services:		
For each hour or part of an hour up to 8 hours	\$((42.10))	<u>43.90</u>
For each hour or part of an hour in excess of 8 hours	\$((62.80))	<u>65.50</u>
Nuclear shop inspections, nuclear field construction inspections, and nuclear triennial shop survey and audit:		
For each hour or part of an hour up to 8 hours	\$((62.80))	<u>65.50</u>
For each hour or part of an hour in excess of 8 hours	\$((98.20))	<u>102.40</u>
Nonnuclear triennial shop survey and audit:		
When state is authorized inspection agency:		

For each hour or part of an hour up to 8 hours \$((42.10)) 43.90

For each hour or part of an hour in excess of 8 hours \$((62.80)) 65.50

When insurance company is authorized inspection agency:

For each hour or part of an hour up to 8 hours \$((62.80)) 65.50

For each hour or part of an hour in excess of 8 hours \$((98.20)) 102.40

Examination fee: A fee of \$((77.70)) 81.00 will be charged for each applicant sitting for an inspection examination(s).

Special inspector commission: An initial fee of \$((26.30)) 27.40 and an annual renewal fee of \$((10.50)) 10.90 along with an annual work card fee of \$((15.80)) 16.40.

Expenses shall include:

Travel time and mileage: The department shall charge for its inspectors' travel time from their offices to the inspection sites and return. The travel time shall be charged for at the same rate as that for the inspection, audit, or survey. The department shall also charge the current Washington office of financial management accepted mileage cost fees or the actual cost of purchased transportation. Hotel and meals: Actual cost not to exceed the office of financial management approved rate.

Requests for Washington state specials and extensions of inspection frequency: For each vessel to be considered by the board, a fee of \$((390.50)) 407.40 must be paid to the department before the board meets to consider the vessel. The board may, at its discretion, prorate the fee when a number of vessels that are essentially the same are to be considered.

WSR 12-09-058
PERMANENT RULES
DEPARTMENT OF
LABOR AND INDUSTRIES

[Filed April 17, 2012, 8:43 a.m., effective May 18, 2012]

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

Purpose: The department is repealing two sections in chapter 296-155 WAC, Part L. The two sections being repealed are WAC 296-155-526 Crane attached personnel platforms and 296-155-528 Crane or derrick suspended personnel platforms.

These sections should have been repealed in the recent adoption of the Cranes - Phase II filing, which was adopted on December 20, 2011 (WSR 12-01-086). These sections are now covered under the personnel lifting requirements located in WAC 296-155-547 through 296-155-55405.

The department is also changing the title of chapter 296-155 WAC, Part L, from "Cranes, Derricks, Hoists, Elevators, and Conveyors" to "Cranes, Rigging, and Personnel Lifting."

Citation of Existing Rules Affected by this Order: Repealing WAC 296-155-526 and 296-155-528.

Statutory Authority for Adoption: RCW 49.17.010, 49.17.040, 49.17.050, and 49.17.060.

Other Authority: Chapter 49.17 RCW.

Adopted under notice filed as WSR 12-04-093 on February 1, 2012.

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 2; 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 2.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 2.

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 2.

Date Adopted: April 17, 2012.

Judy Schurke
Director

PART L

~~CRANES, ((DERRICKS, HOISTS, ELEVATORS, AND CONVEYORS))~~ RIGGING, AND PERSONNEL LIFTING

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 296-155-526	Crane attached personnel platforms.
WAC 296-155-528	Crane or derrick suspended personnel platforms.

**WSR 12-09-060
PERMANENT RULES
DEPARTMENT OF
EARLY LEARNING**

[Filed April 17, 2012, 9:37 a.m., effective May 18, 2012]

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

Purpose: Prior to enactment of SB 5625 (chapter 297, Laws of 2011), a "full" child care license was issued for a period of three years. To renew the license, the child care provider submitted a renewal application that in many respects included the same elements and level of detail as an application for a new child care license.

SB 5625 eliminated the three-year renewal of a child care license and establishes a simplified annual process for licensees to continue a nonexpiring license. The proposed rules describe the requirements for a child care provider operating under a department of early learning (DEL) initial license to obtain "nonexpiring full license" status, and once obtained, the annual requirements for continuing the nonexpiring full license. Under the rules, to maintain a nonexpiring license the licensee must, by thirty days before the annual anniversary date of the child care license:

- Pay the annual license fee;
- Submit a signed declaration:
 - Indicating the licensee's intent to continue his or her child care program (or tell DEL the date the licensee plans to cease child care operations), and
 - Stating that the licensee is in compliance with all DEL licensing rules; and
- Verify that each employee and others associated with the child care who are required to have a DEL background check clearance either have such a clearance or have submitted a current DEL background check application.

Under the bill and the proposed rules, a child care license expires if the licensee does not meet the annual requirements to maintain a nonexpiring full license. If so, the child care agency must close and the provider must submit a new license application and obtain a new license.

The proposal revises other sections of chapters 170-151 and 170-295 WAC consistent with provisions in SB 5625 regarding:

- Payment of annual license fees;
- Enforcement actions; and
- Probationary licenses.

Proposal of this rule is consistent with state office of financial management guidance regarding implementation of Executive Order 10-06 suspending noncritical rule making (extended by Executive Order 11-03), but allowing rules to proceed that are:

"Required by federal or state law or required to maintain federally delegated or authorized programs;" or
"Beneficial to or requested or supported by the regulated entities, local governments or small businesses that it affects."

The proposed rules are needed to implement SB 5625 and remove requirements that are inconsistent with the new law. Small child care business owners and their advocates testified in support enacting SB 5625 during the 2011 legislative session.

Citation of Existing Rules Affected by this Order: Amending WAC 170-151-010, 170-151-085, 170-151-097, 170-151-098, 170-151-992, 170-295-0010, 170-295-0090, 170-295-0110, 170-295-0140, 170-295-7040, and 170-295-7080.

Statutory Authority for Adoption: RCW 43.215.070, 43.215.060, and 43.43.832(6); chapter 43.215 RCW.

Adopted under notice filed as WSR 12-02-078 on January 4, 2012.

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 2, Amended 11, 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 2, Amended 11, 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 2, Amended 11, Repealed 0.

Date Adopted: April 17, 2012.

Elizabeth M. Hyde
Director

AMENDATORY SECTION (Amending WSR 08-08-012, filed 3/19/08, effective 4/19/08)

WAC 170-151-010 What definitions are important for the school-age child care center program? The following definitions are important under this chapter:

"Capacity" means the maximum number of children the licensee is authorized to have on the premises at a given time.

"Child abuse or neglect" means the injury, sexual abuse, sexual exploitation, or negligent treatment or maltreatment of a child as defined in RCW 26.44.020 and chapter 388-15 WAC.

"Department" means the state department of early learning (DEL), or its predecessor the department of social and health services (DSHS), the state agency with the legal authority to regulate and certify school-age child care centers.

"Department of health" means the state department of health.

"I," "you," and "your" refer to and mean the licensee or applicant for child care license.

"License" means a permit issued by the department to a person or organization to operate a school-age child care center and affirming the licensee meets requirements under licensure.

"Licensee" means the person, organization, or legal entity named on the facility license and responsible for operating the center.

"Licensor" means the person employed by the department to regulate and license a school-age child care center.

"Nonexpiring license" or "nonexpiring full license" means a full license that is issued to a licensee following the initial licensing period as provided in WAC 170-151-087.

"Premises" means the building where the center is located and the adjoining grounds over which the licensee has control.

"School-age child" means a child five years of age through twelve years of age enrolled in a public or private school.

"School-age child care center" means a program operating in a facility other than a private residence, accountable for school-age children when school is not in session. The program must meet department licensing requirements, provide adult-supervised care, and a variety of developmentally appropriate activities.

"Staff" means a person or persons employed by the licensee to provide child care and to supervise children served at the center.

"The Washington state training and registry system (STARS)" means the entity approved by the department to determine the classes, courses, and workshops licensees and staff may take to satisfy the department's training requirements.

"We" or "our" refer to and mean the department of early learning (DEL), including DEL licensors.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-151-085 (~~(How do I get an)~~) Initial (~~(license?)~~) licenses. (1) The department may issue an initial license (~~(to you if you are)~~) if an applicant is not currently licensed to provide child care, when (~~(you)~~) the applicant:

(a) Can demonstrate compliance with the rules contained in this chapter pertaining to the health and safety of the child in care; but

(b) Cannot demonstrate compliance with the rules pertaining to:

- (i) Staff-child interactions(~~(;)~~);
- (ii) Group size and staff-child ratios(~~(;)~~);
- (iii) Behavior management and discipline(~~(;)~~);
- (iv) Activity programs(~~(;)~~);
- (v) Child records and information(~~(;)~~); and
- (vi) Other rules requiring department observation of the applicant's ability to comply with rules(~~(;)~~); and

(c) Can provide a plan, acceptable to the department, to comply with rules found in subsection (1)(b) of this section.

(2) The department may issue an initial license (~~(to you)~~) for a period not to exceed six months, renewable for a period not to exceed two years.

(3) The department must evaluate (~~(you)~~) an applicant's ability to comply with all rules contained in this chapter during the period of initial licensure prior to issuing a nonexpiring full license under WAC 170-151-087.

(4) The department may issue a nonexpiring full license to (~~(you if you)~~) a licensee operating under an initial license who:

(a) Demonstrates (~~(you)~~) full compliance with (~~(all rules contained in)~~) the health and safety requirements of this chapter at any time during the period of initial licensure;

(b) Demonstrates substantial compliance with the other requirements of this chapter at any time during the period of initial licensure; and

(c) Meets the requirements for a nonexpiring full license as provided in WAC 170-151-087.

(5) The department must (~~(not issue)~~) deny a nonexpiring full license to (~~(you if you do)~~) a licensee operating under an initial license who does not demonstrate the ability to

comply with all rules contained in this chapter during the period of initial licensure.

NEW SECTION

WAC 170-151-087 Nonexpiring licenses. (1) To qualify for a nonexpiring full license, a licensee must submit the following to the department on an annual basis thirty days prior to the anniversary date of the license. The anniversary date is the date the licensee's first initial license was issued:

- (a) An annual nonrefundable licensing fee;
- (b) A declaration to the department on a department-approved form indicating:
 - (i) The intent to continue operating a licensed child care program; or
 - (ii) The intent to cease operation on a date certain;
- (c) A declaration on a department-approved form of compliance with all licensing rules; and

(d) Documentation of completed background check applications as determined by the department-established schedule. As provided in RCW 43.215.215 (2)(f), as amended by chapter 295 (2SHB 1903), Laws of 2011, the schedule for submission of a background check application shall be once every three years. For each individual required to have a background check clearance, the licensee must verify current background checks or submit a background check application at least thirty days prior to the anniversary date.

(2) The requirements in subsection (1) of this section must be met:

- (a) Before a licensee operating under an initial license is issued a nonexpiring full license; and
 - (b) Every twelve months after issuance of a nonexpiring full license.
- (3) If a licensee fails to meet the requirements in subsection (1) of this section for continuation of a nonexpiring full license, the license expires and the licensee must submit a new application for licensure.
- (4) Nothing about the nonexpiring license process in this section may interfere with the department's established monitoring practice.
- (5) A licensee has no right to an adjudicative proceeding (hearing) to appeal the expiration, nonrenewal, or noncontinuation of a full nonexpiring license as a result of the licensee's failure to comply with the requirements of this section.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-151-097 (~~What if I do not pay the~~) Civil (~~penalty?~~) penalties—Failure to pay. The department may suspend, revoke, or not (~~renew~~) continue a license for failure to pay a civil monetary penalty the department has assessed within ten days after such assessment becomes final.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-151-098 (~~Under what circumstances may the department issue a~~) Probationary (~~license?~~) licenses. (1) The department may issue a probationary license to a licensee in accordance with the process provided in RCW

43.215.290, and must base the decision to issue a probationary license on the following factors:

(a) Willful or negligent noncompliance by (~~you~~) the licensee;

(b) History of noncompliance(~~?~~);

(c) Extent of deviation from the requirements(~~?~~);

(d) Evidence of a good faith effort to comply(~~?~~); and

(e) Any other factors relevant to the unique situation.

(2) Where the negligent or willful violation of the licensing law does not present an immediate threat to the health and well-being of the children but would be likely to do so if allowed to continue, the department may issue a probationary license in addition to civil penalties or other sanctions. Such situations may include:

(a) Substantiation that a child (or children) was abused or neglected while in the care of the center(~~?~~);

(b) Disapproved fire safety or sanitation report(~~?~~);

(c) Use of unauthorized space for child care(~~?~~);

(d) Inadequate supervision of children(~~?~~);

(e) Understaffing for the number of children in care(~~?~~);

or

(f) Noncompliance with requirements addressing:

(i) Children's health(~~?~~);

(ii) Proper nutrition(~~?~~);

(iii) Discipline(~~?~~);

(iv) Emergency medical plan(~~?~~); or

(v) Sanitation and personal hygiene practices.

(3) (~~You~~) The licensee must notify parents of all children in care or who may apply for care when the department issues a probationary license (~~to you~~). The licensee must:

(a) (~~You must~~) Notify the parents or guardians of all children in care of the program's probationary status within five working days of receiving the department's notification that the department has issued a probationary license;

(b) (~~You must~~) Notify parents and guardians in writing, and the department must approve the notice before (~~you~~) the licensee sends the notification; and

(c) (~~You must~~) Provide documentation to the department that (~~you have~~) he or she has notified parents or guardians of all children in care within ten working days after (~~you~~) the licensee receives notification that the department has issued a probationary license. Documentation must consist of a copy of the letter (~~you have~~) the licensee has sent to the parents(~~?~~) or guardians.

(~~4~~) (4) The department may issue a probationary license for up to six months, and at the department's discretion, the department may extend the probationary license for an additional six months.

AMENDATORY SECTION (Amending WSR 08-08-012, filed 3/19/08, effective 4/19/08)

WAC 170-151-992 Fee payment (~~and refunds~~). (~~+~~) Fees are due with applications for initial license or renewal. The department will not proceed on applications until required fees are paid.

Except as otherwise provided in these rules, fees shall be paid for a minimum of one year.

(2) Fees for licenses issued for other than yearly periods shall be prorated based on the stated annual fee.

~~(3) When the department issues a license for more than one year:~~

~~(a) Fees may be paid for the entire licensing period by paying at the rate established at the time the application was submitted, or~~

~~(b) If the licensee does not pay the fee for the entire license period, annual fees shall be due thirty days prior to each annual anniversary date of the license, at the annual fee rate established by these rules at the time such fee is paid.~~

~~(4) Except as otherwise provided in these rules, if an application is withdrawn prior to issuance or denial, one-half of the fee shall be refunded.~~

~~(5) If there is a change of or by the licensee requiring a new license, the fee paid for a period beyond the next license anniversary date shall be refunded. Changes requiring a new license shall require a new application and payment of fee as provided herein.~~

~~(6) If there is a change by the applicant or licensee that requires an amendment placing the licensee in a higher fee category, the additional fee shall be prorated for the remainder of the license period.~~

~~(7) Fees becoming due on or after the effective date of this chapter shall be at the rates provided herein.~~

~~(8) To the extent fees are reduced through regular rule adoption of this chapter on or before December 31, 1982, fees shall be refunded.~~

~~(9) Fee payments shall be by mail. Payment shall be by check, draft, or money order.) (1) The department does not process an application or continuation until the applicant or licensee, as applicable, has paid the required fee.~~

(2) Applicants or licensees can pay licensing fees for:

(a) A minimum of one year; or

(b) Multiple years.

(3) Applicants and licensees must pay their fees by mailing a check or money order for the required amount to the department.

(4) If there is a change in a facility that places the facility in a different fee category, the department prorates the additional fee amount over the remainder of the license period.

(5) If an applicant or licensee withdraws an application before the department denies or issues a license, the fee shall not be refunded.

AMENDATORY SECTION (Amending WSR 08-10-041, filed 4/30/08, effective 5/31/08)

WAC 170-295-0010 What definitions under this chapter apply to licensed child care providers? "American Indian child" means any unmarried person under the age of eighteen who is:

(1) A member or eligible for membership in a federally recognized Indian tribe, or who is Eskimo, Aleut, or other Alaska native and a member of an Alaskan native regional corporation or Alaska native village;

(2) Determined or eligible to be found Indian by the Secretary of the Interior, including through issuance of a certificate of degree of Indian blood, or by the Indian health service;

(3) Considered to be Indian by a federally recognized or nonfederally recognized Indian tribe; or

(4) A member or entitled to be a member of a Canadian tribe or band, Metis community, or nonstatus Indian community from Canada.

"**Anti-bias**" is an approach that works against biases and recognizes when others are treated unfairly or oppressively based on race, color, national origin, marital status, gender, sexual orientation, class, religion, creed, disability, or age.

"**Capacity ((that you are licensed for))**" means the maximum number of children that ((you are)) a licensee is authorized to have on the premises of the child care at any one time.

"**Center**" means the same as "**child care center**."

"**Certification**" means department approval of a person, home, or facility that does not legally need to be licensed, but wants evidence that they meet the minimum licensing requirements (also see "**Tribal certification**").

"**Child abuse or neglect**" means the physical abuse, sexual abuse, sexual exploitation, abandonment or negligent treatment or maltreatment of a child by any person indicating the child's health, welfare, and safety is harmed.

"**Child-accessible**" means areas where children regularly have access such as: Entrances and exits to and from the center, classrooms or child care areas, playground area including equipment and fencing, parking areas, walkways, decks, platforms, stairs and any items available for children to use in these areas.

"**Child care center**" means the same as a "**child day care center**" or a facility providing regularly scheduled care for a group of children one month of age through twelve years of age for periods less than twenty-four hours.

"**Clean**" means to remove dirt and debris from a surface by scrubbing and washing with a detergent solution and rinsing with water. This process must be accomplished before sanitizing a surface.

"**CACFP**" means child and adult care food program established by congress and funded by the United States Department of Agriculture (USDA).

"**Commercial kitchen equipment**" means equipment designed for business purposes such as restaurants.

"**Communicable disease**" means a disease caused by a microorganism (bacterium, virus, fungus, or parasite) that can be transmitted from person to person via an infected body fluid or respiratory spray, with or without an intermediary agent (such as a louse, or mosquito) or environmental object (such as a table surface).

"**Cultural relevancy**" creates an environment that reflects home cultures, communities and lives of children enrolled in the program.

"**Department,**" "**we,**" "**us,**" or "**our**" refers to and means the state department of early learning (DEL) and its predecessor agency the department of social and health services (DSHS).

"**Developmentally appropriate practice**":

(1) Means that the provider should interact with each child in a way that recognizes and respects the child's chronological and developmental age;

(2) Is based on knowledge about how children grow and learn; and

(3) Reflects the developmental level of the individual child, and interactions and activities must be planned with the needs of the individual child in mind.

"Director" means the person responsible for the overall management of the center's facility and operation, except that "DEL director" means the director of the department of early learning.

"Disinfect" means to eliminate virtually all germs from inanimate surfaces through the use of chemicals or physical agents.

"Domestic kitchen" means a kitchen equipped with residential appliances.

"External medication" means a medication that is not intended to be swallowed or injected but is to be applied to the external parts of the body, such as medicated ointments, lotions, or liquids applied to the skin or hair.

"I," "you," and "your" refer to and mean the licensee or applicant for a child care license.

"Inaccessible to children" means stored or maintained in a manner preventing children from reaching, entering, or using potentially hazardous items or areas. Examples include but are not limited to: Quantities of water, sharp objects, medications, chemicals, electricity, fire, mechanical equipment, entrapment or fall areas.

"Individual plan of care" means that the center's health policies and procedures do not cover the needs of the individual child so an individual plan is needed. Examples may include children with allergies, asthma, Down syndrome, tube feeding, diabetes care such as blood glucose monitoring, or nebulizer treatments.

"Infant" means a child one-month through eleven months of age.

"Lead teacher" means the person who is the lead child care staff person in charge of a child or group of children and implementing the activity program.

"License" means a permit issued by the department authorizing ~~((you))~~ a licensee by law to operate a child care center and certifying that ~~((you))~~ the licensee meets the minimum requirements under licensure.

"Licensee" or **"you"** means the person, organization, or legal entity responsible for operating the center.

"Maximum potential capacity based on square footage" is the maximum number of children ~~((you))~~ a licensee can be licensed for based on the amount of useable space (square footage) in ~~((you))~~ the licensee's center. ~~((you))~~ The licensee may be licensed for less than the maximum potential capacity. ~~((you))~~ A licensee may not be licensed for more than the maximum potential capacity.

"Moisture impervious" or **"moisture resistant"** means a surface incapable of being penetrated by water or liquids.

"Nonexpiring license" or "nonexpiring full license" means a full license that is issued to a licensee following the initial licensing period as provided in WAC 170-295-0095.

"Parent" means birth parent, custodial parent, foster parent, legal guardian, those authorized by the parent or other entity legally responsible for the welfare of the child.

"Pesticides" means chemicals that are used to kill weeds, pests, particularly insects.

"Potentially hazardous food" means any food or ingredient that requires temperature control because it supports rapid growth of infectious or toxin forming microorganisms.

"Potable water" means water suitable for drinking by the public as determined by the state department of health or local health jurisdiction.

"Premises" means the building where the center is located and the adjoining grounds over which ~~((you have))~~ the licensee has control.

"Preschool age child" means a child thirty months through five years of age not attending kindergarten or elementary school.

"Program supervisor" means the person responsible for planning and supervising the center's learning and activity program.

"Sanitize" means a surface must be clean and the number of germs reduced to a level that disease transmissions by that surface are unlikely. This procedure is less vigorous than disinfection.

"Satellite kitchen" means a food service establishment approved by a local health jurisdiction where food is stored, prepared, portioned or packaged for service elsewhere.

"School-age child" means a child not less than five years through twelve years of age who has begun attending kindergarten or elementary school.

"Staff" means a child care giver or group of child care givers employed by the licensee to supervise children served at the center who are authorized by DEL to care for or have unsupervised access to children under chapter 170-06 WAC.

"Supervised access" refers to those individuals at a child care center who have no responsibility for the operation of the center and do not have unsupervised access to children. These individuals are not required to submit a background check form. This includes those persons on the premises for "time limited" activities whose presence is supervised by a center employee and does not affect provider/child ratios or the normal activities or routine of the center. Examples include:

(1) A person hired to present an activity to the children in care such as a puppet show, cooking activity, and story telling;

(2) Parent participation as part of a special theme; or

(3) A relative visiting a child on the premises.

"The Washington state training and registry system (STARS)" means the entity approved by the department to determine the classes, courses, and workshops licensees and staff may take to satisfy training requirement.

"Toddler" means a child twelve months through twenty-nine months of age.

"Terminal room cleaning" means thorough cleaning of walls, ceiling, floor and all equipment, and disinfecting as necessary, in a room which has been used by a person having a communicable disease before it is occupied by another person.

"Tribal certification" means that the department has certified the tribe to receive state payment for children eligible to receive child care subsidies.

"Unsupervised access" refers to those individuals at a child care center who can be left alone with children in the child care center. These individuals must have received a full

background authorization clearance under chapter 170-06 WAC.

"Useable space" means the areas that are available at all times for use by the children that do not cause a health or safety hazard.

AMENDATORY SECTION (Amending WSR 08-08-012, filed 3/19/08, effective 4/19/08)

WAC 170-295-0090 ~~((When does the department issue))~~ **Initial and nonexpiring full licenses**~~((, and when are))~~—Licensing fees ((due?)). ~~((We))~~ The department may issue an initial license to centers that have not yet begun providing care, but are accepting applications for potential clients.

(1) ~~((We))~~ The department may issue an initial license when ~~((you))~~ an applicant can show that ~~((you are))~~ he or she is following the rules regarding the child's health and safety.

(2) ~~((We))~~ The department may issue an initial license if ~~((you have))~~ an applicant has not yet opened for business, and so ~~((are))~~ is not yet able to show that ~~((you are))~~ he or she is complying with the rules pertaining to:

- (a) Staff to child interactions;
- (b) Group size and staff to child ratios;
- (c) Behavior management and discipline;
- (d) Activity programs;
- (e) Child records and information; and
- (f) Other rules that require us to observe ~~((your))~~ the facility's ability to comply with rules.

(3) ~~((You))~~ Applicants must provide ~~((us))~~ the department with a plan to comply with the rules listed in subsection (2)(a) through (f) of this section. ~~((We))~~ The department must approve of that plan.

(4) ~~((We))~~ The department may issue an initial license to an applicant for a period not to exceed six months, renewable for a period not to exceed two years.

(5) When ~~((you have))~~ a licensee has an initial license ~~((we:~~

~~((a) Evaluate your))~~ the department evaluates the licensee's ability to comply with all rules contained in this chapter prior to issuing a nonexpiring full license(;

~~((b) May issue a full license to you when you have demonstrated compliance with chapter 170-295 WAC; and~~

~~((c) Do not issue a full license to you if you do not demonstrate the ability to comply with all rules contained in chapter 170-295))~~ under WAC 170-295-0095.

(6) ~~((You must pay licensing fees at the time you apply for an initial license and when your license is being renewed.~~

~~((7) We do))~~ The department may issue a nonexpiring full license to a licensee operating under an initial license who:

(a) Demonstrates full compliance with the health and safety requirements of this chapter at any time during the period of initial licensure;

(b) Demonstrates substantial compliance with the other requirements of this chapter at any time during the period of initial licensure; and

(c) Meets the requirements for a nonexpiring full license as provided in WAC 170-295-0095.

(7) The department must deny a nonexpiring full license to a licensee operating under an initial license who does not

demonstrate the ability to comply with all rules contained in this chapter during the period of initial licensure.

(8) Fees are due with applications for initial licenses or continuations of a nonexpiring full license.

(9) The department does not process ~~((your))~~ an application or continuation until ~~((you have))~~ the applicant or licensee, as applicable, has paid the required fee.

~~((8) You))~~ (10) Applicants or licensees can pay licensing fees for:

(a) A minimum of one year; or

(b) ~~((The entire length of your license.))~~ Multiple years.

~~((9) You pay your fee))~~ (11) Applicants and licensees pay their fees by mailing a check or money order for the required amount to the department~~((, according to instructions on the licensing application.~~

(10) If you pay your fee one time per year, you pay the annual rate each time. The annual fee is due thirty days before each annual anniversary date of the license.

(11) If you pay for more than one year, the total fee you pay is based on the annual fee rate. For example, if you are licensed for three years and want to pay the licensing fee for the entire period at once, you multiply the annual fee by three years, and pay that amount at the time of your license application or renewal).

(12) If there is a change in ((your)) a facility that places ((your)) the facility in a ((higher)) different fee category, ((we)) the department prorates the additional fee amount over the remainder of the license period.

(13) If ((you)) an applicant or licensee withdraws ((your)) an application before ((we deny)) the department denies or issues a license, ((we refund one half of)) the fee shall not be refunded.

~~((14) If there is a change that requires a new license, we refund any fee that remains after your next licensing date. A new license requires a new application and fee.~~

~~((15) If we deny, revoke, or suspend your license, we do not refund your licensing fee.~~

~~((16) If you reapply for a license after we revoke or suspend your license, you must pay a new license fee.~~

~~((17) If you do not pay licensing fees when they are due, we suspend or deny your license.))~~

NEW SECTION

WAC 170-295-0095 Nonexpiring full license. (1) To qualify for a nonexpiring full license, a licensee must submit the following to the department on an annual basis thirty days prior to the anniversary date of the license. The anniversary date is the date the licensee's first initial license was issued:

(a) An annual nonrefundable licensing fee;

(b) A declaration to the department on a department-approved form indicating:

(i) The intent to continue operating a licensed child care program; or

(ii) The intent to cease operation on a date certain;

(c) A declaration on a department-approved form of compliance with all licensing rules; and

(d) Documentation of completed background check applications as determined by the department-established schedule. As provided in RCW 43.215.215 (2)(f), as

amended by chapter 295 (2SHB 1903), Laws of 2011, the schedule for submission of a background check application shall be once every three years. For each individual required to have a background check clearance, the licensee must verify current background checks or submit a background check application at least thirty days prior to the anniversary date.

(2) The requirements in subsection (1) of this section must be met:

(a) Before a licensee operating under an initial license is issued a nonexpiring full license; and

(b) Every twelve months after issuance of a nonexpiring full license.

(3) If a licensee fails to meet the requirements in subsection (1) of this section for continuation of a nonexpiring full license, the license expires and the licensee must submit a new application for licensure.

(4) Nothing about the nonexpiring license process in this section may interfere with the department's established monitoring practice.

(5) A licensee has no right to an adjudicative proceeding (hearing) to appeal the expiration, nonrenewal, or noncontinuation of a full nonexpiring license as a result of the licensee's failure to comply with the requirements of this section.

AMENDATORY SECTION (Amending WSR 08-08-012, filed 3/19/08, effective 4/19/08)

WAC 170-295-0110 (~~When can I be fined for not following the minimum licensing requirements?~~) Civil fines. (1) ~~((We notify you))~~ The department notifies licensees in writing of ~~((our))~~ the department's intention to impose a civil fine. ~~((We))~~ The department may use personal service, ~~((including by our))~~ the department's licensuror, or certified mail. The letter will include:

(a) A description of the violation and a quote of the law or rule that ~~((you have))~~ the licensee has failed to meet;

(b) A statement of what ~~((you))~~ the licensee must do to come into compliance;

(c) The date by which ~~((we))~~ the department requires compliance;

(d) Information about the maximum allowable penalty ~~((we))~~ the department can impose if ~~((you do))~~ the licensee does not come into compliance by the given date;

(e) How ~~((you))~~ the licensee can get technical assistance services provided by ~~((us))~~ the department or by others; and

(f) Information about how ~~((you))~~ the licensee can request an extension to the date ~~((you must))~~ to be in compliance, if ~~((we))~~ the department decides ~~((you have))~~ he or she has a good reason.

(2) The length of time ~~((we establish))~~ the department establishes for ~~((you))~~ the licensee to come into compliance depends on:

(a) The seriousness of the violation;

(b) The potential threat to the health, safety and welfare of children in ~~((your))~~ the licensee's care; or

(c) If ~~((you have))~~ the licensee has had previous opportunities to correct the deficiency and ~~((have))~~ has not done so.

(3) ~~((We))~~ The department uses the following criteria to determine if ~~((we))~~ the department imposes a civil fine based on, but not limited to, these reasons:

(a) The child care center has previously been subject to an enforcement action for the same or similar type of violation for the same statute or rule; or

(b) The child care center has previously been given notice of the same or similar type of violation of the same law or rule; or

(c) The violation represents a potential threat to the health, safety, and/or welfare of children in care.

(4) ~~((We can))~~ The department may impose a civil fine in addition to or at the same time as other disciplinary actions against a child care center. These include probation, suspension, or other action.

(5) ~~((You))~~ A licensee must pay any civil fines no more than twenty-eight days after ~~((you receive))~~ receiving the notice that ~~((you have))~~ he or she has a fine. ~~((We))~~ The department may specify a later date.

(6) ~~((We can))~~ The department may waive the fine if ~~((your))~~ the licensee's center comes into compliance during the notification period.

(7) ~~((You))~~ A licensee must post the final notice of a civil fine in a noticeable place in ~~((your))~~ his or her center. The notice must remain posted until ~~((we notify you))~~ the department notifies the licensee that ~~((we have))~~ the department has received ~~((your))~~ the payment.

(8) Each violation of a law or rule is a separate violation. ~~((We can))~~ The department may penalize each violation. ~~((We can))~~ The department may impose a penalty for each day the violation continues or as a flat amount of the maximum allowable penalty.

(9) If ~~((you))~~ a licensee fails to pay ~~((your))~~ a fine within ten days after the assessment becomes final, ~~((we can))~~ the department may suspend, revoke, or not ~~((renew your))~~ continue his or her license.

(10) ~~((You))~~ Licensees have the right to a hearing when ~~((we assess))~~ the department assesses a civil fine under RCW 43.215.307 and chapter 170-03 WAC.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-295-0140 (~~When can the department issue a~~) Probationary licenses ~~((to a child care center operator?))~~. (1) ~~((We can))~~ The department may issue a probationary license to ~~((you))~~ a licensee in accordance with the process provided in RCW 43.215.290, based on the following factors:

(a) ~~((Your))~~ The licensee's willful or negligent failure to comply with the regulations;

(b) ~~((Your))~~ The licensee's history of noncompliance with the regulations;

(c) How far ~~((you))~~ the licensee deviates from the regulations;

(d) Evidence of ~~((your))~~ the licensee's good faith effort to comply with the regulations; and

(e) Any other factors relevant to ~~((your))~~ the licensee's unique situation.

(2) ~~((We can))~~ The department may issue a probationary license to ~~((you))~~ a licensee when the willful or negligent violation of the licensing requirements does not present an immediate threat to the health and well being of the children,

but would be likely to do so if allowed to continue. ~~((We can))~~ The department may also issue civil fines or other sanctions in this case. Such situations can include:

- (a) Substantiation that a child was abused or neglected while in the care of the center;
- (b) A fire safety inspection or health/sanitation inspection report that has been disapproved;
- (c) Use of unauthorized space for child care;
- (d) Inadequate supervision of children;
- (e) Under staffing for the number of children in care; and
- (f) Noncompliance with requirements addressing children's health, proper nutrition, discipline, emergency medical plan, sanitation and personal hygiene practices.

(3) ~~((You))~~ Licensees are required to notify parents when a probationary license is issued. ~~((You))~~ The licensee must:

- (a) Notify in writing the parents or guardians of all children in care that the center is in probationary status. This notification must be within five working days of ~~((your))~~ receiving notification of being placed on probationary status or being issued a probationary license. ~~((We))~~ The department must approve the notification before ~~((you))~~ the licensee sends it; and

(b) Provide documentation to ~~((us))~~ the department that parents or guardians of all children in care have been notified. ~~((You))~~ The licensee must provide this documentation within ten working days of being notified that ~~((you have))~~ he or she has been issued a probationary license.

(4) A probationary license ~~((can))~~ may be issued for up to six months and ~~((can))~~ may be extended at ~~((our))~~ the department's discretion for an additional six months.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-295-7040 ~~((Am I required to keep licensing information available on site for parents to review?))~~ **Facility records.** ~~((You))~~ The licensee must keep a file on-site containing ~~((the following licensing information:~~

- ~~(1) Copies of the most recent child care center checklists for licensing renewal and facility licensing compliance agreement for any deficiencies noted; and~~
- ~~(2))~~ (s)) copies of the most recent child care center ~~((s))~~ monitoring checklist and facility licensing compliance agreement for any deficiencies noted.

AMENDATORY SECTION (Amending WSR 06-15-075, filed 7/13/06, effective 7/13/06)

WAC 170-295-7080 ~~((What am I required to post in the center?))~~ **Materials that must be posted.** ~~((You))~~ Licensees must post the following items so that they are clearly visible to the parent and staff:

- (1) The center's child care license issued under this chapter;
- (2) A schedule of regular duty hours with the names of staff;
- (3) A typical activity schedule, including operating hours and scheduled mealtimes;
- (4) Meal and snack menus for the month;
- (5) Fire safety record and evacuation plans and procedures, including a diagram of exiting routes;

- (6) Emergency telephone numbers near the telephone;
- (7) Nondiscrimination poster;
- (8) For the staff, ~~((you))~~ the licensee must post:
 - (a) Dietary restrictions and nutrition requirements for particular children;
 - (b) Handwashing practices;
 - (c) Diaper changing procedures, if applicable;
 - (d) Disaster preparedness plan; and
 - (e) Center policies and procedures.
- (9) ~~((You))~~ The licensee must post a notification advising parents that ~~((you are))~~ the licensee is required to keep ~~((the following licensing information available))~~ a file on-site for their review~~((:~~

~~(a) Copies of the most recent child care center checklist for licensing renewal and facility licensing compliance agreement for any deficiencies noted; and~~

~~(b))~~ (s)) containing copies of the most recent child care center ~~((s))~~ monitoring checklist and facility licensing compliance agreement for any deficiencies noted.

WSR 12-09-061
PERMANENT RULES
DEPARTMENT OF
EARLY LEARNING

[Filed April 17, 2012, 9:42 a.m., effective May 18, 2012]

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

Purpose: SB 5504 increases the maximum civil fine that may be assessed by the department of early learning (DEL) for a child care agency that violates chapter 43.215 RCW or rules adopted under this law, or when an individual or entity is suspected of providing child care without a license (unlicensed care), when a license is required by law. SB 5504 also changed the content of the notice DEL must give an individual or entity suspected of providing unlicensed care, and other actions the department may take to let the public know about agencies providing unlicensed care.

The provision of unlicensed child care is a significant public health, safety and welfare concern. The legislature in chapter 43.215 RCW defines the types of child care agencies that must be licensed. Without licensing oversight, unlicensed child care operators may:

- Be caring for children without adequate monitoring;
- Not have had their facilities inspected for health and safety, particularly for fire safety and emergency evacuation of infants and other children who cannot walk;
- Be caring for more children than would be safe, even if the facility was licensed;
- Not be providing adequate early learning or developmental activities;
- Not have staff with adequate child care or child development training; and/or
- Not have done background checks on individuals caring for or having access to the children.

The legislature established DEL in part to "safeguard and promote the health, safety and well-being of children receiving child care and early learning assistance, which is

paramount over the right of any person to provide care ... " RCW 43.215.005 (4)(c). These rules are needed to provide the tools for the department to address suspected unlicensed child care, as well as to protect the safety, health and well-being of children who may be in unlicensed child care.

Proceeding with these rules is consistent with state office of financial management guidance regarding Executive Order 10-06 suspending noncritical rule making, but allowing rules to proceed that are,

- *"Required by federal or state law or required to maintain federally delegated or authorized programs," or*
- *"Necessary to protect public health, safety, and welfare or necessary to avoid an immediate threat to the state's natural resources."*

Revising these rules is necessary to comply with the revised state law, and to protect the health, safety and welfare of children being cared for in suspected unlicensed and unmonitored child care environments.

Citation of Existing Rules Affected by this Order: Amending WAC 170-151-095 and 170-295-0130.

Statutory Authority for Adoption: RCW 43.215.070 and 43.215.060; chapter 43.215 RCW.

Adopted under notice filed as WSR 12-02-080 on January 4, 2012.

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 2, 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 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 0, Amended 2, Repealed 0.

Date Adopted: April 17, 2012.

Elizabeth M. Hyde
Director

AMENDATORY SECTION (Amending WSR 08-08-012, filed 3/19/08, effective 4/19/08)

WAC 170-151-095 May the department assess civil penalties on unlicensed programs? (1) If the department receives information that a school-age program is operating without a license, the department will investigate. ~~((The department may contact the program, send a letter, or make an on-site visit to determine that the agency is operating without a license. Where the department has determined that an agency is operating without a license, the department must send written notification to the unlicensed program by certified mail or other means showing proof of service. This notification must contain the following:~~

~~(1) Notice to the agency of the basis for the department's determination that the agency is providing child care without a license and the need for the department to license the agency;~~

~~(2) The citation of the applicable law;~~

~~(3) The assessment of seventy five dollars per day penalty for each day the agency provides unlicensed care. The department makes the fine effective and payable within thirty days of the agency's receipt of the notification;~~

~~(4) How to contact the department;~~

~~(5) The unlicensed agency's need to submit an application to the department within thirty days of receipt of the department's notification;~~

~~(6) That the department may forgive the penalty if the agency submits an application within thirty days of the notification; and~~

~~(7) The unlicensed agency's right to an adjudicative proceeding as a result of the assessment of a monetary penalty and the appropriate procedure for requesting an adjudicative proceeding.))~~ (2) If the department suspects that an individual is providing unlicensed child care, the department will send the individual written notice within ten calendar days to explain:

(a) Why the department suspects that the individual is providing child care without a license;

(b) That a license is required and why;

(c) That the individual must immediately stop providing child care;

(d) That if the individual seeks to obtain a license, within thirty calendar days from the date of the department's notice in this subsection, the individual must submit a written agreement on a department form stating that he or she agrees to:

(i) Attend the next available department child care licensing orientation; and

(ii) Submit a child care licensing application after completing orientation; and

(e) That the department has the authority to issue a fine of two hundred fifty dollars per day for each day that the individual continues to provide child care without a license.

(3) The department's written notice in subsection (2) of this section must inform the individual providing unlicensed child care:

(a) How to respond to the department;

(b) How to apply for a license;

(c) How a fine, if issued, may be suspended or withdrawn;

(d) That the individual has a right to request an adjudicative proceeding (hearing) if a fine is assessed; and

(e) How to ask for a hearing.

(4) If an individual providing unlicensed child care does not submit an agreement to obtain a license as provided in subsection (2)(d) of this section within thirty calendar days from the date of the department's written notice, the department will post information on its web site that the individual is providing child care without a license.

AMENDATORY SECTION (Amending WSR 08-08-012, filed 3/19/08, effective 4/19/08)

WAC 170-295-0130 ~~When can ((F)) an individual be fined for operating an unlicensed program?~~ (1) If ~~((we)) the department~~ receives information that ~~((you are)) an individual~~ is operating a child care center without a license, ~~((we)) the department~~ investigates the allegation.

~~(2) ((We contact you, send you a letter, or make an on-site visit to your center to determine whether you are operating without a license.~~

~~(3) If we determine that you personally or on behalf of another person are operating a child care center without a license, we send written notification by certified mail or other method showing proof of service to the owner of the unlicensed center. This notification must contain the following:~~

~~(a) Notice to the center owner of our basis for determination that the owner is providing child care without a license and the need for us to license the center;~~

~~(b) Citation of the applicable law;~~

~~(c) The fine is effective and payable within thirty days of the agency's receipt of the notification;~~

~~(d) Information about how to contact the department;~~

~~(e) The requirement that the unlicensed center owner submit an application for a license to the department within thirty days of receipt of our notification;~~

~~(f) That we can forgive the fine if the center submits an application within thirty days of the notification; and~~

~~(g) The unlicensed center owner's right to an adjudicative proceeding (fair hearing) as a result of the assessment of a monetary fine and how to request an adjudicative proceeding.)~~ If the department suspects that an individual is providing unlicensed child care, the department will send the individual written notice within ten calendar days to explain:

(a) Why the department suspects that the individual is providing child care without a license;

(b) That a license is required and why;

(c) That the individual must immediately stop providing child care;

(d) That if the individual seeks to obtain a license, within thirty calendar days from the date of the department's notice in this subsection, the individual must submit a written agreement on a department form stating that he or she agrees to:

(i) Attend the next available department child care licensing orientation; and

(ii) Submit a child care licensing application after completing orientation; and

(e) That the department has the authority to issue a fine of two hundred fifty dollars per day for each day that the individual continues to provide child care without a license.

(3) The department's written notice in subsection (2) of this section must inform the individual providing unlicensed child care:

(a) How to respond to the department;

(b) How to apply for a license;

(c) How a fine, if issued, may be suspended or withdrawn;

(d) That the individual has a right to request an adjudicative proceeding (hearing) if a fine is assessed; and

(e) How to ask for a hearing.

(4) If an individual providing unlicensed child care does not submit an agreement to obtain a license as provided in subsection (2)(d) of this section within thirty calendar days from the date of the department's written notice, the department will post information on its web site that the individual is providing child care without a license.

WSR 12-09-075
PERMANENT RULES
COMMUNITY COLLEGES
OF SPOKANE

[Filed April 17, 2012, 2:31 p.m., effective May 18, 2012]

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

Purpose: To amend and clarify the limitations of use of district facilities.

Citation of Existing Rules Affected by this Order: Amending WAC 132Q-136-040.

Statutory Authority for Adoption: RCW 28B.50.140.

Adopted under notice filed as WSR 12-05-085 on February 17, 2012.

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 0, Repealed 0.

Date Adopted: April 17, 2012.

Kathleen Roberson
Executive Assistant
to the CFO

AMENDATORY SECTION (Amending WSR 11-20-027, filed 9/23/11, effective 10/24/11)

WAC 132Q-136-040 **Limitations.** (1) District facilities of Washington State Community College District 17 may not be used in ways that substantially obstruct or disrupt educational activities or freedom of movement or other lawful activities on or in district facilities.

(2) District facilities may not be used by groups, including informal groups, which discriminate in their membership or limit participation in activities on the basis of race, creed, color, national origin, sex, marital status, age, or the presence of any sensory, mental, or physical ~~((handicap))~~ disability.

(3) College personnel or official student organizations may use district facilities to present educational forums regarding ballot propositions and/or candidates who have

filed for public office as long as the audience is limited to college personnel and students. However, pursuant to RCW 42.17.130 "the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition" is prohibited.

(4) District facilities may not be used for private or commercial purposes such as sales, advertising, or promotional activities unless such activities are in conjunction with authorized use of facilities by outside groups, fund raising activities directly benefiting the district, or activities fulfilling an educational or service need of the students or college personnel. The sale of any item, the use of any advertising material, or operation of any promotional activity is subject to prior approval of the chancellor or designee.

(5) The distribution of handbills, leaflets, pamphlets and similar materials is not permitted in or on those facilities to which access by the general public is restricted or where such distribution would significantly impinge upon the primary business being conducted.

(6) Charitable solicitation is not permitted in or on those facilities to which access by the general public is restricted or where such solicitation would significantly impinge upon the primary business being conducted.

(7) District facilities may be used by other public or private educational institutions or public agencies only insofar as the intended use of the facilities meets a community need not being fulfilled by District 17 and where such activities do not interfere with the educational programs being offered by District 17 or with the maintenance and repair programs of the district. A user fee, if any, for such use shall be determined by the chancellor or designee.

(8) Organizations or persons other than district personnel or official student organizations may use district facilities only after the procedures pursuant to WAC 132Q-136-050 are completed and appropriate user fees have been paid in full or satisfactory payment arrangements completed.

(9) District 17 reserves the right to require that the district be represented at any use of facilities where the presence of a representative is in the best interest of the district.

(10) District equipment shall be used only when authorized and shall not be removed from any facility unless written authorization for such removal has been obtained prior to use.

(11) No decorations or other application of material to walls, ceiling or floors of any facility shall be permitted if such application will in any way mar, deface or injure the facility. Users shall be responsible for the removal or disposal of any decorations, materials, equipment, furnishings or rubbish that remain in or on any facility following use of the facility. Failure of any user to meet this obligation that results in additional cost to the district shall subject the user to additional charges for such costs.

(12) College property may not be used for camping, defined to include sleeping, carrying on cooking activities, storing personal belongings, or the erection of tents or other shelters or structures used for purposes of personal habitation.

WSR 12-09-077

PERMANENT RULES

COLUMBIA RIVER GORGE COMMISSION

[Filed April 17, 2012, 3:38 p.m., effective June 1, 2012]

Effective Date of Rule: June 1, 2012.

Purpose: Currently, the executive director of the gorge commission must review a development review application for completeness within fourteen days after receiving it, and must issue a decision on a standard development review application within seventy-two days after accepting the application as complete and an expedited review application within thirty days. The rule changes those time periods into goals that the executive director will attempt to make. The rule also eliminates the requirement that the commission publish notices of development review applications in the local newspaper and send a notice to the local library. Finally, the rule incorporates changes to the management plan for the special management areas that the forest service provided to the commission in 2011 and the commission adopted without change.

Citation of Existing Rules Affected by this Order: Amending 350-81-020, 350-81-036, 350-81-038, 350-81-042, 350-81-054, 350-81-082, 350-81-190, 350-81-370, 350-81-550, 350-81-600, and 350-81-620.

Statutory Authority for Adoption: RCW 43.97.015.

Other Authority: ORS 196.150; 16 U.S.C. §§ 544d (c)(5)(A), 544e (c)(1), 544f(l).

Adopted under notice filed as WSR 11-21-002 on October 5, 2011.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 5, 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 6, 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: April 10, 2012.

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 12-11 issue of the Register.

WSR 12-09-079
PERMANENT RULES
HEALTH CARE AUTHORITY
(Medicaid Program)

[Filed April 17, 2012, 4:25 p.m., effective May 18, 2012]

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

Purpose: These proposed rules are necessary to:

(1) Establish that a family electing to receive hospice care for an individual under twenty-one years of age is no longer required to waive treatment for the terminal illness; and

(2) Require that a hospice physician or nurse practitioner must have a face-to-face encounter with every hospice patient to determine the continued eligibility of that patient prior to the one hundred eighty day recertification, and prior to each subsequent recertification and also attest that the visit took place.

Citation of Existing Rules Affected by this Order: Amending WAC 182-551-1000, 182-551-1010, 182-551-1200, 182-551-1210, 182-551-1300, 182-551-1305, 182-551-1310, 182-551-1330, 182-551-1340, 182-551-1350, 182-551-1360, 182-551-1370, 182-551-1400, 182-551-1500, 182-551-1510, 182-551-1520, 182-551-1530, 182-551-1800, 182-551-1810, 182-551-1820, 182-551-1830, and 182-551-1840.

Statutory Authority for Adoption: RCW 41.05.021, Section 2302 of the Patient Protection and Affordable Care Act of 2010 (P.L. 111-148), and Section 1814 (a)(7) of the Social Security Act.

Adopted under notice filed as WSR 12-06-032 on March 2, 2012.

Changes Other than Editing from Proposed to Adopted Version: WAC 182-551-1010 Hospice program—Definitions, "Hospice aide services" - Services provided by ~~home health~~ hospice aides employed by an in-home services agency licensed to provide ~~home health~~ hospice or hospice care center services under the supervision of a registered nurse, physical therapist, occupational therapist, or speech therapist. Such care may include ambulation and exercise, medication assistance level 1 and level 2, reporting changes in client's conditions and needs, completing appropriate records, and personal care or homemaker services, and other nonmedical tasks, as defined in this section.

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 1, Amended 22, 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 22, Repealed 0.

Date Adopted: April 17, 2012.

Kevin M. Sullivan
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-551-1000 Hospice program—General. (1) The (~~department's~~) medicaid agency's hospice program is a twenty-four hour a day program that allows a terminally ill client to choose physical, pastoral/spiritual, and psychosocial comfort care (~~(rather than cure)~~) and a focus on quality of life. A hospice interdisciplinary team communicates with the client's nonhospice care providers to ensure the client's needs are met through the hospice plan of care. Hospitalization is used only for acute symptom management.

(2) A client, a physician, or an authorized representative under RCW 7.70.065 may initiate hospice care. The client's physician must certify the client as terminally ill and appropriate for hospice care.

(3) Hospice care is provided in a client's temporary or permanent place of residence.

(4) Hospice care ends when:

(a) The client or an authorized representative under RCW 7.70.065 revokes the hospice care;

(b) The hospice agency discharges the client;

(c) The client's physician determines hospice care is no longer appropriate; or

(d) The client dies.

(5) Hospice care includes the provision of emotional and spiritual comfort and bereavement support to the client's family member(s).

(6) (~~Department approved~~) Medicaid agency-approved hospice agencies must meet the general requirements in chapter (~~(388-502)~~) 182-502 WAC, Administration of medical programs—Providers.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-551-1010 Hospice program—Definitions. The following definitions and abbreviations and those found in WAC (~~(388-500-0005)~~) 182-500-0005, Medical definitions, apply to this subchapter.

"Authorized representative" (~~(means)~~) - An individual who has been authorized to terminate medical care or to elect or revoke the election of hospice care on behalf of a terminally ill individual who is mentally or physically incapacitated. See RCW 7.70.065.

"Biologicals" (~~(means)~~) - Medicinal preparations including serum, vaccine autotoxins, and biotechnological drugs made from living organisms and their products.

"Brief period" (~~(means)~~) - Six days or less within a thirty consecutive-day period.

"Community services office (CSO)" (~~(means)~~) - An office of the department of social and health services (DSHS) that administers social and health services at the community level.

"Concurrent care" - Medically necessary services delivered at the same time as hospice services, providing a

blend of curative and palliative services to clients twenty years of age and younger who are enrolled in hospice. See WAC 182-551-1860.

"Curative care" - Treatment aimed at achieving a disease-free state.

"Discharge" ((means ~~an~~)) - A hospice agency ends hospice care for a client.

"Election period" ((means)) - The time, ninety or sixty days, that the client is certified as eligible for and chooses to receive hospice care.

"Family" ((means)) - An individual or individuals who are important to, and designated in writing by, the client and need not be relatives, or who are legally authorized to represent the client.

"Home and community services (HCS) office" ((means ~~an~~)) - A department of social and health services (DSHS) aging and disability services administration (ADSA) office that manages the state's comprehensive long-term care system which provides in-home, residential, and nursing home services to clients with functional disabilities.

~~("Home health aide" means an individual registered or certified as a nursing assistant under chapter 18.88A RCW who, under the direction and supervision of a registered nurse, physical therapist, occupational therapist, or speech therapist, assists in the delivery of nursing or therapy related activities, or both, to patients of a hospice agency, or hospice care center.~~

~~"Home health aide services" means services provided by home health aides employed by an in-home services agency licensed to provide home health, hospice, or hospice care center services under the supervision of a registered nurse, physical therapist, occupational therapist, or speech therapist. Such care may include ambulation and exercise, medication assistance level 1 and level 2, reporting changes in client's conditions and needs, completing appropriate records, and personal care or homemaker services, and other nonmedical tasks, as defined in this section.)~~

"Hospice agency" ((means)) - A person or entity administering or providing hospice services directly or through a contract arrangement to individuals in places of temporary or permanent residence under the direction of an interdisciplinary team composed of at least a nurse, social worker, physician, spiritual counselor, and volunteer. (Note: For the purposes of this subchapter, requirements for hospice agencies also apply to hospice care centers.)

"Hospice aide" - An individual registered or certified as a nursing assistant under chapter 18.88A RCW who, under the direction and supervision of a registered nurse, physical therapist, occupational therapist, or speech therapist, assists in the delivery of nursing or therapy related activities, or both, to patients of a hospice agency, or hospice care center.

"Hospice aide services" - Services provided by hospice aides employed by an in-home services agency licensed to provide hospice or hospice care center services under the supervision of a registered nurse, physical therapist, occupational therapist, or speech therapist. Such care may include ambulation and exercise, medication assistance level 1 and level 2, reporting changes in client's conditions and needs, completing appropriate records, and personal care or home-

maker services, and other nonmedical tasks, as defined in this section.

"Hospice care center" ((means)) - A homelike noninstitutional facility where hospice services are provided, and that meets the requirements for operation under RCW 70.127.280 and applicable rules.

"Hospice services" ((means)) - Symptom and pain management provided to a terminally ill individual, and emotional, spiritual, and bereavement support for the individual and individual's family in a place of temporary or permanent residence.

"Interdisciplinary team" ((means)) - The group of individuals involved in client care providing hospice services or hospice care center services including, at a minimum, a physician, registered nurse, social worker, spiritual counselor, and volunteer.

"Palliative" ((means)) - Medical treatment designed to reduce pain or increase comfort, rather than cure.

"Plan of care" ((means)) - A written document based on assessment of client needs that identifies services to meet these needs.

"Related condition(s)" ((means)) - Any health condition(s) that manifests secondary to or exacerbates symptoms associated with the progression of the condition and/or disease, the treatment being received, or the process of dying. (Examples of related conditions: Medication management of nausea and vomiting secondary to pain medication; skin breakdown prevention/treatment due to peripheral edema.)

"Residence" ((means)) - A client's home or place of living.

"Revoke" or "revocation" ((means)) - The choice to stop receiving hospice care.

"Terminally ill" ((means)) - The client has a life expectancy of six months or less, assuming the client's disease process runs its natural course.

"Twenty-four-hour day" ((means)) - A day beginning and ending at midnight.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-551-1200 Client eligibility for hospice care. (1) A client who elects to receive hospice care must be eligible for one of the following medical assistance programs, subject to the restrictions and limitations in this chapter and other WAC:

- (a) Categorically needy ((program (CNP))) (CN);
 - (b) ((Limited casualty program—Medically needy program (LCP-MNP));
 - (c) Children's health (V);
 - (d) State children's health insurance program (SCHIP);
 - (e) CNP—Alien emergency medical;
 - (f) LCP-MNP—Alien emergency medical; or
 - (g) General assistance expedited disability (GAX-))
- Children's health care as described in WAC 388-505-0210;

- (c) Medically needy (MN);
- (d) Medical care services as described in WAC 182-508-0005 (within Washington state or designated border cities); or

(e) Alien emergency medical (AEM) as described in WAC 388-438-0110, when the medical services are necessary to treat a qualifying emergency medical condition.

(2) A hospice agency is responsible to verify a client's eligibility with the client or the client's department of social and health services (DSHS) home and community services (HCS) office or community services office (CSO).

(3) A client enrolled in one of the ~~((department's))~~ medicaid agency's managed care ((plans)) organizations (MCO) must receive all hospice services, including facility room and board, directly through that ~~((plan))~~ MCO. The ~~((client's managed care plan))~~ MCO is responsible for arranging and providing all hospice services for ((*) an MCO client ~~((enrolled in a managed care plan)).~~

(4) A client who is also eligible for medicare hospice under part A is not eligible for hospice care through the ~~((department's))~~ medicaid agency's hospice program. The ~~((department))~~ medicaid agency does pay hospice nursing facility room and board for these clients if the client is admitted to a nursing facility or hospice care center (HCC) and is not receiving general inpatient care or inpatient respite care. See also WAC ~~((388-551-1530))~~ 182-551-1530.

(5) A client who meets the requirements in this section is eligible to receive hospice care through the ~~((department's))~~ medicaid agency's hospice program when all of the following is met:

(a) The client's physician certifies the client has a life expectancy of six months or less.

(b) The client elects to receive hospice care and agrees to the conditions of the "election statement" as described in WAC ~~((388-551-1310))~~ 182-551-1310.

(c) The hospice agency serving the client:

(i) Notifies the ~~((department's))~~ medicaid agency's hospice program within five working days of the admission of all clients, including:

(A) Medicaid-only clients;

(B) Medicaid-medicare dual eligible clients;

(C) Medicaid clients with third party insurance; and

(D) Medicaid-medicare dual eligible clients with third party insurance.

(ii) Meets the hospice agency requirements in WAC ~~((388-551-1300))~~ 182-551-1300 and ~~((388-551-1305))~~ 182-551-1305.

(d) The hospice agency provides additional information for a diagnosis when the ~~((department))~~ medicaid agency requests and determines, on a case-by-case basis, the information that is needed for further review.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-551-1210 Covered services, including core services and supplies reimbursed through the hospice daily rate. (1) The ~~((department))~~ medicaid agency reimburses a hospice agency for providing covered services, including core services and supplies described in this section, through the ~~((department's))~~ medicaid agency's hospice daily rate, subject to the conditions and limitations described in this section and other WAC. See WAC 182-551-1860 for pediatric concurrent care.

(2) To qualify for reimbursement, covered services, including core services and supplies in the hospice daily rate, must be:

(a) Related to the client's hospice diagnosis;

(b) Identified by the client's hospice interdisciplinary team;

(c) Written in the client's plan of care (POC); and

(d) Made available to the client by the hospice agency on a twenty-four hour basis.

(3) The hospice daily rate includes the following core services that must be either provided by hospice agency staff, or contracted through a hospice agency, if necessary, to supplement hospice staff in order to meet the needs of a client during a period of peak patient loads or under extraordinary circumstances:

(a) Physician services related to the administration of POC.

(b) Nursing care provided by:

(i) A registered nurse (RN); or

(ii) A licensed practical nurse (LPN) under the supervision of an RN.

(c) Medical social services provided by a social worker under the direction of a physician.

(d) Counseling services provided to a client and the client's family members or caregivers.

(4) Covered services and supplies may be provided by a service organization or an individual provider when contracted through a hospice agency. To be reimbursed the hospice daily rate, a hospice agency must:

(a) Assure all contracted staff meets the regulatory qualification requirements;

(b) Have a written agreement with the service organization or individual providing the services and supplies; and

(c) Maintain professional, financial, and administrative responsibility.

(5) The following covered services and supplies are included in the appropriate hospice daily rate as described in WAC ~~((388-551-1510(6)))~~ 182-551-1510(6), subject to the conditions and limitations described in this section and other WAC:

(a) Skilled nursing care;

(b) Drugs, biologicals, and over-the-counter medications used for the relief of pain and symptom control of a client's terminal illness and related conditions;

(c) Communication with nonhospice providers about care not related to the client's terminal illness to ensure the client's plan of care needs are met and not compromised;

~~((Medical equipment and supplies that are medically necessary for the palliation and management of a client's terminal illness and related conditions;))~~ Durable medical equipment and related supplies, prosthetics, orthotics, medical supplies, related services, or related repairs and labor charges in accordance with WAC 182-543-9100 (6)(c). These services and equipment are paid by the hospice agency for the palliation and management of a client's terminal illness and related conditions and are included in the daily hospice rate;

(e) ~~((Home health))~~ Hospice aide, homemaker, and/or personal care services that are ordered by a client's physician and documented in the POC. ~~((Home health))~~ Hospice aide

services are provided through the hospice agency to meet a client's extensive needs due to the client's terminal illness. These services must be provided by a qualified (~~home health~~) hospice aide and are an extension of skilled nursing or therapy services. See 42 CFR 484.36);

(f) Physical therapy, occupational therapy, and speech-language therapy to manage symptoms or enable a client to safely perform ADLs (activities of daily living) and basic functional skills;

(g) Medical transportation services, including ambulance (see WAC 182-546-5550 (1)(d));

(h) A brief period of inpatient care, for general or respite care provided in a medicare-certified hospice care center, hospital, or nursing facility; and

(i) Other services or supplies that are documented as necessary for the palliation and management of a client's terminal illness and related conditions;

(6) A hospice agency is responsible to determine if a nursing facility has requested authorization for medical supplies or medical equipment, including wheelchairs, for a client who becomes eligible for the hospice program. The (~~department~~) medicaid agency does not pay separately for medical equipment or supplies that were previously authorized by the (~~department~~) medicaid agency and delivered on or after the date the (~~department~~) medicaid agency enrolls the client in the hospice program.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-551-1300 Requirements for a (~~department-approved~~) medicaid-approved hospice agency. (1) To become a (~~department-approved~~) medicaid-approved hospice agency, the (~~department~~) medicaid agency requires a hospice agency to provide documentation that it is medicare, Title XVIII certified by the department of health (DOH) as a hospice agency.

(2) A (~~department-approved~~) medicaid-approved hospice agency must at all times meet the requirements in chapter (~~388-551~~) 182-551 WAC, subchapter I, Hospice services, and the requirements under the Title XVIII medicare program.

(3) To ensure quality of care for medical assistance (~~clients~~) clients, the (~~department's~~) agency's clinical staff may conduct hospice agency site visits.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-551-1305 Requirements for becoming a (~~department-approved~~) medicaid-approved hospice care center (HCC). (1) To apply to become a (~~department-approved~~) medicaid-approved hospice care center, the (~~department~~) medicaid agency requires a hospice agency to:

(a) Be enrolled with the (~~department~~) medicaid agency as (~~a department~~) an approved hospice agency (see WAC (~~388-551-1300~~) 182-551-1300);

(b) Submit a letter of request to:

Hospice Program Manager
(~~Division of Medical Management~~)

Department of Social and Health Services))
P.O. Box 45506
Olympia, WA 98504-5506; and

(c) Include documentation that confirms the approved hospice agency is medicare certified by department of health (DOH) as a hospice care center and provides one or more of the following levels of hospice care (levels of care are described in WAC (~~388-551-1500~~) 182-551-1500):

- (i) Routine home care;
- (ii) Inpatient respite care; and
- (iii) General inpatient care.

(2) A (~~department-approved~~) medicaid-approved hospice care center must at all times meet the requirements in chapter (~~388-551~~) 182-551 WAC, subchapter I, Hospice services, and the requirements under the Title XVIII medicare program.

(3) A hospice agency qualifies as a (~~department-approved~~) medicaid-approved hospice care center when:

- (a) All the requirements in this section are met; and
- (b) The (~~department~~) medicaid agency provides the hospice agency with written notification.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-551-1310 Hospice election periods, election statements, and the hospice certification process. (1) Hospice coverage is available for two ninety-day election periods followed by an unlimited number of sixty-day election periods. A client or a client's authorized representative must sign an election statement to initiate or reinstate an election period for hospice care.

(2) The election statement must be filed in the client's hospice medical record within two calendar days following the day the hospice care begins and requires all of the following:

- (a) Name and address of the hospice agency that will provide the care;
- (b) Documentation that the client is fully informed and understands hospice care and waiver of other medicaid and/or medicare services;
- (c) Effective date of the election; and
- (d) Signature of the client or the client's authorized representative.

(3) The following describes the hospice certification process:

(a) When a client elects to receive hospice care, the (~~department~~) medicaid agency requires a hospice agency to:

- (i) Obtain a signed written certification from a physician of the client's terminal illness; or
- (ii) Document in the client's medical file that a verbal certification was obtained and follow up a documented verbal certification with a written certification signed by:

(A) The medical director of the hospice agency or a physician staff member of the interdisciplinary team; and

(B) The client's attending physician (if the client has one).

(iii) Place the signed written certification of the client's terminal illness in the client's medical file:

(A) Within sixty days following the day the hospice care begins; and

(B) Before billing the ~~((department))~~ medicaid agency for the hospice services.

(b) For subsequent election periods, the ~~((department))~~ medicaid agency requires ~~((the hospice agency to))~~:

(i) ~~((Obtain a signed written certification statement of the client's terminal illness; or~~

~~(ii) Document in the client's medical file that a verbal certification was obtained and follow up a documented verbal certification with a written certification signed by the medical director of the hospice agency or a physician staff member of the hospice agency; and~~

~~(iii) Place the written certification of the client's terminal illness in the client's medical file:~~

~~(A) Within two calendar days following the beginning of a subsequent election period; and~~

~~(B) Before billing the department for the hospice services:)) A hospice physician or hospice nurse practitioner to:~~

~~(A) Have a face-to-face encounter with every hospice client within thirty days prior to the one hundred eightieth-day recertification and prior to each subsequent recertification to determine continued eligibility of the client for hospice care. The medicaid agency does not pay for face-to-face encounters to recertify a hospice client; and~~

~~(B) Attest that the face-to-face encounter took place.~~

~~(ii) The hospice agency to:~~

~~(A) Document in the client's medical file that a verbal certification was obtained and follow up a documented verbal certification with a written certification signed by the medical director of the hospice agency or a physician staff member of the hospice agency;~~

~~(B) Place the written certification of the client's terminal illness in the client's medical file before billing the medicaid agency for the hospice services; and~~

~~(C) Submit the written certification to the medicaid agency with the hospice claim related to the recertification.~~

(4) When a client's hospice coverage ends within an election period (e.g., the client revokes hospice care), the remainder of that election period is forfeited. The client may reinstate the hospice benefit at any time by providing an election statement and meeting the certification process requirements.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-551-1330 Hospice—Client care and responsibilities of hospice agencies. (1) A hospice agency must facilitate a client's continuity of care with nonhospice providers to ensure that medically necessary care, both related and not related to the terminal illness, is met. This includes:

(a) Determining if the ~~((department))~~ medicaid agency has approved a request for prescribed medical equipment, such as a wheelchair. If the prescribed item is not delivered to the client before the client becomes covered by a hospice agency, the ~~((department))~~ medicaid agency will rescind the approval. See WAC ~~((388-543-1500))~~ 182-543-9100(7).

(b) Communicating with other ~~((department))~~ medicaid programs and documenting the services a client is receiving

in order to prevent duplication of payment and to ensure continuity of care. Other ~~((department))~~ medicaid programs include, but are not limited to, programs administered by the department of social and health services aging and disability services administration (ADSA).

(c) Documenting each contact with nonhospice providers.

(2) When a client resides in a nursing facility, the hospice agency must:

(a) Coordinate the client's care with all providers, including pharmacies and medical vendors; and

(b) Provide the same level of hospice care the hospice agency provides to a client residing in their home.

(3) Once a client chooses hospice care, hospice agency staff must notify and inform the client of the following:

(a) By choosing hospice care from a hospice agency, the client gives up the right to:

(i) Covered medicaid hospice service and supplies received at the same time from another hospice agency; and

(ii) Any covered medicaid services and supplies received from any other provider that are necessary for the palliation and management of the terminal illness and related medical conditions.

(b) Services and supplies are not paid through the hospice daily rate if they are:

(i) Proven to be clinically unrelated to the palliation and management of the client's terminal illness and related medical conditions (see WAC ~~((388-551-1210(3)))~~ 182-551-1210(3));

(ii) Not covered by the hospice daily rate;

(iii) Provided under a Title XIX medicaid program when the services are similar or duplicate the hospice care services; or

(iv) Not necessary for the palliation and management of the client's terminal illness and related medical conditions.

(4) A hospice agency must have written agreements with all contracted providers.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-551-1340 When a client leaves hospice without notice. When a client chooses to leave hospice care or refuses hospice care without giving the hospice agency a revocation statement, as required by WAC ~~((388-551-1360))~~ 182-551-1360, the hospice agency must do all of the following:

(1) Within five working days of becoming aware of the client's decision, inform and notify in writing the ~~((department's))~~ medicaid hospice program manager (see WAC ~~((388-551-1400))~~ 182-551-1400 for further requirements);

(2) Complete a medicaid hospice ~~((5-day))~~ notification form ~~((DSSH))~~ HCA 13-746) and forward a copy to the appropriate department of social and health services (DSHS) home and community services (HCS) office or community services office (CSO) to notify that the client is discharging from the program;

(3) Notify the client, or the client's authorized representative, that the client's discharge has been reported to the ~~((department))~~ medicaid agency; and

(4) Document the effective date and details of the discharge in the client's hospice record.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-551-1350 Discharges from hospice care.

(1) A hospice agency may discharge a client from hospice care when the client:

- (a) Is no longer certified for hospice care;
- (b) Is no longer appropriate for hospice care; or
- (c) The hospice agency's medical director determines the client is seeking treatment for the terminal illness outside the plan of care (POC).

(2) At the time of a client's discharge, a hospice agency must:

(a) Within five working days, complete a medicaid hospice ((~~5-day~~)) notification form ((~~DSHS~~)) HCA 13-746 and forward the form to the ((~~department's~~)) medicaid hospice program manager (see WAC ((~~388-551-1400~~)) 182-551-1400 for additional requirements), and a copy to the appropriate DSHS home and community services office (HCS) or community services office (CSO);

(b) Keep the discharge statement in the client's hospice record;

(c) Provide the client with a copy of the discharge statement; and

(d) Inform the client that the discharge statement must be:

(i) Presented with the client's current services card when obtaining medicaid covered ((~~healthcare~~)) health care services or supplies, or both; and

(ii) Used until the ((~~department~~)) medicaid agency removes the hospice restriction from the client's information available online at <https://www.waproviderone.org>.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-551-1360 Ending hospice care (revocations). (1) A client or a client's authorized representative may choose to stop hospice care at any time by signing a revocation statement.

(2) The revocation statement documents the client's choice to stop medicaid hospice care. The revocation statement must include all of the following:

(a) Client's signature (or the client's authorized representative's signature if the client is unable to sign);

(b) Date the revocation was signed; and

(c) Actual date that the client chose to stop receiving hospice care.

(3) The hospice agency must keep any explanation supporting any difference in the signature and revocation dates in the client's hospice records.

(4) When a client revokes hospice care, the hospice agency must:

(a) Inform and notify in writing the medicaid agency's hospice program manager, within five working days of becoming aware of the client's decision((~~-inform and notify in writing the department's hospice program manager~~)) (see

WAC ((~~388-551-1400~~)) 182-551-1400 for additional requirements);

(b) Notify the appropriate department of social and health services (DSHS) home and community services (HCS) office or community services office (CSO) of the revocation by completing and forwarding a copy of the medicaid hospice ((~~5-day~~)) notification form ((~~DSHS~~)) HCA 13-746 to the appropriate DSHS home and community services (HCS) office or community services office (CSO);

(c) Keep the revocation statement in the client's hospice record;

(d) Provide the client with a copy of the revocation statement; and

(e) Inform the client that the revocation statement must be:

(i) Presented with the client's current ((~~medical identification (medical ID))~~)) services card when obtaining medicaid covered ((~~healthcare~~)) health care services or supplies, or both; and

(ii) Used until the ((~~department~~)) medicaid agency issues a new ((~~medical ID~~)) services card that identifies that the client is no longer a hospice client.

(5) After a client revokes hospice care, the remaining days within the current election period are forfeited. The client may immediately enter the next consecutive election period. The client does not have to wait for the forfeited days to pass before entering the next consecutive election period.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-551-1370 When a hospice client dies.

When a client dies, the hospice agency must:

(1) Within five working days, inform and notify in writing the ((~~department's~~)) medicaid agency's hospice program manager; and

(2) Notify the appropriate department of social and health services (DSHS) home and community services (HCS) office or community services office (CSO) of the client's date of death by completing and forwarding a copy of the medicaid hospice ((~~5-day~~)) notification form ((~~DSHS~~)) HCA 13-746 to the appropriate DSHS HCS office or CSO.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-551-1400 Notification requirements for hospice agencies.

(1) To be reimbursed for providing hospice services, the hospice agency must complete a medicaid hospice ((~~5-day~~)) notification form ((~~DSHS~~)) HCA 13-746 and forward the form to the ((~~department's~~)) medicaid agency's hospice program manager within five working days from when a medical assistance client begins the first day of hospice care, or has a change in hospice status. The hospice agency must notify the ((~~department's~~)) medicaid hospice program of:

(a) The name and address of the hospice agency;

(b) The date of the client's first day of hospice care;

(c) A change in the client's primary physician;

(d) A client's revocation of the hospice benefit (home or institutional);

- (e) The date a client leaves hospice without notice;
 - (f) A client's discharge from hospice care;
 - (g) A client who admits to a nursing facility (this does not apply to an admit for inpatient respite care or general inpatient care);
 - (h) A client who discharges from a nursing facility (this does not apply to an admit for inpatient respite care or general inpatient care.);
 - (i) A client who is eligible for or becomes eligible for medicare or third party liability (TPL) insurance;
 - (j) A client who dies; or
 - (k) A client who transfers to another hospice agency. Both the former agency and current agency must provide the ~~((department))~~ medicaid agency with:
 - (i) The client's name, the name of the former hospice agency servicing the client, and the effective date of the client's discharge; and
 - (ii) The name of the current hospice agency serving the client, the hospice agency's provider number, and the effective date of the client's admission.
- (2) The ~~((department))~~ medicaid agency does not require a hospice agency to notify the hospice program manager when a hospice client is admitted to a hospital for palliative care.
- (3) When a hospice agency does not notify the ~~((department's))~~ medicaid agency's hospice program within five working days of the date of the client's first day of hospice care as required in subsection (1)(c) of this section, the ~~((department))~~ medicaid agency authorizes the hospice daily rate reimbursement effective the fifth working day prior to the date of notification.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-551-1500 Hospice daily rate—Four levels of hospice care. All services, supplies and equipment related to the client's terminal illness and related conditions are included in the hospice daily rate. The ~~((department))~~ medicaid agency pays for only one of the following four levels of hospice care per day (see WAC 388-551-1510 for payment methods):

- (1) **Routine home care.** Routine home care includes daily care administered to the client at the client's residence. The services are not restricted in length or frequency of visits, are dependent on the client's needs, and are provided to achieve palliation or management of acute symptoms.
- (2) **Continuous home care.** Continuous home care includes acute skilled care provided to an unstable client during a brief period of medical crisis in order to maintain the client in the client's residence and is limited to:
 - (a) A minimum of eight hours of acute care provided during a twenty-four-hour day;
 - (b) Nursing care that must be provided by a registered or licensed practical nurse for more than half the period of care;
 - (c) Homemaker, ~~((home health))~~ hospice aide, and attendant services that may be provided as supplements to the nursing care; and
 - (d) In home care only (not care in a nursing facility or a hospice care center).

- (3) **Inpatient respite care.** Inpatient respite care includes room and board services provided to a client in a ~~((department-approved))~~ medicaid-approved hospice care center, nursing facility, or hospital. Respite care is intended to provide relief to the client's primary caregiver and is limited to:
 - (a) No more than six consecutive days; and
 - (b) A client not currently residing in a hospice care center, nursing facility, or hospital.
- (4) **General inpatient hospice care.** General inpatient hospice care includes services administered to a client for pain control or management of acute symptoms. In addition:
 - (a) The services must conform to the client's written plan of care (POC).
 - (b) This benefit is limited to brief periods of care in ~~((department-approved))~~ medicaid agency-approved:
 - (i) Hospitals;
 - (ii) Nursing facilities; or
 - (iii) Hospice care centers.
 - ~~((b))~~ (c) There must be documentation in the client's medical record to support the need for general inpatient level of hospice care.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-551-1510 Rates methodology and payment method for hospice agencies. This section describes rates methodology and payment methods for hospice care provided to hospice clients.

- (1) The ~~((department))~~ medicaid agency uses the same rates methodology as medicare uses for the four levels of hospice care identified in WAC 388-551-1500.
- (2) Each of the four levels of hospice care has the following three rate components:
 - (a) Wage component;
 - (b) Wage index; and
 - (c) Unweighted amount.
- (3) To allow hospice payment rates to be adjusted for regional differences in wages, the department bases payment rates on the metropolitan statistical area (MSA) county location. MSAs are identified in the department's current published billing instructions.
- (4) Payment rates for:
 - (a) Routine and continuous home care services are based on the county location of the client's residence.
 - (b) Inpatient respite and general inpatient care services are based on the MSA county location of the providing hospice agency.
- (5) The ~~((department))~~ medicaid agency pays hospice agencies for services (not room and board) at a daily rate calculated as follows:
 - (a) Payments for services delivered in a client's residence (routine and continuous home care) are based on the county location of the client's residence; or
 - (b) Payments for respite and general inpatient care are based on the county location of the providing hospice agency.
- (6) The ~~((department))~~ medicaid agency:
 - (a) Pays for routine hospice care, continuous home care, respite care, or general inpatient care for the day of death;

(b) Does not pay room and board for the day of death; and

(c) Does not pay hospice agencies for the client's last day of hospice care when the last day is for the client's discharge, revocation, or transfer.

(7) Hospice agencies must bill the ~~((department))~~ medicaid agency for their services using hospice-specific revenue codes.

(8) For hospice clients in a nursing facility:

(a) The ~~((department))~~ medicaid agency pays nursing facility room and board payments at a daily rate directly to the hospice agency at ninety-five percent of the nursing facility's current medicaid daily rate in effect on the date the services were provided; and

(b) The hospice agency pays the nursing facility at a daily rate no greater than the nursing facility's current medicaid daily rate.

(9) The ~~((department))~~ medicaid agency:

(a) Pays a hospice care center a daily rate for room and board based on the average room and board rate for all nursing facilities in effect on the date the services were provided.

(b) Does not pay hospice agencies or hospice care centers a nursing facility room and board payment for:

(i) A client's last day of hospice care (e.g., client's discharge, revocation, or transfer); or

(ii) The day of death.

(10) The daily rate for authorized out-of-state hospice services is the same as for in-state non-MSA hospice services.

(11) The client's notice of action (award) letter states the amount of participation the client is responsible to pay each month towards the total cost of hospice care. The hospice agency receives a copy of the award letter and:

(a) Is responsible to collect the correct amount of the client's participation if the client has any; and

(b) Must show the client's monthly participation on the hospice claim. (Hospice providers may refer to the ~~((department's))~~ medicaid agency's current published billing instructions for how to bill a hospice claim.) If a client has a participation amount that is not reflected on the claim and the ~~((department))~~ medicaid agency reimburses the amount to the hospice agency, the amount is subject to recoupment by the ~~((department))~~ medicaid agency.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-551-1520 Payment method for nonhospice providers. (1) The ~~((department))~~ medicaid agency pays for hospitals that provide inpatient care to clients in the hospice program for medical conditions not related to their terminal illness according to chapter ~~((388-550))~~ 182-550 WAC, Hospital services.

(2) The ~~((department))~~ medicaid agency pays providers who are attending physicians and not employed by the hospice agency, the usual amount through the resource based relative value scale (RBRVS) fee schedule:

(a) For direct physician care services provided to a hospice client;

(b) When the provided services are not related to the terminal illness; and

(c) When the client's providers, including the hospice agency, coordinate the health care provided.

(3) The ~~((department's))~~ department of social and health services (DSHS) aging and disability services administration (ADSA) pays for services provided to a client eligible under the community options program entry system (COPES) directly to the COPES provider.

(a) The client's monthly participation amount, if there is one, for services provided under COPES is paid separately to the COPES provider; and

(b) Hospice agencies must bill the ~~((department's))~~ medicaid agency's hospice program directly for hospice services, not the COPES program.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-551-1530 Payment method for medicaid-medicare dual eligible clients. (1) The ~~((department does not))~~ medicaid agency will not pay ((for any)) the portion of hospice care ((provided to)) for a client ~~((covered by medicare part A (hospital insurance)))~~ that is covered under medicare A. Nursing home room and board charges described in WAC 182-551-1510 that are not covered under medicare A may be covered by the medicaid agency.

(2) The ~~((department))~~ medicaid agency may pay for hospice care provided to a client:

(a) Covered by medicaid part B (medical insurance); and

(b) Not covered by medicare part A.

(3) For hospice care provided to a medicaid-medicare dual eligible client, hospice agencies are responsible to bill:

(a) Medicare before billing the ~~((department))~~ medicaid agency;

(b) The ~~((department))~~ medicaid agency for hospice nursing facility room and board;

(c) The ~~((department))~~ medicaid agency for hospice care center room and board; and

(d) Medicare for general inpatient care or inpatient respite care.

(4) All the limitations and requirements related to hospice care described in this subchapter apply to the payments described in this section.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-551-1800 Pediatric palliative care (PPC) case management/coordination services—General. Through a hospice agency, the ~~((department's))~~ medicaid agency's pediatric palliative care (PPC) case management/coordination services provide the care coordination and skilled care services to clients who have life-limiting medical conditions. Family members and caregivers of clients eligible for pediatric palliative care services may also receive support through care coordination when the services are related to the client's medical needs.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-551-1810 Pediatric palliative care (PPC) case management/coordination services—Client eligibility. To receive pediatric palliative care (PPC) case management/coordination services, a person must:

- (1) Be twenty years of age or younger;
- (2) Be a current recipient of the:
 - (a) Categorically needy program (CNP);
 - (b) Limited casualty program - Medically needy program (LCP-MNP);
 - (c) CNP((—)) - Alien emergency medical;
 - (d) LCP-MNP((—)) - Alien emergency medical;
 - (e) Children's health insurance program (SCHIP); and
- (3) Have a life-limiting medical condition that requires case management and coordination of medical services due to at least three of the following circumstances:
 - (a) An immediate medical need during a time of crisis;
 - (b) Coordination with family member(s) and providers required in more than one setting (i.e., school, home, and multiple medical offices or clinics);
 - (c) A life-limiting medical condition that impacts cognitive, social, and physical development;
 - (d) A medical condition with which the family is unable to cope;
 - (e) A family member(s) and/or caregiver who needs additional knowledge or assistance with the client's medical needs; and
 - (f) Therapeutic goals focused on quality of life, comfort, and family stability.
- (4) See WAC 182-551-1860 for concurrent palliative and curative care for hospice clients twenty years of age and younger.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-551-1820 Pediatric palliative care (PPC) contact—Services included and limitations to coverage.

- (1) The ((department's)) medicaid agency's pediatric palliative care (PPC) case management/coordination services cover up to six pediatric palliative care contacts per client, per calendar month, subject to the limitations in this section and other applicable WAC.
 - (2) One pediatric palliative care contact consists of:
 - (a) One visit with a registered nurse, social worker, or therapist (for the purpose of this section, the ((department)) medicaid agency defines therapist as a licensed physical therapist, occupational therapist, or speech/language therapist) with the client in the client's residence to address:
 - (i) Pain and symptom management;
 - (ii) Psychosocial counseling; or
 - (iii) Education/training.
 - (b) Two hours or more per month of case management or coordination services to include any combination of the following:
 - (i) Psychosocial counseling services (includes grief support provided to the client, client's family member(s), or client's caregiver prior to the client's death);
 - (ii) Establishing or implementing care conferences;

- (iii) Arranging, planning, coordinating, and evaluating community resources to meet the client's needs;

- (iv) Visits lasting twenty minutes or less (for example, visits to give injections, drop off supplies, or make appointments for other PPC-related services.); and

- (v) Visits not provided in the client's home.

- (3) The ((department)) medicaid agency does not pay for a pediatric palliative care contact described in subsection (2) of this section when a client is receiving services from any of the following:

- (a) Home health program;

- (b) Hospice program;

- (c) Private duty nursing (private duty nursing can subcontract with PPC to provide services)/medical intensive care;

- (d) Disease case management program; or

- (e) Any other ((department)) medicaid program that provides similar services.

- (4) The ((department)) medicaid agency does not pay for a pediatric palliative care contact that includes providing counseling services to a client's family member or the client's caregiver for grief or bereavement for dates of service after a client's death.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-551-1830 How to become a ((department-approved)) medicaid-approved pediatric palliative care (PPC) case management/coordination services provider. This section applies to ((department-enrolled)) medicaid-approved providers who currently do not provide pediatric palliative care (PPC) services to medical assistance clients.

- (1) To apply to become a ((department-approved)) medicaid-approved provider of PPC services, a provider must:

- (a) Be a ((department-approved)) medicaid-approved hospice agency (see WAC ((388-551-1300)) 182-551-1300 and ((388-551-1305)) 182-551-1305); and

- (b) Submit a letter to the ((department's)) medicaid agency's hospice/PPC program manager requesting to become a ((department-approved)) medicaid-approved provider of PPC and include a copy of the provider's policies and position descriptions with minimum qualifications specific to pediatric palliative care.

- (2) A hospice agency qualifies to provide PPC services when:

- (a) All the requirements in this section are met; and

- (b) The ((department)) medicaid agency provides the hospice agency with written notification.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-551-1840 Pediatric palliative care (PPC) case management/coordination services—Provider requirements. (1) An eligible provider of pediatric palliative care (PPC) case management/coordination services must do all of the following:

- (a) Meet the conditions in WAC ((388-551-1300)) 182-551-1300;

(b) Confirm that a client meets the eligibility criteria in WAC ((388-551-1810)) 182-551-1810 prior to providing the pediatric palliative care services;

(c) Place in the client's medical record a written order for PPC from the client's physician;

(d) Determine and document in the client's medical record the medical necessity for the initial and ongoing care coordination of pediatric palliative care services;

(e) Document in the client's medical record:

(i) A palliative plan of care (POC) (a written document based on assessment of a client's individual needs that identifies services to meet those needs).

(ii) The medical necessity for those services to be provided in the client's residence; and

(iii) Discharge planning.

(f) Provide medically necessary skilled interventions and psychosocial counseling services by qualified interdisciplinary hospice team members;

(g) Assign and make available a PPC case manager (nurse, social worker or therapist) to implement care coordination with community-based providers to assure clarity, effectiveness, and safety of the client's POC;

(h) Complete and fax the pediatric palliative care (PPC) referral and 5-day notification form ((~~DSHS~~) HCA 13-752) to the ((~~department's~~) medicaid agency's) PPC program manager within five working days from date of occurrence of the client's:

(i) Date of enrollment in PPC.

(ii) Discharge from the hospice agency or PPC program when the client:

(A) No longer meets PPC criteria;

(B) Is able to receive all care in the community;

(C) Does not require any services for sixty days; or

(D) Discharges from the PPC program and enrolls in the ((~~department's~~) medicaid) hospice program.

(iii) Transfer to another hospice agency for pediatric palliative care services.

(iv) Death.

(i) Maintain the client's file which includes the POC, visit notes, and all of the following:

(i) The client's start of care date and dates of service;

(ii) Discipline and services provided (in-home or place of service);

(iii) Case management activity and documentation of hours of work; and

(iv) Specific documentation of the client's response to the palliative care and the client's and/or client's family's response to the effectiveness of the palliative care (e.g., the client might have required acute care or hospital emergency room visits without the pediatric palliative care services).

(j) Provide when requested by the ((~~department's~~) medicaid agency's) PPC program manager, a copy of the client's POC, visit notes, and any other documents listing the information identified in subsection (1)(i) of this section.

(2) If the ((~~department~~) medicaid agency) determines the POC, visit notes, and/or other required information do not meet the criteria for a client's PPC eligibility or does not justify the billed amount, any payment to the provider is subject to recoupment by the ((~~department~~) medicaid agency).

NEW SECTION

WAC 182-551-1860 Concurrent care for hospice clients twenty years of age and younger. (1) In accordance with Section 2302 of the Patient Protection and Affordable Care Act of 2010 and Section 1814(a)(7) of the Social Security Act, hospice palliative services are available to clients twenty years of age and younger without forgoing curative services which the client is entitled to under Title XIX Medicaid and Title XXI Children's Health Insurance Program (CHIP) for treatment of the terminal condition.

(2) Unless otherwise specified within this section, curative treatment including related services and medications requested for clients twenty years of age and younger are subject to the medicaid agency's specific program rules governing those services or medications.

(3) The following services aimed at achieving a disease-free state are included under the curative care benefit:

(a) Radiation;

(b) Chemotherapy;

(c) Diagnostics, including laboratory and imaging;

(d) Licensed health care professional services;

(e) Inpatient and outpatient hospital care;

(f) Surgery;

(g) Medication;

(h) Equipment and related supplies; and

(i) Ancillary services, such as medical transportation.

(4) The following are not included under the curative care benefit:

(a) Hospice covered services as described in WAC 182-551-1210;

(b) Services related to symptom management such as:

(I) Radiation;

(II) Chemotherapy;

(III) Surgery;

(IV) Medication; and

(V) Equipment and related supplies; and

(c) Ancillary services, such as medical transportation.

(5) Health care professionals must request prior authorization from the agency in accordance with WAC 182-501-0163 for enrollment in a concurrent care plan. Prior authorization requests are subject to medical necessity review under WAC 182-501-0165.

(6) If the curative treatment includes noncovered services in accordance with WAC 182-501-0070, the provider must request an exception to rule in accordance with WAC 182-501-0160.

(7) If the medicaid agency denies a request for a covered service, refer to WAC 182-502-0160, Billing a client, for when a client may be responsible to pay for a covered service.

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.

WSR 12-09-081
PERMANENT RULES
HEALTH CARE AUTHORITY

(Medicaid Program)

[Filed April 17, 2012, 5:19 p.m., effective May 18, 2012]

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

Purpose: Upon order of the governor, the agency reduced its budget expenditures for fiscal year 2011 by 6.3 percent. To achieve the expenditure reduction required under Executive Order 10-04, the agency took the following actions:

- **Effective January 1, 2011**, the agency eliminated dental-related services from program benefit packages for clients twenty-one years of age and older, except clients whose care is managed by the division of developmental disabilities, and implemented an emergency oral health benefit for all other adult clients.
- **Effective July 1, 2011**, in addition to clients whose care is managed by the division of developmental disabilities, the agency reinstated comprehensive dental coverage for certain clients twenty-one years of age and older, as specified in the proposed rules.
- **Effective October 1, 2011**, the agency reduced eligibility for the comprehensive dental benefit for certain clients of the division of developmental disabilities, as specified in the proposed rules.

Governor Gregoire issued Executive Order 10-04 on September 13, 2010, under the authority of RCW 43.88.-110(7). In the executive order, the governor required the health care authority and all other state agencies to reduce their expenditures in state fiscal year 2011 by approximately 6.3 percent. As a consequence of the executive order, funding will no longer be available as of January 1, 2011, for the benefits that are being eliminated as part of these regulatory amendments.

Citation of Existing Rules Affected by this Order: Repealing WAC 182-535-1065, 182-535-1247, 182-535-1255, 182-535-1257, 182-535-1259, 182-535-1261, 182-535-1263, 182-535-1266, 182-535-1267, 182-535-1269, 182-535-1271 and 182-535-1280; and amending WAC 182-535-1060, 182-535-1079, 182-535-1080, 182-535-1082, 182-535-1084, 182-535-1086, 182-535-1088, 182-535-1090, 182-535-1092, 182-535-1094, 182-535-1096, 182-535-1098, 182-535-1099, 182-535-1100, 182-535-1220, 182-535-1350, 182-535-1400, 182-535-1450, and 182-535-1500.

Statutory Authority for Adoption: RCW 41.05.021.

Adopted under notice filed as WSR 12-06-038 on March 2, 2012.

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 19, Repealed 12.

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 19, Repealed 12.

Date Adopted: April 17, 2012.

Kevin M. Sullivan
Rules Coordinator

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-535-1060 Clients who are eligible for dental-related services. (1) The ((following)) clients ((who receive services under the medical assistance programs listed)) described in this section are eligible ((for covered)) to receive the dental-related services((, subject to the restrictions and specific limitations)) described in this chapter ((and other applicable WAC:

(1) Children eligible for the)), subject to limitations, restrictions, and client-age requirements identified for a specific service.

(a) Clients who are eligible under one of the following medical assistance programs:

((a)) (i) Categorically needy ((program)) (CN ((or CNP)));

((b)) (ii) Children's ((health insurance program (CNP-CHHP)) health care as described in WAC 388-505-0210; ((and

(e) Limited casualty program--))

(ii) Medically needy ((program)) ((LCP-MNP)) MN);

(iv) Medical care services (MCS) as described in WAC 182-508-0005;

(v) Alcohol and Drug Abuse Treatment and Support Act (ADATSA).

((2) Adults eligible for the:

(a) Categorically needy program (CN or CNP); and

(b) Limited casualty program--medically needy program (LCP-MNP);

(3) Clients eligible for medical care services under the following state funded only programs are eligible only for the limited dental-related services described in WAC 388-535-1065:

(a) General assistance--Unemployable (GA-U); and

(b) General assistance--Alcohol and Drug Abuse Treatment and Support Act (ADATSA) (GA-W).

(4)) (b) Clients who are eligible under one of the medical assistance programs in subsection (a) of this section and are one of the following:

(i) Twenty years of age and younger;

(ii) Twenty years of age and younger enrolled in ((a)) an agency-contracted managed care ((plan are eligible for medical assistance administration (MAA) covered dental services that are not covered by their plan,)) organization (MCO). MCO clients are eligible under fee-for-service for covered dental-related services not covered by their MCO plan, subject to the provisions of this chapter ((388-535-WAC)) and other applicable ((WAC)) agency rules;

(iii) For dates of service on and after July 1, 2011, clients who are verifiably pregnant;

(iv) For dates of service on and after July 1, 2011, clients residing in one of the following:

(A) Nursing home;

(B) Nursing facility wing of a state veteran's home;

(C) Privately operated intermediate care facility for the intellectually disabled (ICF/ID); or

(D) State-operated residential habilitation center (RHC).

(v) For dates of service on and after July 1, 2011, clients who are eligible under an Aging and Disability Services Administration (ADSA) 1915 (c) waiver program;

(vi) For dates of service prior to October 1, 2011, clients of the division of developmental disabilities; or

(vii) For dates of service on and after October 1, 2011, clients of the division of developmental disabilities who also qualify under (b)(i), (iii), (iv), or (v) of this subsection.

(2) See WAC 388-438-0120 for rules for clients eligible under an alien emergency medical program.

(3) The dental services discussed in this chapter are excluded from the benefit package for clients not eligible for comprehensive dental services as described in subsection (1) of this section. Clients who do not have these dental services in their benefit package may be eligible only for the emergency oral health care benefit according to WAC 182-531-1025.

(4) Exception to rule procedures as described in WAC 182-501-0169 are not available for services that are excluded from a client's benefit package.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-535-1079 Dental-related services ~~((for clients through age twenty))~~—General. (1) Clients described in WAC 182-535-1060 are eligible to receive the dental-related services described in this chapter, subject to coverage limitations, restrictions, and client-age requirements identified for a specific service. The ~~((department))~~ agency pays for dental-related services and procedures provided to eligible clients ~~((through age twenty))~~ when the services and procedures:

(a) Are part of the client's dental benefit package;

(b) Are within the scope of an eligible client's medical care program;

~~((b))~~ (c) Are medically necessary;

~~((c))~~ (d) Meet the ~~((department's))~~ agency's prior authorization requirements, if any;

~~((d))~~ (e) Are documented in the client's record in accordance with chapter ~~((388-502))~~ 182-502 WAC;

~~((e))~~ (f) Are within accepted dental or medical practice standards;

~~((f))~~ (g) Are consistent with a diagnosis of dental disease or condition;

~~((g))~~ (h) Are reasonable in amount and duration of care, treatment, or service; and

~~((h))~~ (i) Are listed as covered in the ~~((department's published))~~ agency's rules~~((:))~~ and published billing instructions and fee schedules.

(2) The agency requires site-of-service prior authorization, in addition to prior authorization of the procedure, if applicable, for nonemergency dental-related services performed in a hospital or an ambulatory surgery center when:

(a) A client is not a client of the division of developmental disabilities according to WAC 182-535-1099;

(b) A client is nine years of age or older;

(c) The service is not listed as exempt from the site-of-service authorization requirement in the agency's current published dental-related services fee schedule or billing instructions; and

(d) The service is not listed as exempt from the prior authorization requirement for deep sedation or general anesthesia (see WAC 182-535-1098 (1)(c)(v)).

(3) To be eligible for payment, dental-related services performed in a hospital or an ambulatory surgery center must be listed in the agency's current published outpatient fee schedule or ambulatory surgery center fee schedule. The claim must be billed with the correct procedure code for the site-of-service.

(4) Under the early periodic screening and diagnostic treatment (EPSDT) program, clients ~~((ages))~~ twenty years of age and younger may be eligible for dental-related services listed as noncovered.

~~((3))~~ Clients who are eligible for services through the division of developmental disabilities may receive dental-related services according to WAC 388-535-1099.

~~((4))~~ (5) The ~~((department))~~ agency evaluates a request for dental-related services that are:

(a) ~~((That are))~~ In excess of the dental program's limitations or restrictions, according to WAC ~~((388-501-0169))~~ 182-501-0169; and

(b) ~~((That are))~~ Listed as noncovered, according to WAC ~~((388-501-0160))~~ 182-501-0160.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-535-1080 Covered dental-related services ~~((for clients through age twenty))~~—Diagnostic. ~~((The department covers medically necessary dental-related diagnostic services, subject to the coverage limitations listed, for clients through age twenty as follows:))~~ Clients described in WAC 182-535-1060 are eligible to receive the dental-related diagnostic services listed in this section, subject to coverage limitations, restrictions, and client-age requirements identified for a specific service.

(1) Clinical oral evaluations. The ~~((department))~~ agency covers:

(a) Oral health evaluations and assessments.

(b) Periodic oral evaluations as defined in WAC ~~((388-535-1050))~~ 182-535-1050, once every six months. Six months must elapse between the comprehensive oral evaluation and the first periodic oral evaluation.

(c) Limited oral evaluations as defined in WAC ~~((388-535-1050))~~ 182-535-1050, only when the provider performing the limited oral evaluation is not providing routine scheduled dental services for the client. The limited oral evaluation:

(i) Must be to evaluate the client for a:

- (A) Specific dental problem or oral health complaint;
- (B) Dental emergency; or
- (C) Referral for other treatment.

(ii) When performed by a dentist, is limited to the initial examination appointment. The ~~((department))~~ agency does not cover any additional limited examination by a dentist for the same client until three months after a removable prosthesis has been seated.

(d) Comprehensive oral evaluations as defined in WAC ~~((388-535-1050))~~ 182-535-1050, once per client, per provider or clinic, as an initial examination. The ~~((department))~~ agency covers an additional comprehensive oral evaluation if the client has not been treated by the same provider or clinic within the past five years.

(e) Limited visual oral assessments as defined in WAC ~~((388-535-1050))~~ 182-535-1050, up to two per client, per year, per provider only when the assessment is:

(i) Not performed in conjunction with other clinical oral evaluation services;

(ii) Performed by a licensed dentist or dental hygienist to determine the need for sealants or fluoride treatment and/or when triage services are provided in settings other than dental offices or clinics; and

(iii) Provided by a licensed dentist or licensed dental hygienist.

(2) **Radiographs (X rays).** The ~~((department))~~ agency:

(a) Covers radiographs that are of diagnostic quality, dated, and labeled with the client's name. The ~~((department))~~ agency requires:

(i) Original radiographs to be retained by the provider as part of the client's dental record(-); and

(ii) Duplicate radiographs to be submitted;

(A) With requests for prior authorization (~~((requests, or))~~); and

(B) When the agency requests copies of dental records ~~((are requested))~~.

(b) Uses the prevailing standard of care to determine the need for dental radiographs.

(c) Covers an intraoral complete series ~~((includes four bitewings))~~ once in a three-year period only if the ~~((department))~~ agency has not paid for a panoramic radiograph for the same client in the same three-year period. The intraoral complete series includes fourteen through twenty-two periapical and posterior bitewings. The agency limits reimbursement for all radiographs to a total payment of no more than payment for a complete series.

(d) Covers medically necessary periapical radiographs ~~((that are not included in a complete series))~~ for diagnosis in conjunction with definitive treatment, such as root canal therapy. Documentation supporting ~~((the))~~ medical necessity ~~((for these))~~ must be included in the client's record.

(e) Covers an occlusal intraoral radiograph once in a two-year period ~~((Documentation supporting the medical necessity for these must be included in the client's record))~~, for clients twenty years of age and younger.

(f) Covers ~~((a maximum of four bitewing radiographs once every twelve months for clients through age eleven))~~ oral facial photo images, only on a case-by-case basis when requested by the agency, for clients twenty years of age and younger.

(g) Covers a maximum of four bitewing radiographs (once per quadrant) once every twelve months ~~((for clients ages twelve through twenty))~~.

(h) Covers panoramic radiographs in conjunction with four bitewings, once in a three-year period, only if the ~~((department))~~ agency has not paid for an intraoral complete series for the same client in the same three-year period.

(i) May ~~((cover))~~ reimburse for panoramic radiographs for preoperative or postoperative surgery cases more than once in a three-year period, only on a case-by-case basis and when prior authorized, except when required by an oral surgeon. For orthodontic services, see chapter 182-535A WAC.

(j) Covers cephalometric films(-)

~~((i) For orthodontics, as described in chapter 388-535A WAC; or~~

~~((ii))~~ once in a two-year period for clients twenty years of age and younger, only on a case-by-case basis and when prior authorized.

(k) Covers radiographs not listed as covered in this subsection, only on a case-by-case basis and when prior authorized.

(l) Covers oral and facial photographic images, only on a case-by-case basis and when requested by the ~~((department))~~ agency.

(3) **Tests and examinations.** The ~~((department))~~ agency covers the following for clients who are twenty years of age and younger:

(a) One pulp vitality test per visit (not per tooth):

(i) For diagnosis only during limited oral evaluations; and

(ii) When radiographs and/or documented symptoms justify the medical necessity for the pulp vitality test.

(b) Diagnostic casts other than those included in an orthodontic case study, on a case-by-case basis, and when requested by the ~~((department))~~ agency.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-535-1082 Covered dental-related services ~~((for clients through age twenty))~~—Preventive services. Clients described in WAC 182-535-1060 are eligible for the ~~((department covers medically necessary))~~ dental-related preventive services ~~((subject to the coverage limitations))~~ listed in this section, ~~((for clients through age twenty as follows))~~ subject to coverage limitations and client-age requirements identified for a specific service.

(1) **Dental prophylaxis.** The ~~((department))~~ agency covers prophylaxis as follows. Prophylaxis:

(a) ~~((Which))~~ Includes scaling and polishing procedures to remove coronal plaque, calculus, and stains when performed on primary(-transitional-) or permanent dentition(-once every six months for clients through age twenty-).

(b) Is limited to once every:

(i) Six months for clients eighteen years of age and younger; and

(ii) Twelve months for clients nineteen years of age and older.

(c) Is reimbursed only when the service is performed;

(i) At least six months after periodontal scaling and root planing, or periodontal maintenance services, for clients ((ages)) from thirteen ((through twenty)) to eighteen years of age; and

(ii) At least twelve months after periodontal scaling and root planing, periodontal maintenance services, for clients nineteen years of age and older.

~~((e) Only)~~ (d) Is not reimbursed separately when ((not)) performed on the same date of service as periodontal scaling and root planing, periodontal maintenance, gingivectomy, or gingivoplasty.

~~((f))~~ (e) Is covered for clients of the division of developmental disabilities according to (a), (c), and (d) of this subsection and WAC ((388-535-1099)) 182-535-1099.

(2) Topical fluoride treatment. The ~~((department))~~ agency covers:

(a) Fluoride ~~((varnish;))~~ rinse, foam or gel, including disposable trays, for clients ~~((ages))~~ six years of age and younger, up to three times within a twelve-month period.

(b) Fluoride ~~((varnish;))~~ rinse, foam or gel, including disposable trays, for clients ~~((ages))~~ from seven ((through)) to eighteen years of age, up to two times within a twelve-month period.

(c) Fluoride ~~((varnish;))~~ rinse, foam or gel, including disposable trays, up to three times within a twelve-month period during orthodontic treatment.

(d) Fluoride rinse, foam or gel, including disposable trays, for clients ~~((ages))~~ from nineteen ((through twenty)) to sixty-four years of age, once within a twelve-month period.

(e) Fluoride rinse, foam or gel, including disposable trays, for clients sixty-five years of age and older who reside in alternate living facilities, up to three times within a twelve-month period.

(f) Additional topical fluoride applications only on a case-by-case basis and when prior authorized.

~~((f))~~ (g) Topical fluoride treatment for clients of the division of developmental disabilities according to WAC ((388-535-1099)) 182-535-1099.

(3) Oral hygiene instruction. The ~~((department))~~ agency covers:

(a) Oral hygiene instruction only for clients ~~((through age))~~ eight years of age and younger.

(b) Oral hygiene instruction, no more than once every six months, up to two times within a twelve-month period.

(c) Individualized oral hygiene instruction for home care to include tooth brushing technique, flossing, and use of oral hygiene aides.

(d) Oral hygiene instruction only when not performed on the same date of service as prophylaxis.

(e) Oral hygiene instruction only when provided by a licensed dentist or a licensed dental hygienist and the instruction is provided in a setting other than a dental office or clinic.

(4) Sealants. The ~~((department))~~ agency covers:

(a) Sealants for clients eighteen years of age and younger and clients of the division of developmental disabilities of any age.

(b) Sealants only when used on a mechanically and/or chemically prepared enamel surface.

~~((f))~~ (c) Sealants once per tooth;

(i) In a three-year period for clients ((through age)) eight years of age and younger; and

(ii) In a two-year period for clients any age of the division of developmental disabilities according to WAC 182-535-1099.

~~((e))~~ (d) Sealants only when used on the occlusal surfaces of:

(i) Permanent teeth two, three, fourteen, fifteen, eighteen, nineteen, thirty, and thirty-one; and

(ii) Primary teeth A, B, I, J, K, L, S, and T.

~~((f))~~ (e) Sealants on noncarious teeth or teeth with incipient caries.

~~((e))~~ (f) Sealants only when placed on a tooth with no preexisting occlusal restoration, or any occlusal restoration placed on the same day.

~~((f))~~ (g) Additional sealants not described in this subsection on a case-by-case basis and when prior authorized.

(5) Space maintenance. The ~~((department covers))~~ agency:

(a) Covers fixed unilateral or fixed bilateral space maintainers for clients ((through age eighteen)) twelve years of age and younger, subject to the following:

(i) Only one space maintainer is covered per quadrant.

(ii) Space maintainers are covered only for missing primary molars A, B, I, J, K, L, S, and T.

(iii) Replacement space maintainers are covered only on a case-by-case basis and when prior authorized.

~~((Only one space maintainer per quadrant.~~

~~((e) Space maintainers only for missing primary molars A, B, I, J, K, L, S, and T.~~

~~((d) Replacement space maintainers only on a case-by-case basis and when prior authorized.))~~ Covers removal of fixed space maintainers for clients eighteen years of age and younger.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-535-1084 Covered dental-related services ((for clients through age twenty))—Restorative services. ~~((The department covers medically necessary dental-related restorative services, subject to the coverage limitations listed, for clients through age twenty as follows:))~~ Clients described in WAC 182-535-1060 are eligible for the dental-related restorative services listed in this section, subject to coverage limitations, restrictions, and client-age requirements identified for a specific service.

~~((1) ((Restorative/operative procedures. The department covers restorative/operative procedures performed in a hospital or an ambulatory surgical center for:~~

~~((a) Clients ages eight and younger;~~

~~((b) Clients ages nine through twenty only on a case-by-case basis and when prior authorized; and~~

~~((c) Clients of the division of developmental disabilities according to WAC 388-535-1099.~~

~~((2))~~ **Amalgam and resin restorations for primary and permanent teeth.** The ~~((department))~~ agency considers:

(a) Tooth preparation, acid etching, all adhesives (including ~~((amalgam))~~ bonding agents), liners~~((;))~~ and

bases, ~~((and)) polishing, and curing~~ as part of the ~~((amalgam)) restoration.~~

~~(b) ((The)) Occlusal adjustment of either the restored tooth or the opposing tooth or teeth as part of the amalgam restoration.~~

~~(c) ((Buccal or lingual surface amalgam restorations, regardless of size or extension, as a one surface restoration. The department covers one buccal and one lingual surface per tooth.~~

~~(d) Multiple amalgam restorations of fissures and grooves of the occlusal surface of the same tooth as a one surface restoration.~~

~~(e) Amalgam)) Restorations placed within six months of a crown preparation by the same provider or clinic to be included in the payment for the crown.~~

~~((3) Amalgam)) (2) **Limitations for all restorations ((for primary posterior teeth only)).** The ~~((department covers amalgam restorations for a maximum of two surfaces for a primary first molar and maximum of three surfaces for a primary second molar. (See subsection (9)(e) of this section for restorations for a primary posterior tooth requiring additional surfaces.) The department does not pay for additional amalgam restorations))~~ agency:~~

~~(a) Considers multiple restoration involving the proximal and occlusal surfaces of the same tooth as a multisurface restoration, and limits reimbursement to a single multisurface restoration.~~

~~(b) Considers multiple preventive restorative resins, flowable composite resins, or resin-based composites for the occlusal, buccal, lingual, mesial, and distal fissures and grooves on the same tooth as a one-surface restoration.~~

~~(c) Considers multiple restorations of fissures and grooves of the occlusal surface of the same tooth as a one-surface restoration.~~

~~(d) Considers resin-based composite restorations of teeth where the decay does not penetrate the dentoenamel junction (DEJ) to be sealants. (See WAC 182-535-1082(4) for sealant coverage.)~~

~~(e) Reimburses proximal restorations that do not involve the incisal angle on anterior teeth as a two-surface restoration.~~

~~(f) Covers only one buccal and one lingual surface per tooth. The agency reimburses buccal or lingual restorations, regardless of size or extension, as a one-surface restoration.~~

~~(g) Does not cover preventive restorative resin or flowable composite resin on the interproximal surfaces (mesial or distal) when performed on posterior teeth or the incisal surface of anterior teeth.~~

~~(h) Does not pay for replacement restorations within a two-year period unless the restoration has an additional adjoining carious surface. The agency pays for the replacement restoration as one multisurface restoration. The client's record must include X rays and documentation supporting the medical necessity for the replacement restoration.~~

~~((4) Amalgam)) (3) **Additional limitations on restorations ((for permanent posterior)) on primary teeth ((only)).** The ~~((department))~~ agency covers:~~

~~(a) ((Covers two occlusal amalgam restorations for teeth one, two, three fourteen, fifteen, and sixteen, if the restorations are anatomically separated by sound tooth structure.~~

~~(b) Covers amalgam restorations for a maximum of five surfaces per tooth for a permanent posterior tooth, once per client, per provider or clinic, in a two-year period.~~

~~(c) Covers amalgam restorations for a maximum of six surfaces per tooth for teeth one, two, three, fourteen, fifteen, and sixteen, once per client, per provider or clinic, in a two-year period (see (a) of this subsection).~~

~~(d) Does not pay for replacement of amalgam restoration on permanent posterior teeth within a two-year period unless the restoration has an additional adjoining carious surface. The department pays for the replacement restoration as one multi-surface restoration. The client's record must include radiographs and documentation supporting the medical necessity for the replacement restoration)) A maximum of two surfaces for a primary first molar. (See subsection (6) of this section for a primary first molar that requires a restoration with three or more surfaces.) The agency does not pay for additional restorations on the same tooth.~~

~~(b) A maximum of three surfaces for a primary second molar. (See subsection (6) of this section for a primary posterior tooth that requires a restoration with four or more surfaces.) The agency does not pay for additional restorations on the same tooth.~~

~~(c) A maximum of three surfaces for a primary anterior tooth. (See subsection (6) of this section for a primary anterior tooth that requires a restoration with four or more surfaces.) The agency does not pay for additional restorations on the same tooth after three surfaces.~~

~~(d) Glass ionomer restorations for primary teeth, only for clients five years of age and younger. The agency pays for these restorations as a one-surface, resin-based composite restoration.~~

~~((5) Resin-based composite)) (4) **Additional limitations on restorations ((for primary and)) on permanent teeth.** The ~~((department))~~ agency covers:~~

~~(a) ((Considers tooth preparation, acid-etching, all adhesives (including resin bonding agents), liners and bases, polishing, and curing as part of the resin-based composite restoration.~~

~~(b) Considers the occlusal adjustment of either the restored tooth or the opposing tooth or teeth as part of the resin-based composite restoration.~~

~~(c) Considers buccal or lingual surface resin-based composite restorations, regardless of size or extension, as a one surface restoration. The department covers only one buccal and one lingual surface per tooth.~~

~~(d) Considers resin-based composite restorations of teeth where the decay does not penetrate the DEJ to be sealants (see WAC 388-535-1082(4) for sealants coverage).~~

~~(e) Considers multiple preventive restorative resin, flowable composite resin, or resin-based composites for the occlusal, buccal, lingual, mesial, and distal fissures and grooves on the same tooth as a one surface restoration.~~

~~(f) Does not cover preventive restorative resin or flowable composite resin on the interproximal surfaces (mesial and/or distal) when performed on posterior teeth or the incisal surface of anterior teeth.~~

~~(g) Considers resin-based composite restorations placed within six months of a crown preparation by the same provider or clinic to be included in the payment for the crown.~~

~~(6) Resin-based composite restorations for primary teeth only.~~ The department covers:

~~(a) Resin-based composite restorations for a maximum of three surfaces for a primary anterior tooth (see subsection (9)(b) of this section for restorations for a primary anterior tooth requiring a four or more surface restoration). The department does not pay for additional composite or amalgam restorations on the same tooth after three surfaces.~~

~~(b) Resin-based composite restorations for a maximum of two surfaces for a primary first molar and a maximum of three surfaces for a primary second molar. (See subsection (9)(c) of this subsection for restorations for a primary posterior tooth requiring additional surfaces.) The department does not pay for additional composite restorations on the same tooth.~~

~~(c) Glass ionomer restorations only for primary teeth, and only for clients ages five and younger. The department pays for these restorations as a one-surface resin-based composite restoration.~~

~~(7) Resin-based composite restorations for permanent teeth only.~~ The department covers:

~~(a)) (b) Two occlusal ((resin-based composite)) restorations for the upper molars on teeth one, two, three, fourteen, fifteen, and sixteen if the restorations are anatomically separated by sound tooth structure.~~

~~((b) Resin-based composite restorations for a maximum of five surfaces per tooth for a permanent posterior tooth, once per client, per provider or clinic, in a two-year period.~~

~~(c) Resin-based composite restorations for a maximum of six surfaces per tooth for permanent posterior teeth one, two, three, fourteen, fifteen, and sixteen, once per client, per provider or clinic, in a two-year period (see (a) of this subsection).~~

~~(d) Resin-based composite restorations for a maximum of six surfaces per tooth for a permanent anterior tooth, once per client, per provider or clinic, in a two-year period.~~

~~(e) Replacement of resin-based composite restoration on permanent teeth within a two-year period only if the restoration has an additional adjoining carious surface. The department pays the replacement restoration as a one multi-surface restoration. The client's record must include radiographs and documentation supporting the medical necessity for the replacement restoration.~~

~~(8)) (c) A maximum of five surfaces per tooth for permanent posterior teeth, except for upper molars. The agency allows a maximum of six surfaces per tooth for teeth one, two, three, fourteen, fifteen, and sixteen.~~

~~(d) A maximum of six surfaces per tooth for resin-based composite restorations for permanent anterior teeth.~~

~~(5) Crowns.~~ The ((department)) agency:

~~(a) Covers the following indirect crowns once every five years, per tooth, for permanent anterior teeth for clients ((ages)) from twelve ((through)) to twenty years of age when the crowns meet prior authorization criteria in WAC ((388-535-1220)) 182-535-1220 and the provider follows the prior authorization requirements in ((d)) (c) of this subsection:~~

~~(i) Porcelain/ceramic crowns to include all porcelains, glasses, glass-ceramic, and porcelain fused to metal crowns; and~~

~~(ii) Resin crowns and resin metal crowns to include any resin-based composite, fiber, or ceramic reinforced polymer compound.~~

~~(b) ((Covers full coverage metal crowns once every five years, per tooth, for permanent posterior teeth to include high noble, titanium, titanium alloys, noble, and predominantly base metal crowns for clients ages eighteen through twenty when they meet prior authorization criteria and the provider follows the prior authorization requirements in (d) and (e) of this subsection.~~

~~(e))~~ Considers the following to be included in the payment for a crown:

~~(i) Tooth and soft tissue preparation;~~

~~(ii) Amalgam and resin-based composite restoration, or any other restorative material placed within six months of the crown preparation. Exception: The ((department)) agency covers a one-surface restoration on an endodontically treated tooth, or a core buildup or cast post and core;~~

~~(iii) Temporaries, including but not limited to, temporary restoration, temporary crown, provisional crown, temporary prefabricated stainless steel crown, ion crown, or acrylic crown;~~

~~(iv) Packing cord placement and removal;~~

~~(v) Diagnostic or final impressions;~~

~~(vi) Crown seating (placement), including cementing and insulating bases;~~

~~(vii) Occlusal adjustment of crown or opposing tooth or teeth; and~~

~~(viii) Local anesthesia.~~

~~((d)) (c) Requires the provider to submit the following with each prior authorization request:~~

~~(i) Radiographs to assess all remaining teeth;~~

~~(ii) Documentation and identification of all missing teeth;~~

~~(iii) Caries diagnosis and treatment plan for all remaining teeth, including a caries control plan for clients with rampant caries;~~

~~(iv) Pre- and post-endodontic treatment radiographs for requests on endodontically treated teeth; and~~

~~(v) Documentation supporting a five-year prognosis that the client will retain the tooth or crown if the tooth is crowned.~~

~~((e)) (d) Requires a provider to bill for a crown only after delivery and seating of the crown, not at the impression date.~~

~~((9)) (6) Other restorative services.~~ The ((department)) agency covers the following restorative services:

~~(a) All recementations of permanent indirect crowns only for clients from twelve to twenty years of age.~~

~~(b) Prefabricated stainless steel crowns with resin window, resin-based composite crowns, prefabricated esthetic coated stainless steel crowns, and fabricated resin crowns for primary anterior teeth once every three years ((without)) only for clients twenty years of age and younger as follows:~~

~~(i) For ages twelve and younger without prior authorization if the tooth requires a four or more surface restoration; and~~

~~(ii) For ages thirteen to twenty with prior authorization ((if the tooth requires a four or more surface restoration)).~~

(c) Prefabricated stainless steel crowns for primary posterior teeth once every three years without prior authorization if:

(i) Decay involves three or more surfaces for a primary first molar;

(ii) Decay involves four or more surfaces for a primary second molar; or

(iii) The tooth had a pulpotomy.

(d) Prefabricated stainless steel crowns for permanent posterior teeth excluding one, sixteen, seventeen, and thirty-two once every three years ((when)), for clients twenty years of age and younger, without prior ((authorized)) authorization.

(e) Prefabricated stainless steel crowns for clients of the division of developmental disabilities without prior authorization according to WAC ((388-535-1099)) 182-535-1099.

(f) Core buildup, including pins, only on permanent teeth, ((when)) only for clients twenty years of age and younger, and only allowed in conjunction with indirect crowns and prior authorized at the same time as the crown prior authorization.

(g) Cast post and core or prefabricated post and core, only on permanent teeth, only for clients twenty years of age and younger, and only when in conjunction with a crown and when prior authorized ((at the same time as the crown prior authorization)).

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-535-1086 Covered dental-related services ~~((for clients through age twenty))~~—Endodontic services. ~~((The department covers medically necessary dental-related endodontic services, subject to the coverage limitations listed, for clients through age twenty as follows:))~~ Clients described in WAC 182-535-1060 are eligible to receive the dental-related endodontic services listed in this section, subject to coverage limitations, restrictions, and client-age requirements identified for a specific service.

(1) **Pulp capping.** The ~~((department))~~ agency considers pulp capping to be included in the payment for the restoration.

(2) **Pulpotomy.** The ~~((department))~~ agency covers:

(a) Therapeutic pulpotomy on primary ~~((posterior))~~ teeth only((; and)) for clients twenty years of age and younger.

(b) Pulpal debridement on permanent teeth only, excluding teeth one, sixteen, seventeen, and thirty-two. The ~~((department))~~ agency does not pay for pulpal debridement when performed with palliative treatment of dental pain or when performed on the same day as endodontic treatment.

(3) **Endodontic treatment.** The ~~((department))~~ agency:

(a) Covers endodontic treatment with resorbable material for primary maxillary incisor teeth D, E, F, and G, if the entire root is present at treatment.

(b) Covers endodontic treatment for permanent anterior, bicuspid, and molar teeth, excluding teeth one, sixteen, seventeen, and thirty-two for clients twenty years of age and younger.

(c) Considers the following included in endodontic treatment:

(i) Pulpotomy when part of root canal therapy;

(ii) All procedures necessary to complete treatment; and
(iii) All intra-operative and final evaluation radiographs for the endodontic procedure.

(d) Pays separately for the following services that are related to the endodontic treatment:

(i) Initial diagnostic evaluation;

(ii) Initial diagnostic radiographs; and

(iii) Post treatment evaluation radiographs if taken at least three months after treatment.

~~((Requires))~~ Covers endodontic retreatment for clients twenty years of age and younger when prior ((authorization for endodontic retreatment and)) authorized.

(f) The agency considers endodontic retreatment to include:

(i) The removal of post(s), pin(s), old root canal filling material, and all procedures necessary to prepare the canals;

(ii) Placement of new filling material; and

(iii) Retreatment for permanent anterior, bicuspid, and molar teeth, excluding teeth one, sixteen, seventeen, and thirty-two.

~~((g))~~ (g) Pays separately for the following services that are related to the endodontic retreatment:

(i) Initial diagnostic evaluation;

(ii) Initial diagnostic radiographs; and

(iii) Post treatment evaluation radiographs if taken at least three months after treatment.

~~((g))~~ (h) Does not pay for endodontic retreatment when provided by the original treating provider or clinic unless prior authorized by the ~~((department))~~ agency.

~~((h))~~ (i) Covers apexification for apical closures for anterior permanent teeth only on a case-by-case basis and when prior authorized. Apexification is limited to the initial visit and three interim treatment visits and limited to clients twenty years of age and younger, per tooth.

~~((h))~~ (j) Covers apicoectomy and a retrograde fill for anterior teeth only for clients twenty years of age and younger.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-535-1088 Covered dental-related services ~~((for clients through age twenty))~~—Periodontic services. ~~((The department covers medically necessary periodontic services, subject to the coverage limitations listed, for clients through age twenty as follows:))~~ Clients described in WAC 182-535-1060 are eligible to receive the dental-related periodontic services listed in this section, subject to coverage limitations, restrictions, and client-age requirements identified for a specified service.

(1) **Surgical periodontal services.** The ~~((department))~~ agency covers the following surgical periodontal services, including all postoperative care:

(a) Gingivectomy/gingivoplasty only on a case-by-case basis and when prior authorized and only for clients twenty years of age and younger; and

(b) Gingivectomy/gingivoplasty for clients of the division of developmental disabilities according to WAC ~~((388-535-1099))~~ 182-535-1099.

(2) **Nonsurgical periodontal services.** The ~~((department))~~ agency:

(a) Covers periodontal scaling and root planing for clients from thirteen to eighteen years of age, once per quadrant, per client, in a two-year period, on a case-by-case basis, when prior authorized ~~((for clients ages thirteen through eighteen))~~, and only when:

(i) The client has radiographic evidence of periodontal disease;

(ii) The client's record includes supporting documentation for the medical necessity, including complete periodontal charting and a definitive diagnosis of periodontal disease;

(iii) The client's clinical condition meets current published periodontal guidelines; and

(iv) Performed at least two years from the date of completion of periodontal scaling and root planing or surgical periodontal treatment, or at least twelve calendar months from the completion of periodontal maintenance.

(b) Covers periodontal scaling and root planing once per quadrant, per client, in a two-year period for clients ~~((ages))~~ nineteen ~~((through twenty))~~ years of age and older. Criteria in (a)(i) through (iv) of this subsection must be met.

(c) Considers ultrasonic scaling, gross scaling, or gross debridement to be included in the procedure and not a substitute for periodontal scaling and root planing.

(d) Covers periodontal scaling and root planing only when the services are not performed on the same date of service as prophylaxis, periodontal maintenance, gingivectomy, or gingivoplasty.

(e) Covers periodontal scaling and root planing for clients of the division of developmental disabilities according to WAC ~~((388-535-1099))~~ 182-535-1099.

(3) **Other periodontal services.** The ~~((department))~~ agency:

(a) Covers periodontal maintenance for clients from thirteen to eighteen years of age once per client in a twelve-month period on a case-by-case basis, when prior authorized, ~~((for clients ages thirteen through eighteen))~~, and only when:

(i) The client has radiographic evidence of periodontal disease;

(ii) The client's record includes supporting documentation for the medical necessity, including complete periodontal charting with location of the gingival margin and clinical attachment loss and a definitive diagnosis of periodontal disease;

(iii) The client's clinical condition meets current published periodontal guidelines; and

(iv) ~~((Performed at least))~~ The client has had periodontal scaling and root planing but not within twelve months ~~((from))~~ of the date of completion of periodontal scaling and root planing, or surgical periodontal treatment.

(b) Covers periodontal maintenance once per client in a twelve month period for clients ~~((ages))~~ nineteen ~~((through twenty))~~ years of age and older. Criteria in (a)(i) through (iv) of this subsection must be met.

(c) Covers periodontal maintenance only if performed ~~((on a different date of service as))~~ at least twelve calendar months after receiving prophylaxis, periodontal scaling and root planing, gingivectomy, or gingivoplasty.

(d) Covers periodontal maintenance for clients of the division of developmental disabilities according to WAC ~~((388-535-1099))~~ 182-535-1099.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-535-1090 Covered dental-related services ~~((for clients through age twenty))~~—Prosthodontics (removable). ~~((The department covers medically necessary prosthodontics (removable) services, subject to the coverage limitations listed, for clients through age twenty as follows:))~~ Clients described in WAC 182-535-1060 are eligible to receive the prosthodontics (removable) and related services, subject to the coverage limitations, restrictions, and client-age requirements identified for a specific service.

(1) **Prosthodontics.** The ~~((department))~~ agency:

(a) Requires prior authorization for all removable prosthodontic and prosthodontic-related procedures ~~((, except as stated in (e)(ii)(B) of this subsection)).~~ Prior authorization requests must meet the criteria in WAC ~~((388-535-1220))~~ 182-535-1220. In addition, the ~~((department))~~ agency requires the dental provider to submit:

(i) Appropriate and diagnostic radiographs of all remaining teeth.

(ii) A dental record which identifies:

(A) All missing teeth for both arches;

(B) Teeth that are to be extracted; and

(C) Dental and periodontal services completed on all remaining teeth.

~~((iii) A prescription written by a dentist when a dentist's prior authorization request is for an immediate denture or a cast metal partial denture.))~~

(b) Covers complete dentures, as follows:

(i) A complete denture, including an ~~((immediate denture or))~~ overdenture, is covered when prior authorized.

(ii) Three-month post-delivery care (e.g., adjustments, soft relines, and repairs) from the seat (placement) date of the complete denture, is considered part of the complete denture procedure and is not paid separately.

(iii) Replacement of an immediate denture with a complete denture is covered, if the complete denture is prior authorized at least six months after the seat date of the immediate denture.

(iv) ~~((Replacement of a complete denture or overdenture is covered only if prior authorized at least five years after the seat date of the complete denture or overdenture being replaced. The replacement denture must be prior authorized.))~~ Complete dentures are limited to:

(A) One initial maxillary complete denture and one initial mandibular complete denture per client, per the client's lifetime; and

(B) One replacement maxillary complete denture and one replacement mandibular complete denture per client, per client's lifetime.

(v) Replacement of a complete denture or overdenture is covered only if prior authorized, and only if the replacement occurs at least five years after the seat date of the complete denture or overdenture being replaced. The replacement denture must be prior authorized.

(vi) The provider must obtain a signed denture agreement of acceptance (#13-809) from the client at the conclusion of the final denture try-in for an agency-authorized complete denture. If the client abandons the complete denture after signing the agreement of acceptance, the agency will deny subsequent requests for the same type of dental prosthesis if the request occurs prior to the dates specified in this section. A copy of the signed agreement must be kept in the provider's files and be available upon request by the agency.

(c) Covers resin partial dentures, as follows:

(i) A partial denture (~~(including a resin or flexible base partial denture,))~~ is covered for anterior and posterior teeth when the partial denture meets the following ~~((department))~~ agency coverage criteria.

(A) The remaining teeth in the arch must have a reasonable periodontal diagnosis and prognosis;

(B) The client has established caries control;

(C) One or more anterior teeth are missing or four or more posterior teeth are missing (excluding teeth one, two, fifteen, sixteen, seventeen, eighteen, thirty-one, and thirty-two);

(D) There is a minimum of four stable teeth remaining per arch; and

(E) There is a three-year prognosis for retention of the remaining teeth.

(ii) Prior authorization ~~((of))~~ is required for partial dentures ~~((~~

~~(A) Is required for clients ages nine and younger, and~~

~~(B) Not required for clients ages ten through twenty. Documentation supporting the medical necessity for the service must be included in the client's file).~~

(iii) Three-month post-delivery care (e.g., adjustments, soft relines, and repairs) from the seat date of the partial denture, is considered part of the partial denture procedure and is not paid separately.

(iv) Replacement of a ~~((resin or flexible base))~~ resin-based denture with any prosthetic is covered only if prior authorized at least three years after the seat date of the resin or flexible base partial denture being replaced. The replacement denture must be prior authorized and meet ~~((department))~~ agency coverage criteria in (c)(i) of this subsection.

(d) ~~((Covers east metal framework partial dentures, as follows:~~

~~(i) Cast metal framework with resin-based partial dentures, including any conventional clasps, rests, and teeth, are covered for clients ages eighteen through twenty only once in a five-year period, on a case-by-case basis, when prior authorized and department coverage criteria listed in subsection (d)(v) of this subsection are met.~~

~~(ii) Cast metal framework partial dentures for clients ages seventeen and younger are not covered.~~

~~(iii) Three-month post-delivery care (e.g., adjustments, soft relines, and repairs) from the seat date of the cast metal partial denture is considered part of the partial denture procedure and is not paid separately.~~

~~(iv) Replacement of a cast metal framework partial denture is covered on a case-by-case basis and only if placed at least five years after the seat date of the partial denture being replaced. The replacement denture must be prior authorized~~

~~and meet department coverage criteria listed in (d)(v) of this subsection.~~

~~(v) Department authorization and payment for cast metal framework partial dentures is based on the following criteria:~~

~~(A) The remaining teeth in the arch must have a stable periodontal diagnosis and prognosis;~~

~~(B) The client has established caries control;~~

~~(C) All restorative and periodontal procedures must be completed before the request for prior authorization is submitted;~~

~~(D) There are fewer than eight posterior teeth in occlusion;~~

~~(E) There is a minimum of four stable teeth remaining per arch; and~~

~~(F) There is a five-year prognosis for the retention of the remaining teeth.~~

~~(vi) The department may consider resin partial dentures as an alternative if the department determines the criteria for east metal framework partial dentures listed in (d)(v) of this subsection are not met.~~

~~(e)) Does not cover replacement of a cast-metal framework partial denture, with any type of denture, within five years of the initial seat date of the partial denture.~~

(e) Requires a provider to bill for removable prosthetic procedures only after the seating of the prosthesis, not at the impression date. Refer to subsection (2)(e) and (f) of this section for what the ~~((department))~~ agency may pay if the removable prosthesis is not delivered and inserted.

(f) Requires a provider to submit the following with a prior authorization request for removable prosthetics for a client residing in an alternate living facility (ALF) as defined in WAC 388-513-1301 or in a nursing facility:

(i) The client's medical diagnosis or prognosis;

(ii) The attending physician's request for prosthetic services;

(iii) The attending dentist's or denturist's statement documenting medical necessity;

(iv) A written and signed consent for treatment from the client's legal guardian when a guardian has been appointed; and

(v) A completed copy of the denture/partial appliance request for skilled nursing facility client form (DSHS 13-788) available from the ~~((department's))~~ agency's published billing instructions.

(g) Limits removable partial dentures to resin-based partial dentures for all clients residing in one of the facilities listed in (f) of this subsection. ~~((The department may consider east metal partial dentures if the criteria in subsection (1)(d) are met.))~~

(h) Requires a provider to deliver services and procedures that are of acceptable quality to the ~~((department))~~ agency. The ~~((department))~~ agency may recoup payment for services that are determined to be below the standard of care or of an unacceptable product quality.

(2) **Other services for removable prosthodontics.** The ~~((department))~~ agency covers:

(a) Adjustments to complete and partial dentures three months after the date of delivery.

(b) Repairs;

(i) To complete ((and partial)) dentures, once in a twelve-month period. The cost of repairs cannot exceed the cost of the replacement denture. The ((department)) agency covers additional repairs on a case-by-case basis and when prior authorized.

(ii) To partial dentures, once in a twelve-month period. The cost of the repairs cannot exceed the cost of the replacement partial denture. The agency covers additional repairs on a case-by-case basis and when prior authorized.

(c) A laboratory reline or rebase to a complete or ((east-metal)) partial denture, once in a three-year period when performed at least six months after the seating date. An additional reline or rebase may be covered for complete or ((east-metal)) partial dentures on a case-by-case basis when prior authorized.

(d) Up to two tissue conditionings, only for clients twenty years of age and younger, and only when performed within three months after the seating date.

(e) Laboratory fees, subject to the following:

(i) The ((department)) agency does not pay separately for laboratory or professional fees for complete and partial dentures; and

(ii) The ((department)) agency may pay part of billed laboratory fees when the provider obtains prior authorization, and the client:

(A) Is not eligible at the time of delivery of the prosthesis;

(B) Moves from the state;

(C) Cannot be located;

(D) Does not participate in completing the complete, immediate, or partial dentures; or

(E) Dies.

(f) A provider must submit copies of laboratory prescriptions and receipts or invoices for each claim when billing for laboratory fees.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-535-1092 Covered dental-related services ((for clients through age twenty))—Maxillofacial prosthetic services. ((The department covers medically necessary maxillofacial prosthetic services, subject to the coverage limitations listed, for clients through age twenty as follows:)) Clients described in WAC 182-535-1060 are eligible to receive the maxillofacial prosthetic services listed in this section, subject to the following:

(1) Maxillofacial prosthetics are covered only for clients twenty years of age and younger on a case-by-case basis and when prior authorized; and

(2) The ((department)) agency must preapprove a provider qualified to furnish maxillofacial prosthetics.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-535-1094 Covered dental-related services ((for clients through age twenty))—Oral and maxillofacial surgery services. ((The department covers medically necessary oral and maxillofacial surgery services;)) Clients described in WAC 182-535-1060 are eligible to receive the

oral and maxillofacial surgery services listed in this section, subject to the coverage limitations ((listed, for clients through age twenty as follows:)), restrictions, and client-age requirements identified for a specific service.

(1) **Oral and maxillofacial surgery services.** The ((department)) agency:

(a) Requires enrolled providers who do not meet the conditions in WAC ((388-535-1070)) 182-535-1070(3) to bill claims for services that are listed in this subsection using only the current dental terminology (CDT) codes.

(b) Requires enrolled providers (oral and maxillofacial surgeons) who meet the conditions in WAC ((388-535-1070)) 182-535-1070(3) to bill claims using current procedural terminology (CPT) codes unless the procedure is specifically listed in the ((department's)) agency's current published billing instructions as a CDT covered code (e.g., extractions).

(c) Covers nonemergency oral surgery performed in a hospital or ambulatory surgery center only for:

(i) Clients ((ages)) eight years of age and younger;

(ii) Clients ((ages)) from nine ((through)) to twenty years of age only on a case-by-case basis and when the site-of-service is prior authorized by the agency; and

(iii) Clients any age of the division of developmental disabilities ((according to WAC 388-535-1099)).

(d) For site-of-service and oral surgery CPT codes that require prior authorization, the agency requires the dental provider to submit:

(i) Documentation used to determine medical appropriateness;

(ii) Cephalometric films;

(iii) X rays;

(iv) Photographs; and

(v) Written narrative.

(e) Requires the client's dental record to include supporting documentation for each type of extraction or any other surgical procedure billed to the ((department)) agency. The documentation must include:

(i) Appropriate consent form signed by the client or the client's legal representative;

(ii) Appropriate radiographs;

(iii) Medical justification with diagnosis;

(iv) Client's blood pressure, when appropriate;

(v) A surgical narrative and complete description of each service performed beyond surgical extraction or beyond code definition;

(vi) A copy of the post-operative instructions; and

(vii) A copy of all pre- and post-operative prescriptions.

((e)) (f) Covers routine and surgical extractions.

((f)) (g) Requires prior authorization for unusual, complicated surgical extractions.

(h) Covers tooth reimplantation/stabilization of accidentally evulsed or displaced teeth for clients twenty years of age and younger.

(i) Covers surgical extraction of unerupted teeth for clients twenty years of age and younger.

(j) Covers debridement of a granuloma or cyst that is five millimeters or greater in diameter. The ((department)) agency includes debridement of a granuloma or cyst that is less than five millimeters as part of the global fee for the extraction.

~~((g))~~ (k) Covers ~~((biopsy, as follows))~~ the following without prior authorization:

(i) Biopsy of soft oral tissue ~~((ø))~~;

(ii) Brush biopsy ~~((do not require prior authorization; and~~

~~((ii)))~~ for clients twenty years of age and younger.

(l) Requires providers to keep all biopsy reports or findings ~~((must be kept))~~ in the client's dental record.

~~((h))~~ (m) Covers alveoloplasty for clients twenty years of age and younger only on a case-by-case basis and when prior authorized. The ~~((department))~~ agency covers alveoloplasty only when not performed in conjunction with extractions.

~~((i))~~ (n) Covers surgical excision of soft tissue lesions only on a case-by-case basis and when prior authorized.

~~((j))~~ (o) Covers only the following excisions of bone tissue in conjunction with placement of ~~((immediate,))~~ complete~~((s))~~ or partial dentures for clients twenty years of age and younger when prior authorized:

(i) Removal of lateral exostosis;

(ii) Removal of torus palatinus or torus mandibularis; and

(iii) Surgical reduction of soft tissue ~~((ø))~~ osseous tuberosity.

(2) **Surgical incisions.** The ~~((department))~~ agency covers the following surgical incision-related services:

(a) Uncomplicated intraoral and extraoral soft tissue incision and drainage of abscess. The ~~((department))~~ agency does not cover this service when combined with an extraction or root canal treatment. Documentation supporting medical necessity must be in the client's record.

(b) Removal of foreign body from mucosa, skin, or subcutaneous alveolar tissue for clients twenty years of age and younger when prior authorized. Documentation supporting the medical necessity for the service must be in the client's record.

(c) Frenuloplasty/frenulectomy for clients ~~((through age))~~ six years of age and younger without prior authorization. ~~((The department covers))~~

(d) Frenuloplasty/frenulectomy for clients ~~((ages))~~ from seven ~~((through))~~ to twelve years of age only on a case-by-case and when prior authorized. Documentation supporting the medical necessity for the service must be in the client's record.

(3) **Occlusal orthotic devices.** (Refer to WAC ~~((388-535-1098-5))~~ 182-535-1098 (4)(c) for occlusal guard coverage and limitations on coverage.) The ~~((department))~~ agency covers:

(a) Occlusal orthotic devices for clients ~~((ages))~~ from twelve ~~((through))~~ to twenty years of age only on a case-by-case basis and when prior authorized.

(b) An occlusal orthotic device only as a laboratory processed full arch appliance.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-535-1096 Covered dental-related services ~~((for clients through age twenty))~~—Orthodontic services.

(1) The ~~((department))~~ agency covers orthodontic services,

subject to the coverage limitations listed, for clients ~~((through age))~~ twenty years of age and younger, according to chapter ~~((388-535A))~~ 182-535A WAC.

(2) The agency does not cover orthodontic services for clients twenty-one years of age and older.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-535-1098 Covered dental-related services ~~((for clients through age twenty))~~—Adjunctive general services. ~~((The department covers medically necessary dental-related adjunctive general services, subject to the coverage limitations listed, for clients through age twenty as follows:))~~ Clients described in WAC 182-535-1060 are eligible to receive the adjunctive general services listed in this section, subject to coverage limitations, restrictions, and client-age requirements identified for a specific service.

(1) **Adjunctive general services.** The ~~((department))~~ agency:

(a) Covers palliative (emergency) treatment, not to include pupal debridement (see WAC ~~((388-535-1086))~~ 182-535-1086 (2)(b)), for treatment of dental pain, for clients twenty years of age and younger, limited to once per day, per client, as follows:

(i) The treatment must occur during limited evaluation appointments;

(ii) A comprehensive description of the diagnosis and services provided must be documented in the client's record; and

(iii) Appropriate radiographs must be in the client's record supporting the medical necessity of the treatment.

(b) Covers local anesthesia and regional blocks as part of the global fee for any procedure being provided to clients.

(c) Covers office-based oral or parenteral conscious sedation, deep sedation, or general anesthesia, as follows:

(i) The provider's current anesthesia permit must be on file with the ~~((department))~~ agency.

(ii) For clients ~~((of the division of developmental disabilities, the services must be performed according to WAC 388-535-1099.~~

~~((iii) For clients ages))~~ eight years of age and younger, and for clients any age of the division of developmental disabilities, documentation supporting the medical necessity of the anesthesia service must be in the client's record.

~~((iv))~~ (iii) For clients ~~((ages))~~ from nine ~~((through))~~ to twenty years of age, deep sedation or general anesthesia services are covered on a case-by-case basis and when prior authorized, except for oral surgery services. For oral surgery services listed in WAC ~~((388-535-1094))~~ 182-535-1094, deep sedation or general anesthesia services do not require prior authorization.

~~((v))~~ (iv) Prior authorization is not required for oral or parenteral conscious sedation for any dental service for clients twenty years of age and younger, and for clients any age of the division of developmental disabilities. Documentation supporting the medical necessity of the service must be in the client's record.

~~((vi))~~ (v) For clients ~~((ages))~~ from nine ~~((through eighteen))~~ to twenty years of age who have a diagnosis of oral

facial cleft, the ~~((department))~~ agency does not require prior authorization for deep sedation or general anesthesia services when the dental procedure is directly related to the oral facial cleft treatment.

~~((vii))~~ For clients ~~through age twenty, the~~ (vi) A provider must bill anesthesia services using the CDT codes listed in the ~~((department's))~~ agency's current published billing instructions.

(d) Covers ~~((inhalation))~~ administration of nitrous oxide ~~((for clients through age twenty)),~~ once per day.

(e) Requires providers of oral or parenteral conscious sedation, deep sedation, or general anesthesia to meet:

(i) The prevailing standard of care;

(ii) The provider's professional organizational guidelines;

(iii) The requirements in chapter 246-817 WAC; and

(iv) Relevant department of health (DOH) medical, dental, or nursing anesthesia regulations.

(f) Pays for dental anesthesia services according to WAC ~~((388-535-1350))~~ 182-535-1350.

(g) Covers professional consultation/diagnostic services as follows:

(i) A dentist or a physician other than the practitioner providing treatment must provide the services; and

(ii) A client must be referred by the ~~((department))~~ agency for the services to be covered.

~~(2) ((Nonemergency dental services. The department covers nonemergency dental services performed in a hospital or ambulatory surgical center only for:~~

~~(a) Clients ages eight and younger.~~

~~(b) Clients ages nine through twenty only on a case-by-case basis and when prior authorized.~~

~~(c) Clients of the division of developmental disabilities according to WAC 388-535-1099.~~

~~(3))~~ **Professional visits.** The ~~((department))~~ agency covers:

(a) Up to two house/extended care facility calls (visits) per facility, per provider. The ~~((department))~~ agency limits payment to two facilities per day, per provider.

(b) One hospital call (visit), including emergency care, per day, per provider, per client, and not in combination with a surgical code unless the decision for surgery is a result of the visit.

(c) Emergency office visits after regularly scheduled hours. The ~~((department))~~ agency limits payment to one emergency visit per day, per client, per provider.

~~((4))~~ **(3) Drugs and/or medicaments (pharmaceuticals).** The ~~((department))~~ agency covers drugs and/or medicaments only when used with parenteral conscious sedation, deep sedation, or general anesthesia for clients twenty years of age and younger. The ~~((department's))~~ agency's dental program does not pay for oral sedation medications.

~~((5))~~ **(4) Miscellaneous services.** The ~~((department))~~ agency covers:

(a) Behavior management when the assistance of one additional dental staff other than the dentist is required ~~((;))~~ for the following clients and documentation supporting the need for the behavior management must be in the client's record:

(i) Clients ~~((ages))~~ eight years of age and younger;

(ii) Clients ~~((ages))~~ from nine ~~((through))~~ to twenty years of age, only on a case-by-case basis and when prior authorized;

(iii) Clients any age of the division of developmental disabilities ~~((according to WAC 388-535-1099));~~ and

(iv) Clients who reside in an alternate living facility (ALF) as defined in WAC 388-513-1301 or in a nursing facility.

(b) Treatment of post-surgical complications (e.g., dry socket). Documentation supporting the medical necessity of the service must be in the client's record.

(c) Occlusal guards when medically necessary and prior authorized. (Refer to WAC ~~((388-535-1094))~~ 182-535-1094(3) for occlusal orthotic device coverage and coverage limitations.) The ~~((department))~~ agency covers:

(i) An occlusal guard only for clients ~~((ages))~~ from twelve ~~((through))~~ to twenty years of age when the client has permanent dentition; and

(ii) An occlusal guard only as a laboratory processed full arch appliance.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-535-1099 Covered dental-related services for clients of the division of developmental disabilities. Subject to coverage limitations, restrictions, and client-age requirements identified for a specific service, the ~~((department))~~ agency pays for the dental-related services listed under the categories of services ~~((listed))~~ in this section ~~((for))~~ that are provided to clients of the division of developmental disabilities ~~((, subject to the coverage limitations listed)).~~ This chapter ((388-535-WAC)) also applies to clients of the division of developmental disabilities, regardless of age, unless otherwise stated in this section.

(1) Preventive services.

(a) Dental prophylaxis. The ~~((department))~~ agency covers dental prophylaxis or periodontal maintenance up to three times in a twelve-month period (see subsection (3) of this section for limitations on periodontal scaling and root planing).

(b) Topical fluoride treatment. The ~~((department))~~ agency covers topical fluoride varnish, rinse, foam or gel, up to three times within a twelve-month period.

(c) Sealants. The ~~((department))~~ agency covers sealants:

(i) Only when used on the occlusal surfaces of:

(A) Primary teeth A, B, I, J, K, L, S, and T; or

(B) Permanent teeth two, three, four, five, twelve, thirteen, fourteen, fifteen, eighteen, nineteen, twenty, twenty-one, twenty-eight, twenty-nine, thirty, and thirty-one.

(ii) Once per tooth in a two-year period.

(2) **Crowns.** The ~~((department))~~ agency covers stainless steel crowns every two years for the same tooth and only for primary molars and permanent premolars and molars, as follows:

(a) For clients ages twenty and younger, the ~~((department))~~ agency does not require prior authorization for stainless steel crowns. Documentation supporting the medical necessity of the service must be in the client's record.

(b) For clients (~~(ages)~~) twenty-one years of age and older, the ~~((department))~~ agency requires prior authorization for stainless steel crowns when the tooth has had a pulpotomy and only for:

(i) Primary first molars when the decay involves three or more surfaces; and

(ii) Second molars when the decay involves four or more surfaces.

(3) Periodontic services.

(a) **Surgical periodontal services.** The ~~((department))~~ agency covers:

(i) Gingivectomy/gingivoplasty once every three years. Documentation supporting the medical necessity of the service must be in the client's record (e.g., drug induced gingival hyperplasia).

(ii) Gingivectomy/gingivoplasty with periodontal scaling and root planing or periodontal maintenance when the services are performed:

(A) In a hospital or ambulatory surgical center; or

(B) For clients under conscious sedation, deep sedation, or general anesthesia.

(b) **Nonsurgical periodontal services.** The ~~((department))~~ agency covers:

(i) Periodontal scaling and root planing, ~~((up to two))~~ one time(s) per quadrant in a twelve-month period.

(ii) Periodontal ~~((sealing))~~ maintenance (four quadrants) substitutes for an eligible periodontal ~~((maintenance or oral prophylaxis))~~ scaling or root planing, twice in a twelve-month period.

(iii) Periodontal maintenance allowed six months after scaling or root planing.

(4) Adjunctive general services. ~~((a) Adjunctive general services.))~~ The ~~((department))~~ agency covers:

~~((i))~~ (a) Oral parenteral conscious sedation, deep sedation, or general anesthesia for any dental services performed in a dental office or clinic. Documentation supporting the medical necessity must be in the client's record.

~~((ii))~~ (b) Sedations services according to WAC ~~((388-535-1098))~~ 182-535-1098 (1)(c) and (e).

~~((b))~~ (5) **Nonemergency dental services.** The ~~((department))~~ agency covers nonemergency dental services performed in a hospital or an ambulatory surgical center for services listed as covered in WAC ~~((388-535-1082, 388-535-1084, 388-535-1086, 388-535-1088, and 388-535-1094))~~ 182-535-1082, 182-535-1084, 182-535-1086, 182-535-1088, and 182-535-1094. Documentation supporting the medical necessity of the service must be included in the client's record.

~~((c))~~ (6) **Miscellaneous services—Behavior management.** The ~~((department))~~ agency covers behavior management provided in dental offices or dental clinics ~~((for clients of any age)).~~ Documentation supporting the medical necessity of the service must be included in the client's record.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-535-1100 Dental-related services not covered ~~((for clients through age twenty)).~~ (1) The ~~((depart-~~

~~ment))~~ agency does not cover the following ~~((for clients through age twenty))~~:

(a) The dental-related services described in subsection (2) of this section unless the services are covered under the early periodic screening, diagnosis and treatment (EPSDT) program. See WAC ~~((388-534-0100))~~ 182-534-0100 for information about the EPSDT program.

(b) Any service specifically excluded by statute.

(c) More costly services when less costly, equally effective services as determined by the ~~((department))~~ agency are available.

(d) Services, procedures, treatment, devices, drugs, or application of associated services:

(i) ~~((Which))~~ That the ~~((department))~~ agency or the Centers for Medicare and Medicaid Services (CMS) considers investigative or experimental on the date the services were provided.

(ii) That are not listed as covered in one or both of the following:

(A) Washington Administrative Code (WAC).

(B) The ~~((department's))~~ agency's current published documents.

(2) The ~~((department))~~ agency does not cover dental-related services listed under the following categories of service ~~((for clients through age twenty))~~ (see subsection (1)(a) of this section for services provided under the EPSDT program):

(a) **Diagnostic services.** The ~~((department))~~ agency does not cover:

(i) Detailed and extensive oral evaluations or reevaluations.

(ii) Extraoral radiographs.

~~((ii) Comprehensive periodontal evaluations.))~~ (iii) Posterior-anterior or lateral skull and facial bone survey films.

(iv) Any temporomandibular joint films.

(v) Tomographic surveys.

(vi) Cephalometric films, for clients twenty-one years of age and older.

(vii) Oral/facial photographic images, for clients twenty-one years of age and older.

(viii) Comprehensive periodontal evaluations.

(ix) Occlusal intraoral radiographs, for clients twenty-one years of age and older.

(x) Viral cultures, genetic testing, caries susceptibility tests, or adjunctive prediagnostic tests.

(xi) Pulp vitality tests, for clients twenty-one years of age and older.

(xii) Diagnostic casts, for clients twenty-one years of age and older.

(b) **Preventive services.** The ~~((department))~~ agency does not cover:

(i) Nutritional counseling for control of dental disease.

(ii) Tobacco counseling for the control and prevention of oral disease.

(iii) Removable space maintainers of any type.

(iv) Oral hygiene instructions for clients nine years of age and older. This is included as part of the global fee for oral prophylaxis.

(v) Sealants placed on a tooth with the same-day occlusal restoration, preexisting occlusal restoration, or a tooth with occlusal decay.

~~((v+))~~ (vi) Sealants, for clients twenty years of age and older. For clients of the division of developmental disabilities, see WAC 182-535-1099.

(vii) Space maintainers, for clients ~~((ages))~~ nineteen ~~((through twenty))~~ years of age and older.

(viii) Recementation of space maintainers, for clients twenty-one years of age and older.

(ix) Custom fluoride trays of any type.

(x) Bleach trays.

(c) **Restorative services.** The ~~((department))~~ agency does not cover:

(i) Restorations for wear on any surface of any tooth without evidence of decay through the dentoenamel junction (DEJ) or on the root surface.

(ii) Gold foil restorations.

~~((ii+))~~ (iii) Metallic, resin-based composite, or porcelain/ceramic inlay/onlay restorations.

~~((iii+))~~ (iv) Prefabricated resin crowns, for clients twenty-one years of age and older.

(v) Preventive restorations.

(vi) Crowns for cosmetic purposes (e.g., peg laterals and tetracycline staining).

~~((iv+))~~ (vii) Permanent indirect crowns for ~~((third molars one, sixteen, seventeen, and thirty-two))~~ molar teeth.

~~((v+))~~ (viii) Permanent indirect crowns on permanent anterior teeth for clients fourteen years of age and younger.

(ix) Temporary or provisional crowns (including ion crowns).

~~((vi+))~~ (x) Labial veneer resin or porcelain laminate restorations.

~~((vii+))~~ (xi) Recementation of any crown, inlay/onlay, or any other type of indirect restoration, for clients twenty-one years of age and older.

(xii) Sedative fillings.

(xiii) Any type of core buildup, cast post and core, or prefabricated post and core, for clients twenty-one years of age and older.

(xiv) Any type of coping.

~~((viii+))~~ (xv) Crown repairs.

~~((ix+))~~ (xvi) Polishing or recontouring restorations or overhang removal for any type of restoration.

(xvii) Amalgam restorations of primary posterior teeth for clients sixteen years of age and older.

(xviii) Crowns on teeth one, sixteen, seventeen, and thirty-two.

(xix) Any services other than extraction on supernumerary teeth.

(d) **Endodontic services.** The ~~((department))~~ agency does not cover:

(i) The following endodontic services for clients twenty-one years of age and older:

(A) Endodontic therapy on permanent bicuspid;

(B) Any apexification/recalcification procedures; or

(C) Any apicoectomy/periradicular service.

(ii) Apexification/recalcification for root resorption of permanent anterior teeth.

(iii) The following endodontic services:

(A) Indirect or direct pulp caps.

(B) Any endodontic therapy on primary teeth, except as described in WAC ~~((388-535-1086))~~ 182-535-1086 (3)(a).

~~((ii))~~ Apexification/recalcification for root resorption of permanent anterior teeth.

~~((iii))~~ (C) Endodontic therapy on molar teeth.

(D) Any apexification/recalcification procedures for bicuspid or molar teeth.

~~((iv+))~~ (E) Any apicoectomy/periradicular services for bicuspid teeth or molar teeth.

~~((v+))~~ (F) Any surgical endodontic procedures including, but not limited to, retrograde fillings (except for anterior teeth), root amputation, reimplantation, and hemisections.

(e) **Periodontic services.** The ~~((department))~~ agency does not cover:

(i) Surgical periodontal services including, but not limited to:

(A) Gingival flap procedures.

(B) Clinical crown lengthening.

(C) Osseous surgery.

(D) Bone or soft tissue grafts.

(E) Biological material to aid in soft and osseous tissue regeneration.

(F) Guided tissue regeneration.

(G) Pedicle, free soft tissue, apical positioning, subepithelial connective tissue, soft tissue allograft, combined connective tissue and double pedicle, or any other soft tissue or osseous grafts.

(H) Distal or proximal wedge procedures.

(ii) Nonsurgical periodontal services including, but not limited to:

(A) Intracoronary or extracoronary provisional splinting.

(B) Full mouth or quadrant debridement.

(C) Localized delivery of chemotherapeutic agents.

(D) Any other type of nonsurgical periodontal service.

(f) **Removable prosthodontics.** The ~~((department))~~ agency does not cover:

(i) Removable unilateral partial dentures.

(ii) Adjustments to any removable prosthesis.

(iii) Any interim complete or partial dentures.

~~((iii+))~~ (iv) Flexible base partial dentures.

(v) Any type of permanent soft relining (e.g., molloplast).

(vi) Precision attachments.

~~((iv+))~~ (vii) Replacement of replaceable parts for semi-precision or precision attachments.

(viii) Replacement of second or third molars for any removable prosthesis.

(ix) Immediate dentures.

(x) Cast-metal framework partial dentures.

(g) **Implant services.** The ~~((department))~~ agency does not cover:

(i) Any type of implant procedures, including, but not limited to, any tooth implant abutment (e.g., periosteal implants, eosteal implants, and transosteal implants), abutments or implant supported crowns, abutment supported retainers, and implant supported retainers.

(ii) Any maintenance or repairs to procedures listed in (g)(i) of this subsection.

(iii) The removal of any implant as described in (g)(i) of this subsection.

(h) **Fixed prosthodontics.** The ~~((department))~~ agency does not cover any type of:

~~((Any type of))~~ (i) Fixed partial denture pontic ~~((or))~~,

(ii) Fixed partial denture retainer.

~~((ii) Any type of))~~ (iii) Precision attachment, stress breaker, connector bar, coping, cast post, or any other type of fixed attachment or prosthesis.

~~((iv))~~ (iv) Occlusal orthotic splint or device, bruxing or grinding splint or device, temporomandibular joint splint or device, or sleep apnea splint or device.

(v) Orthodontic service or appliance, for clients twenty-one years of age and older.

(i) Oral maxillofacial prosthetic services. The agency does not cover any type of oral or facial prosthesis other than those listed in WAC 182-535-1092.

(j) Oral and maxillofacial surgery. The ~~((department))~~ agency does not cover:

(i) Any oral surgery service not listed in WAC ~~((388-535-1094))~~ 182-535-1094.

(ii) Any oral surgery service that is not listed in the ~~((department's))~~ agency's list of covered current procedural terminology (CPT) codes published in the ~~((department's))~~ agency's current rules or billing instructions.

~~((j))~~ (iii) Vestibuloplasty.

(iv) Frenuloplasty/frenulectomy, for clients twenty-one years of age and older.

(k) Adjunctive general services. The ~~((department))~~ agency does not cover:

(i) Anesthesia, including, but not limited to:

(A) Local anesthesia as a separate procedure.

(B) Regional block anesthesia as a separate procedure.

(C) Trigeminal division block anesthesia as a separate procedure.

(D) Medication for oral sedation, or therapeutic intramuscular (IM) drug injections, including antibiotic and injection of sedative.

(E) Application of any type of desensitizing medicament or resin.

(ii) General anesthesia for clients twenty-one years of age and older.

(iii) Oral or parenteral conscious sedation for clients twenty-one years of age and older.

(iv) Analgesia or anxiolysis as a separate procedure except for administration of nitrous oxide for clients twenty-one years of age and older.

(v) Other general services including, but not limited to:

(A) Fabrication of an athletic mouthguard.

(B) Occlusal guards for clients twenty-one years of age and older.

(C) Nightguards.

(D) Occlusion analysis.

~~((E))~~ (E) Occlusal adjustment, tooth or restoration adjustment or smoothing, or odontoplasties.

~~((F))~~ (F) Enamel microabrasion.

~~((E))~~ (G) Dental supplies such as toothbrushes, toothpaste, floss, and other take home items.

~~((F))~~ (H) Dentist's or dental hygienist's time writing or calling in prescriptions.

~~((G))~~ (I) Dentist's or dental hygienist's time consulting with clients on the phone.

~~((H))~~ (J) Educational supplies.

~~((H))~~ (K) Nonmedical equipment or supplies.

~~((H))~~ (L) Personal comfort items or services.

~~((K))~~ (M) Provider mileage or travel costs.

~~((L))~~ (N) Fees for no-show, ~~((cancelled))~~ canceled, or late arrival appointments.

~~((M))~~ (O) Service charges of any type, including fees to create or copy charts.

~~((N))~~ (P) Office supplies used in conjunction with an office visit.

~~((O))~~ (Q) Teeth whitening services or bleaching, or materials used in whitening or bleaching.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-535-1220 Obtaining prior authorization for dental-related services ~~((for clients through age twenty)).~~ (1) The ~~((department))~~ agency uses the determination process for payment described in WAC ~~((388-501-0165))~~ 182-501-0165 for covered dental-related services ~~((for clients through age twenty))~~ that require prior authorization.

(2) The ~~((department))~~ agency requires a dental provider who is requesting prior authorization to submit sufficient objective clinical information to establish medical necessity. The request must be submitted in writing on ~~((an American Dental Association (ADA) claim form, which may be obtained by writing to the American Dental Association, 211 East Chicago Avenue, Chicago, Illinois 60611))~~ DSHS form 13-835, available on the agency's web site.

(3) The ~~((department))~~ agency may request additional information as follows:

(a) Additional radiographs (X rays) (refer to WAC ~~((388-535-1080))~~ 182-535-1080(2)(-));

(b) Study models;

(c) Photographs; and

(d) Any other information as determined by the ~~((department))~~ agency.

(4) The ~~((department))~~ agency may require second opinions and/or consultations before authorizing any procedure.

(5) When the ~~((department))~~ agency authorizes a dental-related service for a client, that authorization indicates only that the specific service is medically necessary; it is not a guarantee of payment. The authorization is valid for six months and only if the client is eligible for covered services on the date of service.

(6) The ~~((department))~~ agency denies a request for a dental-related service when the requested service:

(a) Is covered by another ~~((department))~~ agency program;

(b) Is covered by an agency or other entity outside the ~~((department))~~ agency; or

(c) Fails to meet the program criteria, limitations, or restrictions in this chapter ~~((388-535-WAC)).~~

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-535-1350 Payment methodology for dental-related services. The ~~((medical assistance administration~~

((MAA)) agency uses the description of dental services described in the American Dental Association's Current Dental Terminology (CDT), and the American Medical Association's Physician's Current Procedural Terminology (CPT).

(1) For covered dental-related services provided to eligible clients, ((MAA)) the agency pays dentists and other eligible providers on a fee-for-service or contractual basis, subject to the exceptions and restrictions listed under WAC ((388-535-1100)) 182-535-1100 and ((388-535-1400)) 182-535-1400.

(2) ((MAA)) The agency sets maximum allowable fees for dental services ((provided to children)) as follows:

(a) ((MAA's)) The agency's historical reimbursement rates for various procedures are compared to usual and customary charges.

(b) ((MAA)) The agency consults with representatives of the provider community to identify program areas and concerns that need to be addressed.

(c) ((MAA)) The agency consults with dental experts and public health professionals to identify and prioritize dental services and procedures for their effectiveness in improving or promoting ((children's)) dental health.

(d) Legislatively authorized vendor rate increases and/or earmarked appropriations for ((children's)) dental services are allocated to specific procedures based on the priorities identified in (c) of this subsection and considerations of access to services.

(e) Larger percentage increases may be given to those procedures which have been identified as most effective in improving or promoting ((children's)) dental health.

(f) Budget-neutral rate adjustments are made as appropriate based on the ((department's)) agency's evaluation of utilization trends, effectiveness of interventions, and access issues.

(3) ((MAA)) The agency reimburses dental general anesthesia services for eligible clients on the basis of base anesthesia units plus time. Payment for dental general anesthesia is calculated as follows:

(a) Dental procedures are assigned an anesthesia base unit of five;

(b) Fifteen minutes constitute one unit of time. When a dental procedure requiring dental general anesthesia results in multiple time units and a remainder (less than fifteen minutes), the remainder or fraction is considered as one time unit;

(c) Time units are added to the anesthesia base unit of five and multiplied by the anesthesia conversion factor;

(d) The formula for determining payment for dental general anesthesia is: (5.0 base anesthesia units + time units) x conversion factor = payment.

(4) When billing for anesthesia, the provider must show the actual beginning and ending times on the claim. Anesthesia time begins when the provider starts to physically prepare the client for the induction of anesthesia in the operating room area (or its equivalent), and ends when the provider is no longer in constant attendance (i.e., when the client can be safely placed under postoperative supervision).

(5) ((MAA)) The agency pays eligible providers listed in WAC ((388-535-1070)) 182-535-1070 for conscious sedation with parenteral and multiple oral agents, or for general

anesthesia when the provider meets the criteria in this chapter and other applicable WAC.

(6) Dental hygienists who have a contract with ((MAA)) the agency are paid at the same rate as dentists who have a contract with ((MAA)) the agency, for services allowed under The Dental Hygienist Practice Act.

(7) Licensed denturists who have a contract with ((MAA)) the agency are paid at the same rate as dentists who have a contract with ((MAA)) the agency, for providing dentures and partials.

(8) ((MAA)) The agency makes fee schedule changes whenever the legislature authorizes vendor rate increases or decreases.

(9) ((MAA)) The agency may adjust maximum allowable fees to reflect changes in services or procedure code descriptions.

(10) ((MAA)) The agency does not pay separately for chart or record setup, or for completion of reports, forms, or charting. The fees for these services are included in ((MAA's)) the agency's reimbursement for comprehensive oral evaluations or limited oral evaluations.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-535-1400 Payment for dental-related services. (1) The ((medical assistance administration (MAA))) agency considers that a provider who furnishes covered dental services to an eligible client has accepted ((MAA's)) the agency's rules and fees.

(2) Participating providers must bill ((MAA)) the agency their usual and customary fees.

(3) Payment for dental services is based on ((MAA's)) the agency's schedule of maximum allowances. Fees listed in the ((MAA)) agency's fee schedule are the maximum allowable fees.

(4) ((MAA)) The agency pays the provider the lesser of the billed charge (usual and customary fee) or ((MAA's)) the agency's maximum allowable fee.

(5) ((MAA)) The agency pays "by report" on a case-by-case basis, for a covered service that does not have a set fee.

(6) Participating providers must bill a client according to WAC ((388-502-0160)) 182-502-0160, unless otherwise specified in this chapter.

(7) If the client's eligibility for dental services ends before the conclusion of the dental treatment, payment for any remaining treatment is the client's responsibility. The exception to this is dentures and partial dentures as described in WAC ((388-535-1240)) 182-535-1240 and ((388-535-1290)) 182-535-1290.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-535-1450 Payment for denture laboratory services. This section applies to payment for denture laboratory services. The ((medical assistance administration (MAA))) agency does not directly reimburse denture laboratories. ((MAA's)) The agency's reimbursement for complete dentures, ((immediate dentures,)) partial dentures, and overdentures includes laboratory fees. The provider is responsible

to pay a denture laboratory for services furnished at the request of the provider.

AMENDATORY SECTION (Amending WSR 11-14-075, filed 6/30/11, effective 7/1/11)

WAC 182-535-1500 Payment for dental-related hospital services. The ~~((medical assistance administration (MAA)))~~ agency pays for medically necessary dental-related ~~((hospital))~~ services provided in an inpatient ~~((and))~~ or outpatient ~~((services in accord with))~~ hospital setting according to WAC ~~((388-550-1100))~~ 182-550-1100.

REPEALER

The following sections of the Washington Administrative Code are repealed:

- WAC 182-535-1065 Coverage limits for dental-related services provided under the GA-U and ADATSA programs.
- WAC 182-535-1247 Dental-related services for clients age twenty-one and older—General.
- WAC 182-535-1255 Covered dental-related services—Adults.
- WAC 182-535-1257 Covered dental-related services for clients age twenty-one and older—Preventive services.
- WAC 182-535-1259 Covered dental-related services for clients age twenty-one and older—Restorative services.
- WAC 182-535-1261 Covered dental-related services for clients age twenty-one and older—Endodontic services.
- WAC 182-535-1263 Covered dental-related services for clients age twenty-one and older—Periodontic services.
- WAC 182-535-1266 Covered dental-related services for clients age twenty-one and older—Prosthodontics (removable).
- WAC 182-535-1267 Covered dental-related services for clients age twenty-one and older—Oral and maxillofacial surgery services.
- WAC 182-535-1269 Covered dental-related services for clients age twenty-one and older—Adjunctive general services.

- WAC 182-535-1271 Dental-related services not covered for clients age twenty-one and older.
- WAC 182-535-1280 Obtaining prior authorization for dental-related services for clients age twenty-one and older.

**WSR 12-09-089
PERMANENT RULES
MILITARY DEPARTMENT**

[Filed April 18, 2012, 10:46 a.m., effective May 19, 2012]

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

Purpose: The purpose of this order is to adopt amended rules that describe the procedures the military department will follow in order to provide full access to public records. These amended rules improve clarity and make it easier for requesters to understand military department procedures regarding access to public records.

Citation of Existing Rules Affected by this Order: Amending chapter 323-10 WAC, Public records.

Statutory Authority for Adoption: RCW 42.56.010, 42.56.100.

Adopted under notice filed as WSR 12-04-087 on January 31, 2012.

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 8, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 8, 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: April 18, 2012.

Jill Bushnell
Public Records Officer

AMENDATORY SECTION (Amending § 323-10-010, filed 2/13/74)

WAC 323-10-010 Authority and purpose. ~~((The purpose of this chapter shall be to ensure compliance by the military department, state of Washington with the provisions of chapter 1, Laws of 1973 (Initiative 276), Disclosure Campaign finances Lobbying Records; and in particular with sections 25-32 of that act, dealing with public records.))~~ (1) RCW 42.56.070(1) requires each agency to make available for inspection and copying nonexempt "public records" in accordance with published rules. The act defines "public

record" to include any "writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained" by the agency. RCW 42.56.070(2) requires each agency to set forth "for informational purposes" every law, in addition to the Public Records Act, that exempts or prohibits the disclosure of public records held by that agency.

(2) The purpose of these rules is to establish the procedures the military department will follow in order to provide full access to public records. These rules provide information to persons wishing to request access to public records of the military department and establish processes for both requestors and military department staff that are designed to best assist members of the public in obtaining such access.

(3) The purpose of the act is to provide the public full access to information concerning the conduct of government, mindful of individuals' privacy rights and the desirability of the efficient administration of government. In carrying out its responsibilities under the act, the military department will be guided by the provisions of the act describing its purposes and interpretation.

AMENDATORY SECTION (Amending § 323-10-020, filed 2/13/74)

WAC 323-10-020 ((Definitions:)) Agency description—Contact information—Public records officer. ((+) Public records

"Public record" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics.

(2) Writing

"Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, magnetic or punched cards, discs, drums and other documents.

(3) Military department

The military department is the agency established by law pursuant to the provisions of Title 38 RCW. The military department shall hereinafter be referred to as the "agency." Where appropriate, the term "agency" also refers to the staff and employees of the military department.) (1) The military department is the agency established by law pursuant to the provisions of Title 38 RCW. The headquarters building of the military department and its staff are located at: 1 Militia Drive, Building 1, Camp Murray, Washington, 98430.

(2) Any person wishing to request access to public records of the military department, or seeking assistance in making such a request should contact the public records officer of the military department:

Public Records Officer
Washington Military Department
Building 1
Camp Murray, WA 98430
Phone: 253-512-8110

E-mail: public.records@mil.wa.gov

Information and public records are also available at the military department web site at <http://www.mil.wa.gov>. Requestors are encouraged to view the information and documents available on the web site prior to contacting the records officer.

(3) The public records officer will oversee compliance with the act but another military department staff member may process the request. Therefore, these rules will refer to the public records officer "or designee." The public records officer or designee and the military department will provide the fullest assistance to requestors, create and maintain for use by the public and military department officials an index to public records of the military department, protect public records from damage or disorganization; and prevent fulfilling public records requests from causing excessive interference with essential functions of the military department.

AMENDATORY SECTION (Amending § 323-10-030, filed 2/13/74)

WAC 323-10-030 ((Description of central and field organization of the military department.)) Availability of public records. ((The military department is a public safety agency. The administrative office of the agency and its staff are located at Camp Murray, Tacoma, Washington. In addition to the headquarters, the agency has in excess of forty facilities located throughout the state in the form of armories, shops, aircraft facilities and vehicle storage buildings.)) (1) Hours for inspection of records. Public records are available for inspection and copying by appointment during normal business hours of the military department, Monday through Friday, 9:00 a.m. to 4:00 p.m., excluding legal holidays. Original records must be inspected at the offices of the military department. The military department will take reasonable action to protect records from damage and disorganization during inspection. A requestor shall not take military department records from military department offices without the permission of the public records officer or designee.

(2) Records index and records available on-line. An index of public records is available for use by members of the public. The index, which also includes a list of laws other than those in chapter 42.56 RCW that exempt or prohibit disclosure of specific information or records, may be accessed on-line at <http://www.mil.wa.gov>. A variety of records is also available on the military department web site. Requestors are encouraged to view the documents available on the web site prior to submitting a records request.

(3) Making a request for public records.

(a) Any person wishing to inspect or obtain copies of public records of the military department should make the request in writing by letter, fax, or e-mail addressed to the public records officer or using the military department web site form located at: <http://www.mil.wa.gov>. Records requests should include the following information:

- Name of requestor;
- Address of requestor;
- Other contact information, including telephone number and e-mail address;

- Identification of the public records adequate for the public records officer or designee to locate the records; and
- The date and time of day of the request.

(b) If the requestor wishes to obtain photocopies or electronic versions of nonelectronic records instead of simply inspecting them, he or she should so indicate and make arrangements to pay for copies of the records. A deposit may be required prior to the military department's collection of the records requested. Pursuant to WAC 323-10-070, photocopies will be provided at fifteen cents per page and scanned copies will be provided at six cents per page.

(c) The public records officer or designee may accept requests for public records that contain the above information by telephone or in person. If the public records officer or designee accepts such a request, he or she will confirm receipt of the information and the substance of the request in writing. The department will presume that the request is fully and accurately described in this confirmation unless the requestor promptly indicates otherwise in writing.

AMENDATORY SECTION (Amending § 323-10-040, filed 2/13/74)

WAC 323-10-040 ((Operations and procedures.))

Processing of public records requests—General. ((The military department is the National Guard Headquarters for all Army and Air National Guard units in the state of Washington. The National Guard is that part of the military force of the state that is organized, equipped and federally recognized under the provisions of The National Defense Act of the United States. The National Guard is administered by the governor as "commander-in-chief," through the adjutant general pursuant to general state laws and consistent with federal regulations.)) (1) Order of response. The public records officer or designee will process requests in the order allowing the most requests to be processed in the most efficient manner.

(2) Acknowledging receipt of request. Within five business days of receipt of the request, the public records officer will do one or more of the following:

- (a) Make the records available for inspection or copying;
- (b) If copies or scanned documents are requested and terms of payment are met, send the copies to the requestor;
- (c) Provide a reasonable estimate of when records will be available;
- (d) Seek clarification of a request;
- (e) Revise the estimate of when records will be available;

or

- (f) Deny the request.

(3) Failure to respond. If the military department does not respond in writing within five business days of receipt of the request for disclosure, the requestor should consider contacting the public records officer to determine the reason for the failure to respond.

(4) Seeking clarification of a request. The military department may seek clarification of a request that is unclear or does not sufficiently identify the requested records. Such clarification may be requested and provided by telephone. If the requestor does not respond to the request for clarification within thirty days of the military department's request, the

requestor's request will be deemed abandoned and may be closed by the military department.

(5) Protecting rights of others. In the event that the requested records contain information that may affect rights of others and may be exempt from disclosure, the public records officer may, prior to providing the records, give notice to such others whose rights may be affected by the disclosure. Such notice should be given so as to make it possible for those other persons to contact the requestor and ask him or her to revise the request, or, if necessary, seek an order from a court to prevent or limit the disclosure. The notice to the affected persons will include a copy of the request.

(6) Records exempt from disclosure. Some records are exempt from disclosure, in whole or in part. If the military department believes that a record is exempt from disclosure and should be withheld, the public records officer will state the specific exemption and provide a brief explanation of why the record or a portion of the record is being withheld. If only a portion of a record is exempt from disclosure, but the remainder is not exempt, the public records officer will redact the exempt portions, provide the nonexempt portions, and indicate to the requestor why portions of the record are being redacted.

(7) Inspection of records.

(a) Consistent with other demands, the military department shall promptly provide space to inspect public records. No member of the public may remove a document from the viewing area or disassemble or alter any document. The requestor shall indicate which documents he or she wishes the agency to copy.

(b) The requestor must claim or review the assembled records within thirty days of the military department notification to him or her that the records are available for inspection. The agency will notify the requestor in writing of this requirement and inform the requestor that he or she should contact the agency to make arrangements to claim or review the records. If the requestor or a representative of the requestor fails to claim or review the records within the thirty-day period or make other arrangements, the military department may close the request and refile the assembled records. Other public records requests can be processed ahead of a subsequent request by the same person for the same or almost identical records, which can be processed as a new request.

(8) Providing copies of records. After inspection is complete, the public records officer or designee shall make the requested copies or arrange for copying.

(9) Providing records in installments. When the request is for a large number of records, the public records officer or designee will provide access for inspection and copying in installments, if he or she reasonably determines that it would be practical to provide the records in that way. If, within thirty days, the requestor fails to inspect the entire set of records or one or more of the installments, the public records officer or designee may stop searching for the remaining records and close the request.

(10) Completion of inspection. When the inspection of the requested records is complete and all requested copies are provided, the public records officer or designee will indicate that the military department has completed a diligent search

for the requested records and made any located nonexempt records available for inspection.

(11) Closing withdrawn or abandoned request. When the requestor either withdraws the request or fails to fulfill his or her obligations to clarify the request, inspect the records, or pay the deposit or final payment for the requested copies, the public records officer will close the request and indicate to the requestor that the military department has closed the request.

(12) Later discovered documents. If, after the military department has informed the requestor that it has provided all available records, the military department becomes aware of additional responsive documents existing at the time of the request, it will promptly inform the requestor of the additional documents and provide them on an expedited basis.

AMENDATORY SECTION (Amending § 323-10-050, filed 2/13/74)

WAC 323-10-050 Processing of public records ((available)) requests—Electronic records. ((All public records of the agency, as defined in WAC 323-010-020, are deemed to be available for public inspection and copying pursuant to these rules, except as otherwise provided by section 31, chapter 1, Laws of 1973, WAC 323-010-090, and any applicable federal law or regulation.)) (1) Requesting electronic records. The process for requesting electronic public records is the same as for requesting paper public records.

(2) Providing electronic records. When a requestor requests records in an electronic format, the public records officer will provide the nonexempt records or portions of such records that are reasonably locatable in an electronic format that is used by the agency and is generally commercially available, or in a format that is reasonably translatable from the format in which the agency keeps the record.

AMENDATORY SECTION (Amending § 323-10-060, filed 2/13/74)

WAC 323-10-060 ((Public records officer.)) Exemptions. ((The agency's public records shall be in charge of the public records officer designated by the agency. The person so designated shall be located in the administrative office of the agency. The public records officer shall be responsible for the following: The implementation of the agency's rules and regulations regarding release of public records, coordinating the staff of the agency in this regard, and generally insuring compliance by the staff with the public records disclosure requirements of chapter 1, Laws of 1973, and any other applicable law or regulation.)) (1) The Public Records Act provides that a number of types of documents are exempt from public inspection and copying. In addition, documents are exempt from disclosure if any "other statute" exempts or prohibits disclosure. A list of statutes containing exemptions outside the Public Records Act that restrict availability of some documents held by the military department can be found in the military department public records index which is available on-line at <http://www.mil.wa.gov> or from the public records officer.

(2) The military department is prohibited by statute from disclosing lists of individuals for commercial purposes.

AMENDATORY SECTION (Amending § 323-10-070, filed 2/13/74)

WAC 323-10-070 ((Office hours.)) Costs of providing copies of public records. ((Public records shall be available for inspection and copying during the customary office hours of the agency. For the purposes of this chapter, the customary office hours shall be from 9:00 a.m. to noon and from 1:00 p.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.)) (1) Costs for paper copies. There is no fee for inspecting public records. A requestor may obtain standard black and white photocopies for fifteen cents per page. Copies in color or larger-sized documents cost will be based on the actual cost to reproduce them at the time of the request.

Before beginning to make the copies, the public records officer or designee may require a deposit of up to ten percent of the estimated costs of copying all the records selected by the requestor. The public records officer or designee may also require the payment of the remainder of the copying costs before providing all the records, or the payment of the costs of copying an installment before providing that installment. The military department will not charge sales tax when it makes copies of public records.

(2) Costs for electronic records. The cost of electronic copies of records shall be free for information on a CD-ROM when the information already exists in electronic format and it only has to be copied to a CD. The cost of scanning existing office paper or other nonelectronic records is six cents per page. There will be no charge for e-mailing electronic records to a requestor, unless another cost applies such as a scanning fee.

(3) Costs of mailing. The military department may also charge actual costs of mailing, including the cost of the shipping container.

(4) Payment. Payment may be made by cash, check, or money order to the military department.

AMENDATORY SECTION (Amending § 323-10-080, filed 2/13/74)

WAC 323-10-080 ((Requests for)) Review of denials of public records. ((In accordance with requirements of chapter 1, Laws of 1973 that agencies prevent unreasonable invasion of privacy, protect public records from damage or disorganization, and prevent excessive interference with essential functions of the agency, public records may be inspected or copied or copies of such records may be obtained, at designated agency locations, by members of the public upon compliance with the following procedures:

(1) A request may be made in writing or orally. The request shall be presented to the public records officer, or his designee, if the public records officer is not available, at the administrative office of the agency located at Camp Murray during customary office hours. The request shall include the following information for the agency records officer log:

- (a) The name of the person requesting the record.
- (b) The date upon which the request was made.
- (c) The nature of the request.

~~(d) If the matter requested is referenced within an available index maintained by the records officer, a reference to the requested record as it is described in such index.~~

~~(e) If the requested matter is not identifiable by reference to the agency's current available index, an appropriate description of the record requested.~~

~~(2) In all cases in which a member of the public is making a request, it shall be the obligation of the public records officer or staff member to whom the request is made, to assist the member of the public in appropriately identifying the public record requested.)~~ (1) Petition for internal administrative review of denial of access. Any person who objects to the initial denial or partial denial of a records request may petition in writing (including e-mail) to the public records officer for a review of that decision. The petition shall include a copy of or reasonably identify the written statement by the public records officer or designee denying the request.

(2) Consideration of petition for review. The public records officer shall promptly provide the petition and any other relevant information to the special assistant to the director. The petition will be affirmed or reversed within five business days following the military department's receipt of the petition, or within such other time as the military department and the requestor mutually agree.

(3) Review by the attorney general's office. Pursuant to RCW 42.56.530, if the military department denies a requestor access to public records because it claims the record is exempt in whole or in part from disclosure, the requestor may request the attorney general's office to review the matter. The attorney general has adopted rules on such requests in WAC 44-06-160.

(4) Judicial review. Any person may obtain court review of denials of public records requests pursuant to RCW 42.56.550 at the conclusion of two business days after the initial denial regardless of any internal administrative appeal.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 323-10-090	Copying.
WAC 323-10-100	Exemptions.
WAC 323-10-110	Review of denials of public records requests.
WAC 323-10-120	Protection of public records.
WAC 323-10-130	Requests to the agency.
WAC 323-10-140	Adoption of form.
WAC 323-10-150	Index.
WAC 323-10-900	Appendix A—Request for public record—Form.